Police Response to Protest Flow Charts

The flow charts contained in this appendix may assist commanders in their decision making regarding protest events.

Note: Every police operation is unique and as such should be considered in accordance with its individual circumstances. Relevant legal advice should be sought, as appropriate.

**PUBLIC ASSEMBLY**

- No advance written notice required for public assemblies.

- Is the public procession commonly or customarily held, e.g., Annual Remembrance Day Parade.
  - Yes
  - Exemption from notification requirement [POA s11(2)].

**PUBLIC PROCESSION**

- Is the public procession intended to:
  - (a) Demonstrate support for or opposition to the views or actions of any person or body of persons; or
  - (b) Publicise a cause or campaign; or
  - (c) Mark or commemorate an event.
  - No
  - Written notice required unless it is not reasonably practicable, e.g., spontaneous reaction to a political event [POA s11(1)].

- Has advance written notice been submitted?
  - Yes
  - Organiser of public procession may be guilty of an offence: POA s11(7). Participants not guilty of any offence.
  - No

- Are the intentions of those organising or participating in the public procession or public assembly peaceful?
  - Yes
  - Preemtion in favour of peaceful assembly: ECHR Article 11
    - Police have a duty to:
      1. Refrain from preventing, hindering or applying unreasonable indirect restrictions upon the right to peaceful assembly (negative duty).
      2. Take reasonable measures to protect peaceful public processions and assemblies (positive duty).
  - No

- Presumption in favour of peaceful assembly: ECHR Article 11
  - Do you have compelling and demonstrable information or intelligence that those organising or participating in the protest will use, advocate or incite violence?
    - No
    - Do you reasonably believe the public procession or assembly may result in:
      - (a) Serious public disorder; or
      - (b) Serious damage to property; or
      - (c) Serious disruption to life or the community; or
      - (d) Intimidation of others? [POA 1986 ss12 and 14].
    - Note: Police must demonstrate a certain degree of tolerance towards the protest and anticipate a level of public disruption.
  - Yes
    - Falls outside scope of protection of ECHR Article 11. Exercise of police powers must be lawful and proportionate. Any use of force by police should be the minimum necessary in the circumstances.

- Even if there is a real risk of a public procession or assembly resulting in disorder by developments outside the control of those organising or participating in it, such a public procession or assembly does not for this reason alone fall outside the scope of protection guaranteed by ECHR Article 11.

- Peaceful public procession or assembly should be facilitated without the need to impose conditions or restrictions upon it.
  - No
    - If before or during the event new information or intelligence indicates a change in circumstances, you should consider:
Police can impose conditions or restrictions on the public procession or assembly provided such restrictions:

1. Are **lawful**, eg, imposed in accordance with POA 1986 ss12 or 14; **and**
2. Pursue one or more **legitimate aims**:  
   (a) National security  
   (b) Public safety  
   (c) Prevention of disorder or crime  
   (d) Protection of the rights and freedoms of others; **and**
3. Are **necessary and proportionate**.

Consider the following:

1. Is the purpose sufficiently important to justify the restriction?  
2. Will the measures you propose to take achieve that purpose?  
3. Are there less restrictive measures you could take that would achieve the same purpose?  
4. Do the measures maintain a fair balance between the rights of the protestors and the general interest of the community?

Conditions or restrictions imposed on the procession or assembly under POA 1986 ss12 or 14 to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or the intimidation of others will be lawful.

Conditions that can be imposed on a public procession under POA 1986 s12 include:

(a) The route the procession can take;  
(b) Prohibiting the procession from entering a particular public area.

If particular circumstances exist and a chief officer reasonably believes that the powers to impose conditions will not be sufficient to prevent serious public disorder, the chief officer may apply to the council for an order prohibiting the holding of public processions or a particular class of public procession in the force area or part of the force area for a period of **up to** 3 months [POA s13(1)]. In the case of the Metropolitan Police Service or the City of London Police, the Commissioner applies directly to the Secretary of State [POA s13(4)].

The council must obtain the consent of the Secretary of State for any order prohibiting the holding of public processions [POA s13(2)].

A person who organises, takes part in, or incites another to take part in a public procession the holding of which he or she knows to be prohibited is guilty of an offence [POA 1986 ss13(7)–(9)].

Conditions that can be imposed on a public assembly under POA 1986 s14 include:

(a) The place where the assembly can take place (or continue to take place);  
(b) The maximum duration of the assembly;  
(c) The maximum number of persons who can participate.

A person who organises or takes part in a public procession or assembly and knowingly fails to comply with a condition or restriction imposed under POA s12 or s14 or incites others taking part to fail to comply is guilty of an offence, **but** it is a defence to prove that the failure arose from circumstances beyond the person’s control: POA ss12(4)–(6) and ss14(4)–(6).

Source: HMIC (2009) Adapting to Protest – Nurturing the British Policing Model

The rights to freedom of expression (ECHR Article 10) and peaceful assembly (ECHR Article 11) generally only apply in **public** places.

**KEY QUESTION** = does the prohibition on access to private property have the effect of preventing ANY effective exercise of freedom of expression, ie, does it completely prevent protesters communicating their views to the wider public?

There is no freedom of forum (choice of venue) or right of entry to private property for the exercise of the right to freedom of expression.

If the protesters could hold their protest somewhere else (eg, in a public place close by) or take alternative action that would enable them to freely express their opinion, the answer is likely to be **NO**.

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**ECHR Protocol 1, Article 1**:

Every person is entitled to peaceful enjoyment of his or her possessions, including his or her (private) property.

**Individuals protesting on private land WITHOUT the permission of the occupier are likely to be trespassing.**

A private property owner may in certain circumstances be presumed to have extended an implied invitation to members of the public to come onto his or her private land for lawful purposes. This presumption in the main concerns commercial premises such as shops and restaurants. Any implied invitation may be revoked at will.

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**CIVIL TRESPASS:**
The occupier of the land can sue the trespasser or apply for a court order for possession.

**CRIMINAL TRESPASS**

Aggravated trespass

Trespassory assembly

Are the persons trespassing on the land or in the building intentionally doing something to:

(a) **Intimidate** persons engaged in lawful activity so as to deter them from engaging in that activity? **or**

(b) **Obstruct** persons engaged in lawful activity? **or**

(c) **Disrupt** persons engaged in lawful activity?

**Persons guilty of offence of aggravated trespass [CJPOA 1994 s68(1)].**

Police have powers to remove persons participating in aggravated trespass [CJPOA 1994 s69].
Do you reasonably believe the assembly is intended to be held on land which:
(a) The public has **no right of access** to; or
(b) The public has **limited right of access** to?

If the answer is **YES** to either (a) or (b), the assembly is trespassory and does not proceed.

If the answer is **NO** to both (a) and (b), the assembly is not trespassory and proceeds.

Chief constable may apply to the council for an order prohibiting the holding of trespassory assemblies in the particular area for a specified period (a s14A Order) [POA 1986 s14A].

Council must obtain consent of the Secretary of State before making a s14A Order.

A person who organises, participates or incites another to participate in an assembly prohibited by a s14A Order is guilty of an offence [POA 1986 s14B].

If the police reasonably believe that a person is making his or her way to an assembly prohibited by a s14A Order, the police may stop that person and direct the person not to proceed in the direction of the trespassory assembly [POA 1986 s14C].

A person who fails to comply with a police direction is guilty of an offence.

**Source:** HMIC (2009) Adapting to Protest: Nurturing the British Policing Model
Use of Public Highway. For Northern Ireland see Article 20 of the Public Order (Northern Ireland) Order 1987.

The public right to use the public highway is not restricted to the right to pass and re-pass nor is it restricted to activities ‘incidental or ancillary’ to the exercise of the right of passage.

Public highway = a public place in which all manner of reasonable activities can take place.

The right to freedom of peaceful assembly (ECHR Article 11) is denied if the police fail to recognise that peaceful assembly on the public highway may be lawful.

THREE QUESTIONS TO DETERMINE WHETHER SOMEONE IS GUILTY OF WILFUL OBSTRUCTION OF THE HIGHWAY

1. Is there an obstruction?
   Any stopping on the highway counts as an obstruction.
   YES

2. Is the obstruction accidental?
   NO

3. Does the person obstructing the highway have a lawful excuse or lawful authority?
   NO

Key Question = is the person engaged in an activity which is a reasonable use of the highway?

An obstruction of the highway which is a lawful exercise of the right to peaceful assembly under ECHR Article 11 is unlikely to be unreasonable. For example, a peaceful assembly that does not prevent other people from using the highway is a reasonable use of the highway, but the complete obstruction of a major arterial route may be unreasonable.

It depends on all the circumstances of the case, including:
- The place where the obstruction occurs;
- The length of time the obstruction continues;
- The purpose for which the obstruction is caused;
- Whether the activity does in fact cause an actual obstruction as opposed to a potential obstruction.

The police may place lawful restrictions on the exercise of the right to peaceful assembly on the public highway.

Any restrictions imposed on the exercise of the right to freedom of assembly must be in accordance with ECHR Article 11(2). They must:
1. Be lawful, eg, imposed in accordance with POA 1986 ss12 or 14; and
2. Pursue one or more legitimate aims:
   (a) National security
   (b) Public safety
   (c) Prevention of disorder or crime
   (d) Protection of the rights and freedoms of others; and
3. Be necessary and proportionate.

Source: HMIC (2009) Adapting to Protest: Nurturing the British Policing Model
ACPOS – Facilitating Peaceful Protest

PUBLIC ASSEMBLY

No advance written notice required for public assemblies.

Is the public procession:

(a) A funeral procession; or
(b) Specified in an order made by the Scottish Ministers?

YES

Exemption from notification requirement.

NO

Has advance written notice been submitted?

YES

NO

PUBLIC PROCESSION

Is the public procession intended to:

(a) Demonstrate support for or opposition to the views or actions of any person or body of persons; or
(b) Publicise a cause or campaign; or
(c) Mark or commemorate an event.

YES

Organiser may be guilty of an offence under ss 65, CG (S) Act 1982. Participant refusing to desist when required to do so by constable may be guilty of an offence under ss 65, CG (S) Act 1982.

NO

Local authority (LA) informs police of application. LA considers prohibition or imposition of conditions based on:

1. Likely effect on public safety/public order/damage to property/disruption to community;
2. Whether containment of risks would place excessive burden on police;
3. Whether procession previously held.

If LA permits application then:

Yes

Presumption in favour of peaceful assembly: ECHR Article 11

Police have a duty to:

1. Refrain from preventing, hindering or applying unreasonable indirect restrictions upon the right to peaceful assembly (negative duty); and
2. Take reasonable measures to protect peaceful public processions and assemblies (positive duty).

Do you reasonably believe the public procession or assembly may result in:

(a) Serious public disorder; or
(b) Serious damage to property; or
(c) Serious disruption to the life or the community; or
(d) Intimidation of others? (POA 1985 ss12 and 14).

Note: Police must demonstrate a certain degree of tolerance towards the protest and anticipate a level of public disruption.

Do you have compelling and demonstrable information or intelligence that those organising or participating in the protest will use, advocate or incite violence?

NO

YES

Even if there is a real risk of a public procession or assembly resulting in disorder by developments outside the control of those organising or participating in it, such a public procession or assembly does not for this reason alone fall outside the scope of protection guaranteed by ECHR Article 11.

Falls outside scope of protection of ECHR Article 11.

Exercise of police powers must be lawful and proportionate. Any use of force by police should be the minimum necessary in the circumstances.

Peaceful public procession or assembly should be facilitated without the need to have LA impose conditions or restrictions upon it.

If before or during the event, new information or intelligence indicates a change in circumstances, you should consider:
Police can impose conditions or restrictions on the public procession or assembly provided such restrictions:

1. Are **lawful**, eg, imposed in accordance with POA 1986 ss12 or 14 and
2. Pursue one or more **legitimate aims**:
   (a) National security;
   (b) Public safety;
   (c) Prevention of disorder or crime;
   (d) Protection of the rights and freedoms of others; and
3. Are **necessary and proportionate**.

Consider the following:

(a) Is the purpose sufficiently important to justify the restriction?
(b) Will the measures you propose to take achieve that purpose?
(c) Are there less restrictive measures you could take that would achieve the same purpose?
(d) Do the measures maintain a fair balance between the rights of the protestors and the general interest of the community?

**YES**

Conditions or restrictions imposed on the procession or assembly under POA 1986 ss12 or 14 to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or the intimidation of others will be lawful.

**NO**

Restrictions may be unlawful and in violation of ECHR Article 11.

**YES**

Conditions that can be imposed on a public procession under POA 1986 s12 include:
(a) The route the procession can take;
(b) Prohibiting the procession from entering a particular public area.

Conditions that can be imposed on a public assembly under POA 1986 s14 include:
(a) The place where the assembly can take place (or continue to take place);
(b) The maximum duration of the assembly;
(c) The maximum number of persons who can participate.

A person who organises or takes part in a public procession or assembly and knowingly fails to comply with a condition or restriction imposed under POA s12 or s14, or incites others taking part to fail to comply is guilty of an offence, **but** it is a defence to prove that the failure arose from circumstances beyond the person’s control, POA ss12 (4)–(6) and ss14 (4)–(6).