

# Activists' Legal Project

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## Legal Briefing 3:

# A GUIDE TO POSSIBLE OFFENCES

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The aim of this briefing is to give an idea of the most likely offences that you may find yourself charged with when you participate in direct action. We have given only the barest minimum of detail about each offence. If there are specific offences that you want to know more about then please contact us. We have listed the maximum penalties set down by law for each offence. But please remember that the sentence you can expect to receive will vary according to the exact facts of your case, any previous convictions that you may have and in the case of fines, your means. Please see legal briefing 2, 'A brief guide to trial procedure in the magistrates court', for more information on sentencing.

## 1. Trespass offences

These are offences, introduced by the Criminal Justice and Public Order Act 1994, which essentially give the most senior police officer present, at a demonstration or action on private land, the power to clear the land of all unauthorised persons. All are arrestable offences and will be dealt with in the magistrates court.

### a. Aggravated trespass (section 68)

To commit this offence you must trespass on land (but not public highways, bridleways or footpaths) in the open air with the intention of intimidating, disrupting or obstructing someone from going about their lawful activity.

The section says;

'(1) A person commits the offence of aggravated trespass if he trespasses on land in the open air and, in relation to any lawful activity which persons are engaged in on the land in the open air, does there anything which is intended by him to have the effect

(a) of intimidating those persons or any of

- them so as to deter them or any of them from engaging in that activity of them so as to deter them or any of them from engaging in that activity
- (b) of obstructing that activity
- (c) of disrupting that activity’

The section goes on to define ‘lawful activity’ as an activity which can be engaged in without committing an offence or trespassing on land.’ So if the activity wasn’t lawful then you will have a defence.

The maximum penalty is 3 months imprisonment, a fine of up to £2,500 or both.

## **b. Failure to leave land after a warning (section 69)**

This section states;

- ‘(1) if the senior police officer present at the scene reasonably believes
  - (a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land in the open air or
  - (b) that two or more persons are trespassing on land in the open air and are present there with the common purpose of intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting lawful activity
    - he may direct that person or (as the case may be) those persons (or any of them) to leave the land.
- (2) a direction... if not communicated to the persons referred to [above] by the police officer giving the direction, may be communicated to them by any constable at the scene.
- (3) if a person knowing that a direction..... has been given which applies to him
  - (a) fails to leave the land as soon as is practicable,
  - or
  - (b) having left again enters the land as a trespasser within the period of three months...
    - he commits an offence.....
- (4)...it is a defence for the accused to show
  - (a) that he was not trespassing on land, or
  - (b) that he had reasonable excuse for failing to leave the land as soon as practicable or ....for again entering the land as trespasser.’

The maximum penalty is 3 months imprisonment, a fine of up to £2,500 or both.

## **c. Failure to leave squatted land (section 61)**

Squatting is essentially a civil matter and the owner must have lawful authority e.g. a possession order, before you can be evicted from land. However this section will allow the police to remove you (provided there are two or more persons trespassing) from private land (not buildings) without the need for a possession order, where reasonable steps have been taken to ask you to leave and where either more than six vehicles are present or property has been damaged or threatening, abusive or insulting behaviour or language has been used. So this one will be relevant if you are planning to set up a protest camp or land squat on private land.

The Act states;

- ‘(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken on behalf of the occupier to ask them to leave and
  - (a) that any of those persons has caused damage to the land or to the property on the land or used threatening, abusive or insulting behaviour or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his,
  - (b) that those persons have between them six or more vehicles on the land he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.’

As with section 69 above, a person who knows that a direction has been given which applies to him/her must leave the land as soon as is reasonably practicable and not return within 3 months. Failure to leave or to return within 3 months will be an offence.

The maximum penalty is 3 months imprisonment, a fine of up to £2,500 or both.

## **2. Highway offences**

### **a. Obstruction of the highway**

This charge is often used by the police to remove demonstrators who are standing outside buildings, to remove people sitting down blockading entrances or roads and in many other public order situations. You commit this

offence if, without lawful authority or excuse, you wilfully obstruct the free passage of the highway. The 'highway' includes the road, the pavement, grass verges and private property used as a public thoroughfare. 'Obstruction' includes anything that prevents passing and repassing along the highway. It is also not necessary for the whole of the highway to be blocked for the offence to be committed. The offence is obstructing the highway, not other highway users, so it is not necessary to prove that anyone was actually obstructed. The obstruction has to be 'wilful', so you will often be asked to move and if you do not then this will be used as evidence of your 'wilful' obstruction in court.

This offence can only be tried in the magistrates' court, the maximum penalty is a fine of £1000. There is no power to send a person convicted of this offence to prison. Fines are generally no more than £150.

## **b. Breach of sessional orders**

While Parliament is sitting the police have special powers, under the Metropolitan Police Act 1839, to 'disperse all assemblies or processions of persons likely to cause an obstruction, disorder or annoyance' in a specified area around Westminster (basically the triangle between Vauxhall Bridge, Waterloo Bridge and Buckingham Palace). The aim of these orders is to ensure the free passage of MPs to and from Parliament. You commit an offence if you fail to disperse after you have been made aware of the orders, so the police must read them to you or at least summarise them before arresting you. It is a defence to show that the passage of MPs would not have been obstructed. The orders do not affect marches or demonstrations on a day when Parliament is not sitting.

This offence can only be tried in the magistrates' court, the maximum penalty is a fine of £500. Fines of £100 have been imposed, but there have also been many acquittals.

## **3. Breach of the peace**

If a police officer considers that you are causing, have just caused or are about to cause a 'breach of the peace' they have the right to arrest you. A breach of the peace occurs when an act is done or threatened to be done which either actually harms, or is likely to harm, or puts someone in fear of harm, to themselves, to others or to property. It must be characterised by violence or threat

of violence. This violence can come either from you or from others reacting to your actions. It is very unclear exactly what a breach of the peace actually is, but in a recent case the Court decided that a person acting lawfully can only be arrested for breach of the peace where there is a "real and imminent threat to the peace".

Breach of the peace is not a criminal offence but a civil wrong and the only possible penalty is a bind-over order. This is not a criminal conviction but an undertaking given to the court about your future conduct. After arrest the police will hold you in custody until you can be brought before a magistrate to be bound over to be of good behaviour for a period of time in a specified sum of money e.g. for one year in the sum of £100. If you breach the order and are brought back to court then you will have to pay the sum of money. If you refuse to accept a bind over the magistrate will have no choice but to immediately imprison you for a maximum of six months. However you can get out of prison if you 'purge your contempt' by agreeing to the bind-over order. Sometimes bind-over orders are offered to protesters to settle their cases, the Crown Prosecution Service will for example offer to drop charges such as obstruction of the highway or obstruction of a police officer if the defendant agrees to be bound over.

## **4. Obstructing a police officer**

Under section 51 of the Police Act 1964 it is an offence to resist or wilfully obstruct a constable in the execution of his/her duty. This is widely used by the police at demonstrations. Wilful obstruction of a police officer means doing any act which makes it more difficult for the officer to carry out his/her lawful duty e.g. ignoring their instructions, stopping them doing something, dearesting someone or deliberately misleading them, or giving a false name and/or address. It has to be shown by the Prosecution that the police officer was acting in the execution of his/her duty, i.e. attempting to prevent breach of the law, and this can be very difficult to prove. There is no specific power of arrest for this offence, but the police may be able to rely on their 'general arrest powers'.

This offence can only be tried in the magistrates court. There is a maximum sentence of one month in prison or a fine of £1,000.

A more determined attempt to mislead could result in a charge of attempting to pervert the course of justice

## 5. Public order offences

There are a series of offences connected with the organisation of or participation in marches or demonstrations which are set out in the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994:

### a. Public processions

It is an offence under the Public Order Act 1986 to organise a political march or procession (2 or more people moving along a route) without giving the police 7 days notice in writing. Failure of the organiser to notify the police of the march or to change the start time or route without giving further notice is an offence with a maximum penalty of a fine up to £1,000. The Chief Constable can impose conditions in advance of the march or the senior police officer on the day of the march where he/she reasonably believes there will be serious public disorder, serious property damage or serious disruption to the life of the community. It is an offence, either as an organiser or as a participant, if you know that a condition has been imposed and you do not comply with it. It is also an offence to incite others not to comply. It is a defence to prove that any failure to comply was beyond your control. The Chief Constable can apply for a banning order, to prevent the march going ahead at all, if he/she is satisfied that imposition of conditions on a march will not be sufficient to prevent serious public disorder. It is an offence to organise, take part or incite others to participate in a banned march.

The maximum penalty for breaching the conditions or breaching the banning order is 3 months imprisonment or a maximum fine of £2,500 for organisers or inciters and a fine of £1,000 for participants.

### b. Public assemblies

In addition to the general powers the police use to move or disperse a crowd (breach of the peace, obstruction of the highway, local bye-laws etc) they also have specific powers set out in the Public Order Act 1986 to control public assemblies (static demonstrations including vigils). A 'public assembly' is twenty or more people gathered together in a public place in the open air. This includes highways, parks, shopping precincts or any other place to which the public have access or partial access. Conditions can be placed on an assembly which restrict the place, the duration and the numbers, 'as they appear necessary to prevent serious disorder, disruption of the life of the community, or intimidation'. Conditions can be

imposed in advance or by the senior police officer who is at the assembly. There is no power to ban a public assembly altogether. Breach of the conditions is an offence with the same penalties as for breach of the conditions for a public assembly.

### c. Trespassory assemblies

A trespassory assembly is twenty or more people on land in the open air without permission from the occupier. Under the Criminal Justice and Public Order Act 1994, sections 70 and 71, the police have the power to ban a trespassory assembly where there is a risk of serious disruption to the life of the community or where there is a risk to an important site or building. The police can impose a ban over an area of up to five miles from the site, prevent people travelling to the assembly and arrest those who organise it or take part. These sections have, for example, been used in the past to prevent Solstice celebrations at Stonehenge.

These offences carry a maximum penalty of 3 months imprisonment or a fine of £2,500.

The Public Order Act 1986 also sets out a series of progressively more serious public order offences:

### d. Harassment, alarm or distress (disorderly conduct) (section 5)

This is the least serious public order offence and the one most regularly used against protesters. It was much criticised on its introduction because it covers behaviour which was generally not thought to be criminal. In particular it covers behaviour which falls short of violence or the threat or fear of violence.

It is an offence under this section 'if a person (i) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour or (ii) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress'.

The offence can be committed either in public or in private. There is a two stage power of arrest; the police can only make an arrest if you have been warned to stop the disorderly conduct and have then gone on to repeat it. The conduct does not need to be directed towards another person, but you must have intended your conduct

to be threatening, abusive or insulting or disorderly or were aware that it might be. There must be a victim present at the scene and the prosecution must prove that the conduct took place within the hearing or sight of another person (including a police officer) who was likely to be caused harassment, alarm (for him/herself or for a third party) or distress by your action. Where the only person involved is a police officer, the court might decide that the words or behaviour used did not have the effect of causing harassment alarm or distress, because a police officer may be taken to be more robust and used to, say, strong language.

It's a defence to show that you had no reason to believe there was any such person within hearing or sight of your action. It is also a defence if you can show that the conduct was "reasonable."

The offence can only be dealt with in the magistrates court and carries a maximum sentence of a fine of £1,000. There is no power to send a person convicted of this offence to prison.

## **e. Intentional harassment, alarm or distress (section 4A)**

The Criminal Justice and Public Order Act 1994 inserted this section into the Public Order Act creating a new offence of causing intentional harassment, alarm or distress in an attempt to deal with racial harassment. It has also been used to prosecute stalkers.

A person is guilty of this offence if, 'with intent to cause a person harassment, alarm or distress, he:

- (i) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour or
- (ii) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress'.

This offence differs from the section 5 offence in that it (a) requires an intention to cause a particular person harassment, alarm or distress and (b) actually causes harassment alarm or distress to that person or to another person. It is a defence to show that the conduct was reasonable.

The maximum penalty is also more severe than for the section 5 offence, six months imprisonment or a fine not exceeding £5,000. It can only be tried in a magistrates court.

## **f. Fear of violence (section 4)**

It is an offence under this section' if a person:

- '(i) uses towards another person threatening, abusive or insulting words or behaviour, or
  - (ii) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,
- with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked'.

Prosecutions have been brought where threats, abuse or insults have been made by rival football supporters, on picket lines or between rival demonstrators. The words or behaviour or the display must be directed towards another person. This can include words on a banner or placard, a tee-shirt or a badge

The offence can only be tried in a magistrates court and is punishable with a maximum of six months imprisonment and/or a fine not exceeding £5,000.

## **g. Affray (section 3)**

Under this section 'a person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety'. A threat must be more than words and violence must be violence towards a person and not property. This is a public order offence intended to protect a bystander, so what is important is not whether the person towards whom the violence or threat is directed fears for their safety but whether a third person of 'reasonable firmness' (who need not actually be present) would, if he/she had seen the violence or threat, have feared for his/her own safety.

This offence can be dealt with either in the magistrates or in the Crown Court, known as 'triable either way' (see briefing 2 for an explanation) and is punishable in the Crown Court with a maximum of three years imprisonment or an unlimited fine or both and in the magistrates court with a maximum of six months imprisonment or a fine of £5,000 or both.

## **h. Violent Disorder (section 2)**

The offence of violent disorder is committed ‘where 3 or more people who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety’.

This offence is triable either way and is punishable in the Crown Court with a maximum of five years imprisonment or an unlimited fine or both and in the magistrates court with a maximum of six months imprisonment or a fine of £5,000 or both.

## **i. Riot (section 1)**

This is the most serious of the public order offences. The offence of riot is defined as ‘where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety’. Prosecutions are uncommon because of the difficulty of proving ‘common purpose’.

This offence can only be tried in the Crown Court and the Director of Public Prosecutions must consent to the case being brought. The maximum penalty is 10 years imprisonment, or an unlimited fine or both.

## **6. Harassment**

The Protection from Harassment Act 1997 was brought in supposedly to address the problem of stalking. But it has also been used against political demonstrators from time to time. However in a civil court case, *Huntingdon Life Sciences Ltd. v. Curtin* (1997) the Court said that in view of the individual’s right to protest and demonstrate about issues of public interest, they will resist any attempts to interpret the statute widely.

The act states (section 1) that a person must not pursue a course of conduct -

- (a) Which amounts to harassment of another, and
- (b) Which he knows or ought to know amounts to harassment of another

It is a defence that the course of conduct was pursued for the purpose of preventing or detecting crime or that in the particular circumstances it was reasonable.

The offence can only be tried in a magistrates court and

carries a maximum sentence of 6 months imprisonment or a fine up to £5000.

A more serious offence is set out in section 4 which states that a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

This offence can be tried either in a magistrates court or the Crown Court and carries a maximum sentence of 5 years.

## **7. Criminal damage/arson/going equipped**

You commit the offence of criminal damage if you destroy or damage property or threaten to destroy or damage property, either intentionally or recklessly, without lawful excuse: Section 1(1) of the Criminal Damage Act 1971. The damage does not have to be permanent and even if it is graffiti made with chalk which will wash away with rain it may still be criminal damage. There is a specific defence of ‘lawful excuse’ set out in the Criminal Damage Act, which basically states that if you believed that the destruction of the property was necessary to protect neighbouring property, which was in immediate need of protection, then you have a defence. The classic example of this defence is breaking down your neighbour’s door in order to put out a fire.

Where the value of the damage is less than £5,000 then the case must be heard in the magistrate’s court. Where the value of the damage is greater than £5,000 then the case is triable either way and can be heard either in the magistrates or Crown Court. In the magistrate’s court the maximum sentence is 3 months in prison or a fine of up to £2,500 and a compensation order of up to £5,000. In the Crown Court the maximum sentence is 10 years in prison or an unlimited fine and a compensation order equivalent to the amount of the damage.

If you were to use fire to destroy or damage property then the offence is arson: Section 1(3) of the Criminal Damage Act. The maximum sentence for arson is life imprisonment.

The offence of going equipped is committed if a person has with him/her any article for use in the course of or in connection with certain specified offences. These of-

fences include criminal damage, burglary and theft. Activists found by police on their way to an action with boltcroppers and jemmies etc have been charged with going equipped to cause criminal damage.

The offence must be tried in the Crown Court. The maximum sentence is three years imprisonment.

## 8. GBH/ABH/assault

If you were to cause actual injury to an individual, you could be charged with either grievous bodily harm (GBH) or assault occasioning actual bodily harm (ABH): Offences Against the Person Act 1861. If the injury was very serious then the charge would be GBH and if relatively minor then it could be ABH. There is however much room for argument as to whether particular injuries cause an offence to fall within one category or the other, for example a broken nose can be dealt with as either GBH or ABH.

The current charging guidelines mean that where there is some bruising or scratching the charge is more likely to be common assault rather than ABH. Throwing a bottle, punching or kicking out, either intentionally or recklessly, which causes a person to expect immediate personal violence, can also be charged as common assault. Unwanted touching or shaking a fist at someone can also amount to a common assault. There is no need for any actual injury to have been caused. There is also a related offence of assaulting a police officer in the execution of his/her duty. To prove this offence the prosecution would have to show that the police officer was acting lawfully.

The maximum penalty for GBH with intent (triable only in the Crown Court) is life imprisonment, for GBH without intent (triable either way) it is five years imprisonment and for ABH (triable either way) it is also five years imprisonment. Common assault and assaulting a police officer in the execution of his/her duty can only be tried in the magistrate's court. The maximum penalty for these offences is six months imprisonment and/or a fine not exceeding £5,000.

## 9. Carrying weapons/knives

It is an offence under the Prevention of Crime Act 1953 to have an offensive weapon in a public place without lawful authority or reasonable excuse. The definition of 'weapon' is wide-ranging and could include a flick knife, a broken bottle or an ordinary pair of scissors, a spanner or an umbrella. Although if it is not an article which has

been made or adapted for causing injury then the prosecution must show that you intended to cause injury with say the spanner or umbrella. Self defence can be a reasonable excuse.

This offence is triable either way. The maximum sentence in the Crown Court is two years and in the magistrate's court, six months imprisonment and/or a fine of £5,000.

Under the Criminal Justice Act 1988 it is an offence to have an article with a blade or point in a public place, without good reason. Generally this will be a knife or similar and an ordinary spanner should not fall foul of this provision. There is an exception for a folding knife with a blade of less than three inches. Possession of any other type of knife or blade will be an offence unless you have a good reason e.g. you needed it for work, for a hobby, for religious reasons or as part of your national costume. The good reason needs to relate to the time when the knife was found and not simply that you needed it a few days previously and had forgotten it was still in your pocket. Protesters arrested for other offences have been charged with this offence after being searched. So it's a good idea to check your pockets before you go on an action and leave your knife at home.

The offence is triable either way. The maximum sentence is 2 years.

## 10. Theft/burglary/going equipped

These offences are set out in the Theft Act 1968. The offence of theft is defined as follows: 'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it': section 1 (1) of the Theft Act 1968.

Protestors have successfully argued that they did not intend to 'permanently deprive' and have therefore been acquitted.

This offence must be tried in the Crown Court. The maximum sentence is 7 years imprisonment.

The offence of burglary is committed if a person enters a building as a trespasser intending or actually stealing or attempting to steal anything in the building or inflicting or attempting to inflict on any person in the building grievous bodily harm: Section 9 of the Theft Act 1968. Protesters participating in an office occupation have been charged with this offence, although the charges were later

dropped.

This offence can be tried either in a magistrates court or the Crown Court. The maximum sentence is 14 years imprisonment where the building was a dwelling and 10 years imprisonment for any other type of building.

See paragraph 6 for details of the offence of going equipped.

## 11. Conspiracy

Conspiracy is defined by the Criminal Law Act 1977 (as amended by the Criminal Attempts Act 1981) as an agreement between two or more persons that a course of conduct shall be pursued, which if the agreement is carried out in accordance with their intentions will either amount to the commission of an offence(s) by one or more of the parties or would do so but for the existence of facts which prevent the offences being committed. Conspiracy is not commonly used against activists, possibly because of the difficulties of proving there was an agreement to commit an offence.

Conspiracy can only be tried in the Crown Court. The maximum sentence is the same as for the offence which the defendants have conspired to commit.

## 12. Incitement.

Incitement essentially involves soliciting, encouraging, pressurising or persuading another person to commit an offence. It is an offence to incite another person, whether or not the incitement is successful in persuading the person to commit or attempt to commit an offence.

Incitement to commit an offence which is triable only in a magistrate's court, is triable only in a magistrate's court; incitement to commit a triable either way offence, is triable either way and incitement to commit an offence which is triable only in the Crown Court, is triable only in the Crown Court. In the magistrate's court the maximum sentence is the same as it would have been if the person had been convicted of the incited offence. In the Crown Court the penalty is not limited and is at the discretion of the court.

**We have tried to be as accurate as possible. However it would be impossible to include every point and issue in a short briefing like this. If you are in any doubt about a point, please ask us and if we can't answer your question we will try to refer you to someone who can.**

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