



College of
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APP

AUTHORISED PROFESSIONAL PRACTICE

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Public Order APP: Core principles and legislation (update)

Authorised professional practice

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Public Order

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1. Core Principles

2. Legal framework

2.1 The right to peaceful assembly (basics: the right to protest)

2.1.1 Negative duty

2.1.2 Positive duty

2.2 Starting point for policing public protests: the presumption of peaceful assembly (UPDATED)

Under [section 11](#) of the Public Order Act 1986, organisers of public processions are required to provide notice to the police of the event's location and routes that the procession will follow unless this is not reasonably practicable. Failure to provide such notice results in the organisers being in breach of the Act, but does not render the protest/procession unlawful.

Commonly held/customary processions, or funeral processions, whether they routinely follow the same route or a different route each time, are exempt from the requirement for notice.

There is no legal basis for describing a public protest as inherently unlawful. Neither the Public Order Act nor the law on obstruction of the highway renders a protest unlawful.

A breach of the notification requirement in s 11 of the Public Order Act 1986 does not render a protest unlawful under the Act or mean that an otherwise peaceful procession falls outside the protection of ECHR Article 11. See [Human Rights Act 1998](#). The section applies only to public processions and not to other assemblies. It does not make criminal the participation in such a procession. By failing to meet the notification requirements, only the organisers commit an offence.

The obstruction of a highway does not render a public assembly unlawful. Many activities obstruct the highway or cause disruption

to traffic. Only unreasonable obstructions of the highway are unlawful. See [variations for Northern Ireland](#).

While the ECHR affords certain protections to all individuals those protections do not extend to individuals who seek to ‘abuse’ their [rights to the detriment of another](#). In such circumstances police must consider [Article 17](#).

2.2.1 Organisers’ intentions

2.3 Restricting the right to peaceful protests

2.4 Principles of proportionality

2.5 Protests on private land

2.6 Banning a public procession

2.7 The rights to freedom of belief and expression

2.8 Restricting the right to freedom of expression

2.8.1 Breach of the peace

2.8.2 Police action

2.8.3 Offences of international harassment, alarms or distress (sections 4A and 5 of the Public Order Act 1986)

2.8.4 Incitement to hatred (UPDATE)

Restrictions on the expression of racist ideas or opinions, statements which incite violence and hate speech are generally legitimate under ECHR Article 10(2) and [ECHR Article 17](#). See [Human Rights Act 1998](#).

Parts 3 and 3A of the [Public Order Act 1986](#) include offences where a person uses threatening, abusive or insulting behaviour, or displays threatening, abusive or insulting material, which is intended to stir up (or is likely to stir up) [racial hatred or religious hatred](#). [Section 29AB](#) of the Public Order Act adds the offence of

inciting hatred on the grounds of sexual orientation. This means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).

See [variation for Northern Ireland](#).

2.8.4.1 Racial hatred

2.8.4.2 Religious hatred

2.8.5 Supporting or glorifying terrorism (UPDATE)

[Section 1](#) of the Terrorism Act 2006 makes it an offence to publish, or cause another to publish, a statement intending members of the public to be directly or indirectly encouraged to commit, prepare or instigate acts of terrorism, or being reckless as to whether such a result will occur.

The offence applies to statements which are likely to be understood by some or all of the members of the public to whom they are published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of Terrorism or Convention offences. This includes every statement which glorifies the commission or preparation of such acts or offences; and from which it could reasonably be inferred that it is being glorified as something that should be emulated by members of the public.

Behaviour of this type is likely to fall within the scope of [Article 17](#) as it is clearly contrary to the values of the Convention, and is aimed at the [destruction of the rights and freedoms](#) laid down in it.

2.8.6 Using freedom of expression to destroy the human rights of others (UPDATE)

While the ECHR affords certain protections to all individuals, those protections do not extend to individuals who seek to 'abuse' their rights to the detriment of another. [Article 17](#) states 'Nothing in the convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act

aimed at the destruction of any of the rights and freedoms set out in the convention.’ If [Article 17](#) is considered in conjunction with the protection of the rights of others, the threshold for police interference or restriction changes.

2.8.6.1 Scenarios in which this will most commonly arise:

1. Violence, or incitement to violence
2. Hate speech and associated activity
3. Counter-protests
4. Deliberate interference with / prevention of the peaceful enjoyment of property.

Note: It must be born in mind that it is only in exceptional or extreme cases that [Article 17](#) would apply. It should only be resorted to if it is immediately clear that protestors are relying on the Convention to engage in an activity that is clearly contrary to the values of the Convention, and which is aimed at the destruction of the rights and freedoms laid down in it. It would not apply to a protest whose collateral effect was the inconvenience or annoyance of others – in such a case a balance needs to be struck between the rights of the respective parties.

2.8.6.1.1 Violence, or incitement to violence (UPDATE)

If protestors resort to the use of violence or can be shown to have been inciting others to be violent, this is likely to fall within the scope of [Article 17](#). Violence or incitement to violence is clearly contrary to the values of the Convention and would be aimed at the destruction of the rights and freedoms laid down in it.

2.8.6.1.2 Hate speech and associated activity (UPDATE)

The question of hate speech has been the subject of numerous decisions in the European Court. Different countries do have different concepts as to what might constitute hate speech within the particular cultural and historical sensitivities of that country. The expression of racist ideology and religious hatred has

consistently been held not to attract any protection under the Convention, for example in relation to Islamophobia in [Norwood v UK](#).

In the context of political protest, there is a difference between an expression of “radical dissatisfaction” and speech intended or likely to provoke hatred. In *Stern Taulats and Roura Capellera v. Spain* the appellants had burned a large, upside-down picture of the Spanish King and Queen. These actions had not led to violence or disorder. The ECtHR determined that this was an exercise of the freedom of expression that was not excluded from protection under [Article 17](#).

See [incitement to hatred](#), [racial hatred](#) and [religious hatred](#).

2.8.6.1.3 Counter-protests (UPDATE)

Counter-protest is frequently sensitive and difficult. The general right to stage a counter-protest attracts an equal degree of protection under the ECHR to the protest. A distinction must be drawn between this and a specific counter-protest where the intention is (at least in part) to prevent or substantially curtail the exercise of Article 9, 10 or 11 rights by the initial group. In this instance, Article 17 may well be engaged, as a counter-protest whose aim is to frustrate the exercise of Article 9, 10 and 11 rights by others would itself not be protected by those same articles. In [Plattform ‘Ärzte für das Leben’ v Austria](#), it was confirmed that “the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate”.

2.8.6.1.4 Deliberate interference with / prevention of the peaceful enjoyment of property (UPDATE)

The final common scenario is where the intention of a group is to prevent another person from carrying out lawful (often commercial) activity.

[Article 1 of the first protocol](#): Protection of Property gives every person the right to peaceful enjoyment of his or her possessions. This imposes a negative obligation on the state not to:

- interfere with peaceful enjoyment of property

- deprive a person of their possessions or
- subject a person's possessions to control.

The concept of property and possessions includes tangible things like land and money but also includes leases, shares as well as contractual and statutory rights. Many lawful commercial activities will involve a person making use of their possessions or property. Companies as well as individuals are entitled to protection. For example, a protest that blockaded the entrance to a company's headquarters, and which prevented workers from going to work would be an interference with the company's peaceful enjoyment of its property. An action by protestors aimed at preventing this type of lawful activity is likely to fall within the scope of [Article 17](#). In such circumstances, the police could decide to take action to protect the rights of those affected and restrict the rights of the protesters.

The aim of the protestor in these types of cases must be carefully considered:

- If the protestors' aim is to mount a protest, the collateral effect of which may be to interfere with the rights of others, the lawful and appropriate response by the police will be the imposition of only those conditions and controls that are necessary and proportionate under Articles 9(2), 10(2) and 11(2).
- By contrast, if the protestors' aim is to interfere substantially with, or prevent, another person from undertaking activity which involves the lawful use of their own property, such activity is not protected.

The presumption in favour of peaceful assembly and expression under Articles 10 and 11 does not require that peaceful protest must always be unrestricted as to do so would not necessarily be in-line with Article 17 of the ECHR.

Based on information, intelligence and prevailing circumstance, police will need to assess if protestors' actions are aimed at the destruction of rights and freedoms of others even if they have not explicitly communicated this aim. This assessment will directly inform the legal basis for interfering in / restricting the protest, and

the extent of any such interference. In arriving at a decision the police need to have a clear rationale for their actions whether;

- as will normally be the case, they are imposing restrictions and conditions under Articles 9(2), 10(2) and 11(2), which requires a careful balancing of competing human rights or;
- the actions/intentions of the protestors are such that Article 17 applies, and the particular form of protest does not attract the protection of Articles 9, 10 and 11.

In cases where the protest causes a significant impact on the rights or freedoms of others, both the domestic court and the European court have confirmed that there is no legal right to protest for an indefinite duration. For example in [Molnar v Hungary](#) the European Court concluded that where a mobile protest had taken place in a city centre, significantly disrupting traffic, it was a proportionate interference in the protestors' rights to bring the event to an end after 8 hours. Additionally in [The Mayor Commonalty and Citizens of London v Samede](#) the Court of Appeal confirmed that, notwithstanding the provisions of Articles 10 and 11, there was no right to establish a protest camp of indefinite duration on public land.

It follows that the public are entitled to expect the police to be diligent in assessing the motivations and actions of protesters, and balancing their rights with those of others. Police need to consider the public interest both associated with the protest and any activity it affects. In such cases, the use of [Evidence Gathering Teams](#) can provide best evidence to support subsequent legal proceedings. The use of body worn video cameras can supplement the use of Evidence Gathering Teams but should not replace them.

2.8.7 Threats to life (no change)

2.9 Use of containment as a crowd control measure (no change)