



**College of
Policing**

National Public Order

A Compendium of Legislation



Version 11



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This version of the National Public Order Compendium of Legislation supersedes all prior versions and any references to legislation and case law are accurate at the date of issue.

Readers are advised to use this guide in conjunction with the current legislation which can be found at www.legislation.gov.uk and The PNLD Website.

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Policing Protest – A Compendium of Public Order Legislation Foreword

Each year, thousands of people take part in protest. The UK has a strong tradition which makes the right to protest a fundamental part of our democracy. Maintenance of the Queen's Peace, however, sits at the very heart of the police role.

Order on the streets creates the right conditions for the police to tackle crime and protect the public. Indeed, public disorder is crime and, without civil order, wider criminality thrives and communities cannot survive.

Correct application of the law in facilitating peaceful protest and, where necessary, dealing with public disorder is essential. As a police officer you need to know you are acting lawfully whatever the circumstances. This publication is designed to ensure you are able to do so by providing an aide-memoire to the legislation required for policing protest and bringing those involved in public disorder to justice.

It is important to emphasise that the vast majority of people taking part in protest do so peacefully, and are never considered 'extremist'. Terms like extremism apply only to those who go outside the normal democratic process and engage in serious crime and disorder.

As a police officer, you must always discharge your duties in a lawful and proportionate manner. The starting point for policing is a presumption in favour of facilitating peaceful protest; therefore it is important that the activities of individuals or groups in any protest situation are considered in this context.

This publication provides relevant information in an easy-to-use format, which will make a difference to the way protest is policed. I am confident this publication will assist you in this process, and I urge you to take advantage of it ensuring you have the relevant information whenever it may be needed.

Chief Constable Ian Learmonth
Association of Chief Police Officers, Lead on Public Order and Public Safety

Note

This guide may be useful for both first response and/or tactical or strategic planning. It does not provide an in-depth or exhaustive account of legislation. For further guidance on the law you should refer to the Police National Legal Database (PNLD).

Please note that this guide does not address individual force policy or associated procedures. Your force will be able to provide you with further guidance on public order procedures which are relevant locally.

Purpose of this Document

This document functions as a reference tool for delegates undertaking the Public Order programme. Common legislation and case law applicable to police officers involved in the Public Order Learning Programme have been consolidated into this guide in order to enable timely and accessible reference to relevant information throughout the duration of the programme. The document also has an operational function, as a reference document in relation to Public Order incidents and events.

Introduction

The Public Order Learning Programme aims to provide learners with the specialist knowledge, understanding, and skills to enable them to perform effectively and safely as Bronze, Silver, Gold Commanders and Tactical Advisors before, during, and after a Public Order incident or event. Commanders and Tactical Advisors need to be able to understand, analyse, and respond to information during constantly changing events. They need to be able to make timely, proportionate, lawful, appropriate, necessary, and ethical decisions. Access to this user-friendly legislation document will inform such decision-making and the actions taken during an incident or event.

How to Use this Document

This document is not intended to be read 'cover-to-cover'. Instead it should be used as a reference document, to be referred to as required and as appropriate, in order to consolidate knowledge and understanding as part of the Public Order Learning Programme.

The document provides an overview of legislation relevant to the Public Order Learning Programme and the operational role of Commanders and Tactical Advisors; this includes stated cases linked to the legislation.

IMPORTANT NOTE: The National Public Order Compendium of Legislation does **not** replace existing complete versions of the relevant legislation and guidance; it should be read in conjunction with the current legislation which may be accessed via: www.legislation.gov.uk and www.pnld.co.uk.

Also, **readers of this document must ensure they are using the most up-to-date version**; the guide is stored on POLKA which can be accessed via: www.polka.pnn.police.uk, and the Public Order web portal on the NCALT Managed Learning Environment (MLE) which can be accessed via: www.ncalt.pnn.police.uk.

Human Rights

Human Rights Act 1998

Schedule 1 - (This lists the Articles of the European Convention on Human Rights to which the Human Rights Act 1998 Applies.)

ARTICLE 2 RIGHT TO LIFE

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Article 1 of the Thirteenth Protocol to the European Convention on Human Rights, which has been ratified by the UK and is now included in Schedule 1 of the Human Rights Act 1998 abolishes the death penalty in all circumstances. See Human Rights Act (Amendment) Order 2004, SI 2004/1574.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3 PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4 PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term “forced or compulsory labour” shall not include:
- a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d. any work or service which forms part of normal civic obligations.

ARTICLE 5 RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- a. the lawful detention of a person after conviction by a competent court;
 - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 - 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 - 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 - 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6 RIGHT TO A FAIR TRIAL

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly

necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b. to have adequate time and facilities for the preparation of his defence;
 - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7 NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8 RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10 FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security,

territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11 FREEDOM OF ASSEMBLY AND ASSOCIATION

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12 RIGHT TO MARRY

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 14 PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 17 PROHIBITION OF ABUSE OF RIGHTS

Nothing in this 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 forth herein

or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18 LIMITATION ON USE OF RESTRICTIONS ON RIGHTS

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II THE FIRST PROTOCOL**ARTICLE 1 PROTECTION OF PROPERTY**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Use of Force

Section 3 Criminal Law Act 1967 - Use of force during arrest

“(1) A person may use such force as is reasonable in the circumstances in the prevention of -crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.”

Notes

(i) The above power can be used by any person.

(ii) If there is a question as to whether excessive force was used, there is a test laid down which determines the matter (it principally applies to self-defence but, similarly, can be applied in determining whether excessive force was used) -

‘A jury must decide whether a defendant honestly believed that the circumstances were such as required him to use force to defend himself from an attack or threatened attack the jury has then to decide whether the force used was reasonable in the circumstances’ (R v Owino 1996 and confirmed in DPP v Armstrong-Braun 1998)

Note that this is basically an ‘objective’ test determined by the jury. They do not have to consider whether the defendant thought his/her actions were reasonable in the circumstances. They just have to consider what they believe was reasonable.

‘Extracted PNLD 19 August 2010’

Section 117 Police and Criminal Evidence Act 1984 - Power of constable to use reasonable force

Section 117 of the Police and Criminal Evidence Act 1984 provides that a constable can use reasonable force in the exercise of any power under this Act.

117 Where any provision of this Act -

(a) confers a power on a constable; and

(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

Notes

(i) Searches, arrests and any other duties governed by PACE, including taking fingerprints and samples, are all subject to the use of reasonable force. (Reasonable force may only be exercised if necessary)

(ii) However, the provision only applies to the Police and Criminal Evidence Act itself and NOT to the Codes of Practice (R v Derek Jones and R v Gary Nelson 1999 96 (18) L.S.G. 33). Where the procedure is one which is only outlined in the Codes and not created by PACE, the code itself must give the authority for force to be used. For example, confrontation, the method of identification, is only described in PACE Code D and does not include a power to use reasonable force. A suspect cannot be forced to cooperate

(iii) Officers should only use sufficient force to achieve their objectives.

(iv) Also see section 3 of the Criminal Law Act 1967 for the powers to use reasonable force in other situations.

'Extracted PNLD 19 August 2010'

Section 76 Criminal Justice and Immigration Act 2008 - Reasonable force for purpose of self defence

Section 76 of the Criminal Justice and Immigration Act 2008 expands on the common law and statutory defence of 'self-defence'.

76(1) This section applies where in proceedings for an offence -

- (a) an issue arises as to whether a person charged with the offence ("D") is entitled to rely on a defence within subsection (2), and
- (b) the question arises whether the degree of force used by D against a person ("V") was reasonable in the circumstances.

76(2) The defences are -

- (a) the common law defence of self-defence; and
- (b) the defences provided by section 3(1) of the Criminal Law Act 1967 or section 3(1) of the Criminal Law Act (Northern Ireland) 1967 (use of force in prevention of crime or making arrest).

76(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

76(4) If D claims to have held a particular belief as regards the existence of any circumstances -

- (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
- (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not
 - (i) it was mistaken, or
 - (ii) (if it was mistaken) the mistake was a reasonable one to have made.

76(5) But subsection (4) (b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

76(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

76(7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) -

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

76(8) Subsection (7) is not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in subsection (3).

76(9) This section is intended to clarify the operation of the existing defences mentioned in subsection (2).

76(10) In this section -

(a) **legitimate purpose** means -

(i) the purpose of self-defence under the common law, or

(ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);

(b) references to self-defence include acting in defence of another person; and

(c) references to the degree of force used are to the type and amount of force used.

Notes

(i) Section 76 provides a gloss on the common law of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 and section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which relate to the use of force in the prevention of crime or making an arrest. It is intended to improve understanding of the practical application of these areas of the law. It uses elements of case law to illustrate how the defence operates. It does not change the current test that allows the use of reasonable force.

(ii) In line with the case law, the defence will be available to a person if he honestly believed it was necessary to use force and if the degree of force used was not disproportionate in the circumstances as he viewed them. The section reaffirms that a person who uses force is to be judged on the basis of the circumstances as he perceived them, that in the heat of the moment he will not be expected to have judged exactly what action was called for, and that a degree of latitude may be given to a person who only did what he honestly and instinctively thought was necessary. A defendant is entitled to have his actions judged on the basis of his view of the facts as he honestly believed them to be, even if that belief was mistaken.

(iii) Section 76 retains a single test for self-defence and the prevention of crime (or the making of an arrest) which can be applied in each of these contexts

(iv) Section 76 applies whether the alleged offence took place before, or on or after, the date on which that section comes into force (14 July 2008) but does not apply in relation to - (a) any trial on indictment where the arraignment took place before that date, or (b) any summary trial which began before that date, or in relation to any proceedings in respect of any trial within paragraph (a) or (b).

(v) Where the alleged offence is a service offence, that section similarly does not apply in relation to - (a) any proceedings before a court where the arraignment took place before that date, or (b) any summary

proceedings which began before that date, or in relation to any proceedings in respect of any proceedings within paragraph (a) or (b).

(vi) For the purposes of sub-paragraph (3) summary proceedings are to be regarded as beginning when the hearing of the charge, or (as the case may be) the summary trial of the charge, begins.

(vii) "service offence" means - (a) any offence against any provision of Part 2 of the Army Act 1955, Part 2 of the Air Force Act 1955 or Part 1 of the Naval Discipline Act 1957 or (b) any offence under Part 1 of the Armed Forces Act 2006; "summary proceedings" means summary proceedings conducted by a commanding officer or appropriate superior authority.

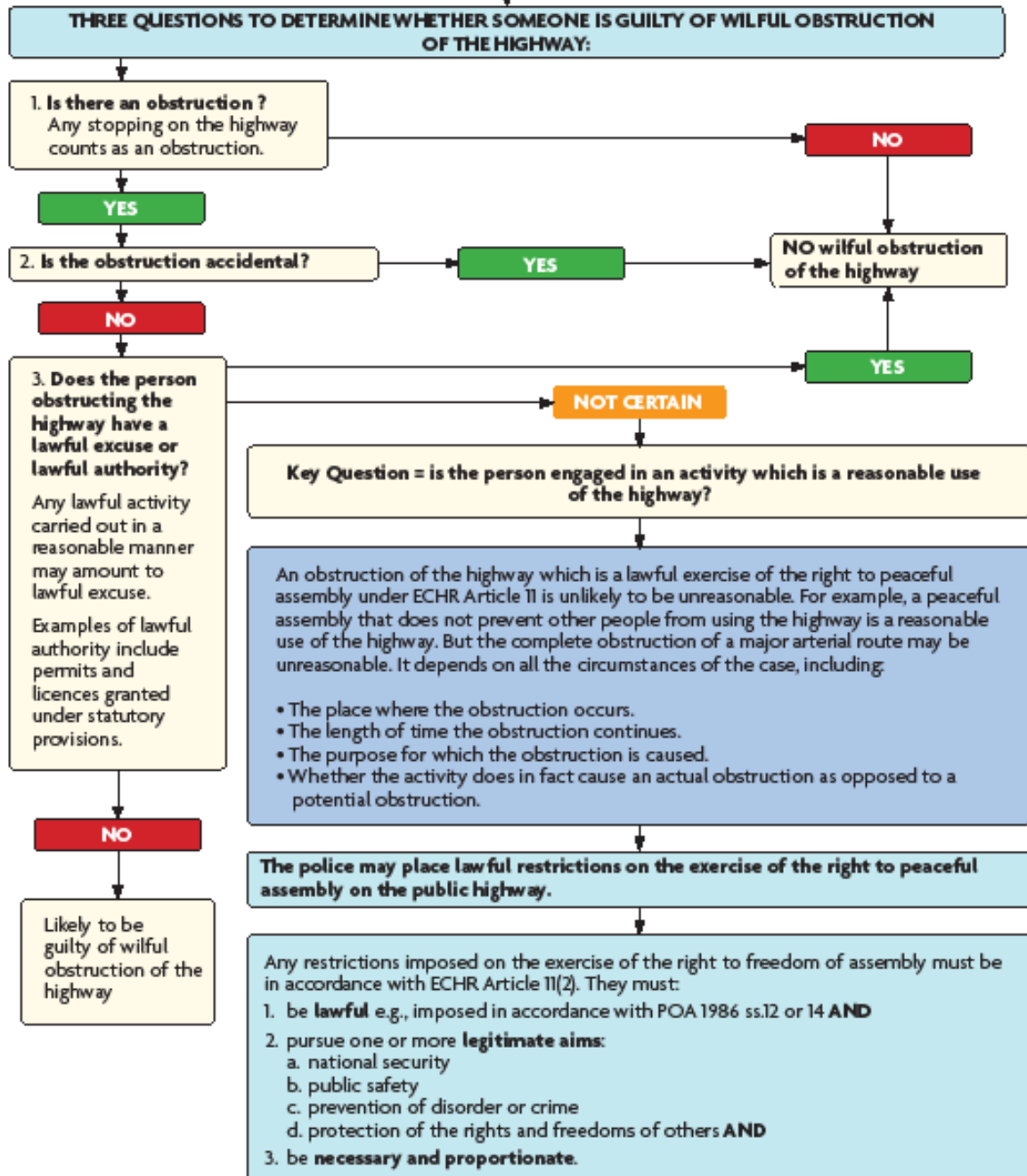
'Extracted PNLD 3 August 2010'

USE OF PUBLIC HIGHWAY

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.

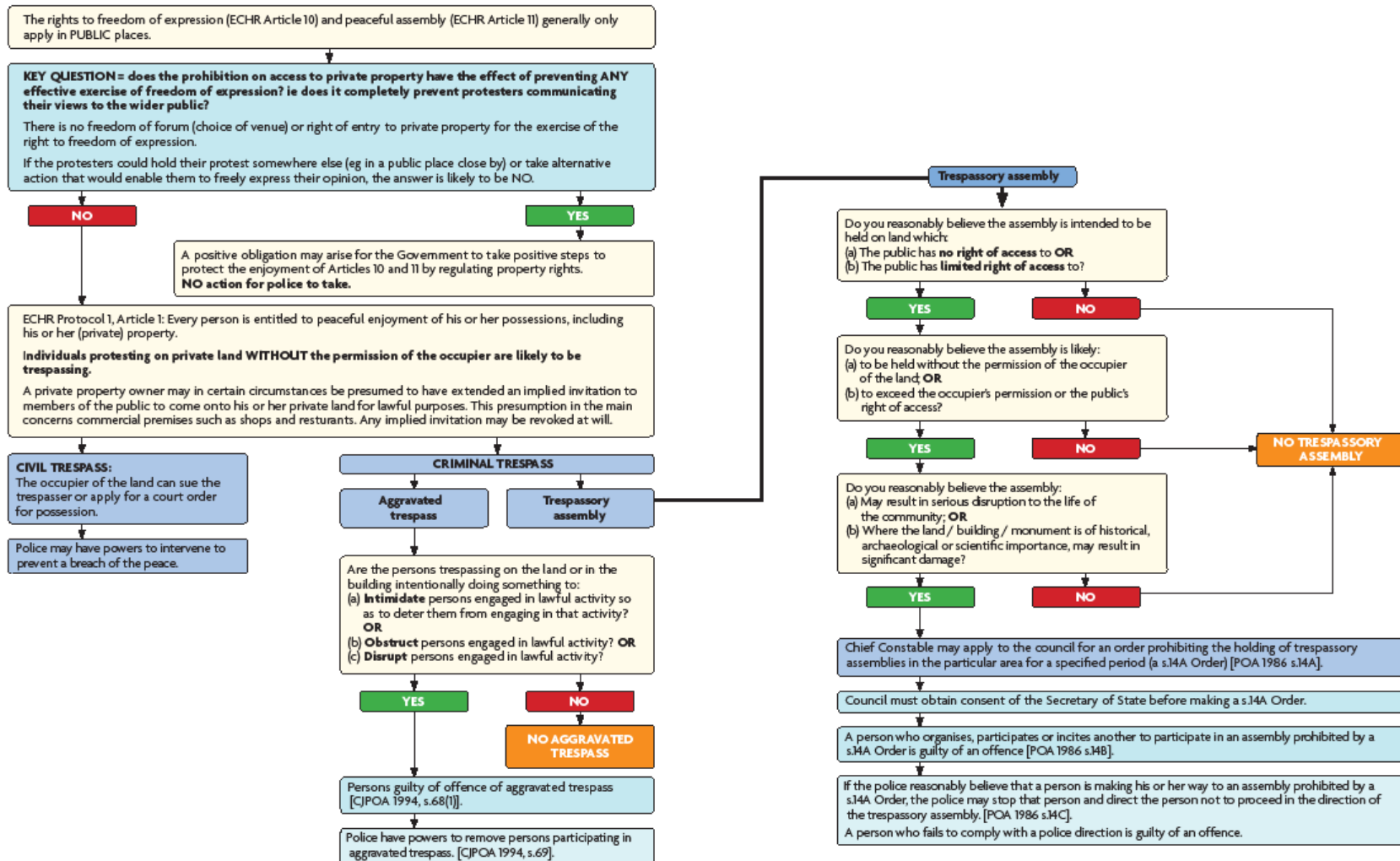
Public highway – a public place on which **all manner of reasonable activities** can take place.

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.



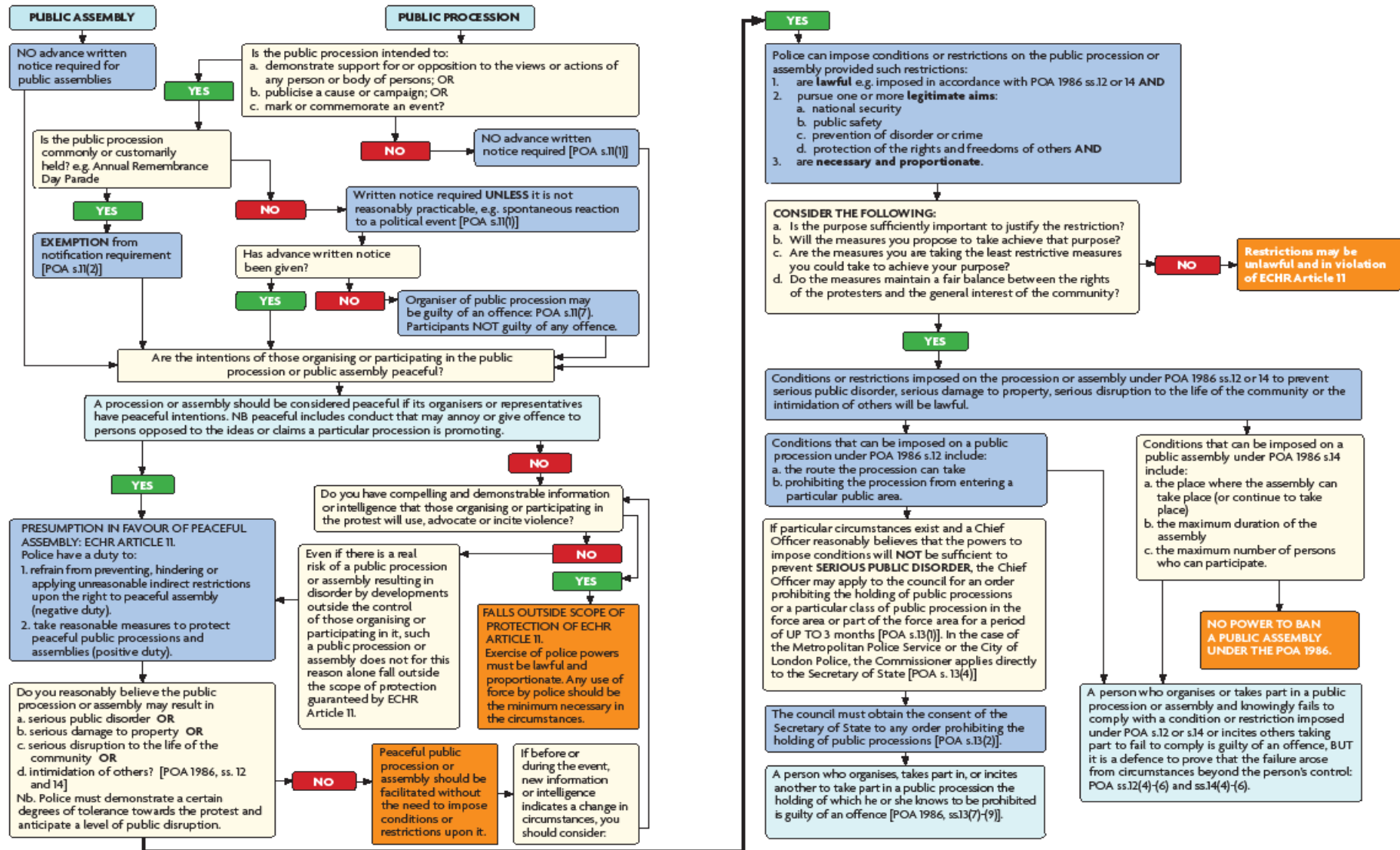
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PROTESTS ON PRIVATE LAND



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FACILITATING PEACEFUL PROTEST



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Stop and Search

Section 1 Police and Criminal Evidence Act 1984 - Stop and Search

Notes

Reasonable suspicion: This section does not give a constable power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles, or any article to which subsection 8A applies or any firework to which subsection 8B applies.

Prohibited article means:

Offensive weapons or any article;
made or adapted for use in the course of or in connection with an offence to which this sub-paragraph applies; or
intended by the person having it with him for such use by him or by some other person

An article made or adapted for use in the course of or in connection with the following offences: burglary, theft, TWOC; obtaining property by deception; criminal damage.

Section 8A - pointed or bladed articles, where a person has committed, or is going to commit offences. 'Any article in relation to which a person has committed, or is committing or is going to commit an offence under Section 139 of the Criminal Justice Act 1988'

Section 8B - any firework, which a person possesses in contravention of a prohibition, imposed by the relevant fireworks regulations. Currently these are the fireworks regulations 2004.

Reasonable grounds can never be supported on the basis of personal factors alone, i.e. a person's colour, age, hairstyle, manner of dress or previous convictions.

Places in which powers to search can be exercised:

A 1(1) Constable may exercise his powers:

a) in any place to which at the time he proposes to exercise the power, the public or any section of the public has access on payment or otherwise as of a right or by virtue of express or implied permission;

OR

b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

This can include land onto which people regularly gain access as trespassers.

**Section 60 Criminal Justice and Public Order Act 1994 -
Powers to stop and search in anticipation of, or after,
violence**

Section 60 of the Criminal Justice and Public Order Act 1994 allows senior police officers to authorise constables to stop and search persons in a specific area, either where a serious public order problem is likely to arise or has taken place, or for offensive weapons or dangerous instruments. Failing to submit to a search is an offence.

60(1) If a police officer of or above the rank of Inspector reasonably believes -

(a) that incidents involving serious violence may take place in any locality in his police area, and that it is expedient to give an authorisation under this section to prevent their occurrence,

(aa) that -

(i) an incident involving serious violence has taken place in England and Wales in his police area;

(ii) a dangerous instrument or offensive weapon used in the incident is being carried in any locality in his police area by a person; and

(iii) it is expedient to give an authorisation under this section to find the instrument or weapon; or

(b) that persons are carrying dangerous instruments or offensive weapons in any locality in his police area without good reason,

he may give an authorisation that the powers conferred by this section are to be exercisable at any place within that locality for a specified period not exceeding 24 hours.

60(3) If it appears to an officer of or above the rank of Superintendent that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any

activity falling within the authorisation, he may direct that the authorisation shall continue in being for a further 24 hours.

60(3A) If an Inspector gives an authorisation under subsection (1) he must, as soon as it is practicable to do so, cause an officer of or above the rank of Superintendent to be informed.

60(4) this section confers on any constable in uniform power -

(a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.

Note

IMPORTANT DIFFERENCE BETWEEN A STREET SEARCH AND POWER TO REMOVE MASK - Be aware that any street search, including the search power in sub-section (4), must comply with section 2 of the Police and Criminal Evidence Act 1984 (*Osman v DPP* 1999 All ER (D) 716). Such power may only be exercised in the locality authorised (see Code of Practice A PACE Note for Guidance 13).

60(5) A constable may, in the exercise of the powers conferred by subsection (4), stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

60(6) If in the course of a search under this section a constable discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.

60(8) A person who fails -

(a) to stop, or to stop a vehicle;

When required to do so by a constable in the exercise of his powers under this section commits an offence.

60(9) Subject to subsection (9ZA), any authorisation under this section shall be in writing signed by the officer giving it and shall specify the grounds on which it is given and the locality in which and the period during which the powers conferred by this section are exercisable and a direction under subsection (3) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

60(9ZA) An authorisation under subsection (1)(aa) need not be given in writing where it is not practicable to do so but any oral authorisation must state the matters which would otherwise have to be specified under subsection (9) and must be recorded in writing as soon as it is practicable to do so.

60(9A) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if the references to a locality in his police area were references to a place in England and Wales specified in section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 and as if the reference in subsection (1)(aa)(i) above to his police area were a reference to any place falling within section 31(1)(a) to (f) of the Act of 2003.

60(10) Where a vehicle is stopped by a constable under this section, the driver shall be entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

60(10A) A person who is searched by a constable under this section shall be entitled to obtain a written statement that he was searched under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which he was searched.

60(11) In this section -

Dangerous instruments

means instruments which have a blade or are sharply pointed;

Offensive weapon

has the meaning given by section 1(9) of the Police and Criminal Evidence Act 1984 or, in relation to Scotland, section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995; but in subsections (1)(aa), (4), (5) and (6) above and subsection (11A) below includes, in the case of an incident of the kind mentioned in subsection (1)(aa)(i) above, any article used in the incident to cause or threaten injury to any person or otherwise to intimidate; and

Vehicle

includes a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960.

60(11A) For the purposes of this section, a person carries a dangerous instrument or an offensive weapon if he has it in his possession.

60(12) The powers conferred by this section are in addition to and not in derogation of, any power otherwise conferred.

Mode of Trial and Penalty

Summary: Fine not exceeding level 3 on the standard scale and/or maximum one month imprisonment

Arrest without warrant

Note: Arrest in Scotland: in accordance with Section 60B, in Scotland where a constable reasonably believes that a person has committed or is committing an offence under section 60(8) he may arrest that person without warrant

'Extracted PNLD 3 August 2010'

**Section 60AA Criminal Justice and Public Order Act 1994 -
Powers to require removal of disguises**

Section 60AA of the Criminal Justice and Public Order Act 1994 provides powers to require the removal of disguises at public order events where a section 60 authorisation is in force or an authorisation is given under this section.

60AA (1) Where-

(a) an authorisation under section 60 is for the time being in force in relation to any locality for any period, or

(b) an authorisation under subsection (3) that the powers conferred by subsection (2) shall be exercisable at any place in a locality is in force for any period,

those powers shall be exercisable at any place in that locality at any time in that period.

60AA (2) This subsection confers power on any constable in uniform-

(a) to require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity;

(b) to seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose.

60AA (3) If a police officer of or above the rank of Inspector reasonably believes-

(a) that activities may take place in any locality in his police area that are likely (if they take place) to involve the commission of offences, and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

he may give an authorisation that the powers conferred by this section shall be exercisable at any place within that locality for a specified period not exceeding twenty-four hours.

60AA (4) If it appears to an officer of or above the rank of Superintendent that it is expedient to do so, having regard to offences which-

(a) Have been committed in connection with the activities in respect of which the authorisation was given, or

(b) are reasonably suspected to have been so committed, he may direct that the authorisation shall continue in force for a further twenty-four hours.

60AA (5) If an inspector gives an authorisation under subsection (3), he must, as soon as it is practicable to do so, cause an officer of or above the rank of Superintendent to be informed.

60AA (6) Any authorisation under this section-

(a) shall be in writing and signed by the officer giving it; and

(b) shall specify-

(i) the grounds on which it is given;

(ii) the locality in which the powers conferred by this section are exercisable;

(iii) the period during which those powers are exercisable;

and a direction under subsection (4) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

60AA(7) A person who fails to remove an item worn by him when required to do so by a constable in the exercise of his power under this section shall commit an offence.

60AA(8) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force

(including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if references to a locality or to a locality in his police area were references to any locality in or in the vicinity of any policed premises, or to the whole or any part of any such premises.

Notes

(i) Section 95 of the Anti-terrorism, Crime and Security Act 2001 applies the measures to Northern Ireland.

(ii) Home Office Circular 32/2002 notified Police Forces that section 94 of the Anti-terrorism, Crime and Security Act 2001 came into force on 14 December 2001. It also explains the changes to the legislation in respect of section 60AA.

(iii) Does this power apply to face paint when it is on someone's face? The answer is that it is difficult to foresee a situation where it would apply to face paint or make-up. The wording of the power allows an officer to 'require any person to remove any item'. There is no definition of item in the Act, so it must be given its ordinary meaning as 'a separate article'. That could not really be used as a description of face paint once it has been applied. Nor does it seem possible to seize the paint before it is applied. The power allows the seizure of an item which a person is going to wear. Although the pot with the face paint is definitely an item, the quantity of paint in that pot that is going to be used is not an item because it is not a separate article.

Mode of Trial and Penalty

Summary: fine not exceeding level 3 of the standard scale and/or maximum one month imprisonment - Arrest without warrant

'Extracted PNLD 3 August 2010'

Public Order

Section 27 Violent Crime Reduction Act 2006 - Directions to individuals who represent a risk of disorder

Section 27 of the Violent Crime Reduction Act 2006 provides that a constable in uniform can issue a direction to leave a locality to an individual aged at least 10 who is in a public place and who presents a risk of alcohol related crime or disorder. The direction will prohibit their return to the locality for up to 48 hours, and failure to comply is an offence.

27(1) If the test in subsection (2) is satisfied in the case of an individual aged 10 or over who is in a public place, a constable in uniform may give a direction to that individual -

- (a) requiring him to leave the locality of that place; and
- (b) prohibiting the individual from returning to that locality for such period (not exceeding 48 hours) from the giving of the direction as the constable may specify.

27(2) That test is -

- (a) that the presence of the individual in that locality is likely, in all the circumstances, to cause or to contribute to the occurrence of alcohol related crime or disorder in that locality, or to cause or to contribute to a repetition or continuance there of such crime or disorder; and
- (b) that the giving of a direction under this section to that individual is necessary for the purpose of removing or reducing the likelihood of there being such crime or disorder in that locality during the period for which the direction has effect or of there being a repetition or continuance in that locality during that period of such crime or disorder.

27(3) A direction under this section -

- (a) must be given in writing;

(b) may require the individual to whom it is given to leave the locality in question either immediately or by such time as the constable giving the direction may specify;

(c) must clearly identify the locality to which it relates;

(d) must specify the period for which the individual is prohibited from returning to that locality;

(e) may impose requirements as to the manner in which that individual leaves the locality, including his route; and

(f) may be withdrawn or varied (but not extended so as to apply for a period of more 48 hours) by a constable.

27(4) A constable may not give a direction under this section that prevents the individual to whom it is given -

(a) from having access to a place where he resides;

(b) from attending at any place which he is required to attend for the purposes of any employment of his or of any contract of services to which he is a party;

(c) from attending at any place which he is expected to attend during the period to which the direction applies for the purposes of education or training or for the purpose of receiving medical treatment; or

(d) from attending at any place which he is required to attend by any obligation imposed on him by or under an enactment or by the order of a court or tribunal.

27(4A) A constable who gives a direction under this section may, if the constable reasonably suspects that the individual to whom it is given is aged under 16, remove the person to a place where the person resides or a place of safety.

27(5) A constable who gives a direction under this section must make a record of:

(a) the terms of the direction and the locality to which it relates;

(b) the individual to whom it is given;

(c) the time at which it is given;

(d) the period during which that individual is required not to return to the locality.

27(6) A person who fails to comply with a direction under this section is guilty of an offence.

27(8) in this section public place means:

(a) a highway; or

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

and for this purpose place includes a place on a means of transport.

Notes

(i) No definition is provided of 'disorder'. It must therefore be interpreted according to ordinary language rather than in any technical way. It is not confined to criminal offences such as in the Public Order Act 1986 or to other statutory definitions of 'disorderly' such as in the Football Spectators Act 1989. The same applies to the offence of disorderly behaviour while drunk under the Criminal Justice Act 1967 s.91 and was held to be the case in regard to the offence in the Public Order Act 1986 s.5: *Chambers and Edwards v DPP* [1995] Crim. L.R. 896.

(ii) Home Office Circular 026/2007 states that this power should be used proportionately, reasonably and with discretion in circumstances where it is considered necessary to prevent the likelihood of alcohol-related crime or disorder.

Mode of Trial and Penalty

Summary - fine not exceeding level 4 on the standard scale

Arrest without a warrant

'Extracted PNLD 3 August 2010'

Police admit unlawful use of Section 27 on Stoke Fan**11 June 2009**

Stoke City fan Lyndon Edwards, 38, has been awarded £2,750 in compensation following unlawful police action in Manchester last year. Greater Manchester police used section 27 of the Violent Crime Reduction Act to round up more than 80 Stoke City fans prior to their club's premier league tie with Manchester United at Old Trafford on Saturday, 15 November 2008.

Even though Stoke's fans had been well behaved - the pub landlord made no complaints and has since invited them back - supporters were detained for up to four hours and forcibly transported by the police back to Stoke-on-Trent on coaches, missing the game.

Deprived of toilet facilities on the coach, Lyndon and his fellow supporters were instructed to urinate into cups, which spilled over the floor of the bus so that they had to sit with the urine sloshing around their feet for the 40-mile journey back.

Stoke City fan Lyndon contacted the Football Supporters Federation (FSF) to complain about his appalling treatment at the hands of the police.

Breach of the Peace

'Breach of the peace' is an ancient common law concept which is of importance to police officers, providing a number of powers:

- (1) to arrest;
- (2) to intervene and/or detain by force;

To prevent any action likely to result in a breach of the peace in both public and private places; *Thomas v Sawkins* (1935) 99 JP 295.

It is not a criminal offence in English law, although, for administrative purposes, it may be necessary to complete most of the same paperwork to put an individual before a Court for breaching the peace. That it is not a criminal offence was confirmed by the European Court of Human Rights in *Steel & Others v UK* (1998) 28 EHRR 603. The Court went on to say it was a procedure which came within the ambit of the Human Rights Convention and is lawful so long as the action taken is proportionate to the nature of the disturbance.

Breach of the peace

used to mean 'any interruption of the peace and good order which ought to prevail in a civilised society'. However, it was re-defined in *R v Howell* (1982) QB 416 and the following is the current test which must be applied:

'A breach of the peace is committed whenever harm is done, or is likely to be done to a person, or, in his presence to his property, or, whenever a person is in fear of being harmed through an assault, affray, riot or other disturbance'.

Key case = *Laporte v Chief Constable of Gloucestershire Constabulary* which established the following:

"To be compatible with the Human Rights Act 1998, action can only be taken by the police when they honestly and reasonably believe that there is a real risk of an imminent breach of the peace, [meaning proximate in

time] reasonably close by [meaning proximate in place] and any action taken must be intended to ensure public safety; to prevent disorder or crime and/or to protect the rights of others and must be necessary and proportionate.”

Note: In a case in from the Scottish Appeal Court of Justiciary (not binding on English/Welsh Courts, but they may well take ‘judicial note’ of it), the Court decided that someone using ‘f**** off’ as part of his normal conversation, as opposed to shouting it as a form of abuse, did not commit a breach of the peace. The officer had told him there was a warrant for him and he had replied ‘F*** off, I’ve nae warrant’.

(Comment: A different person may have said, ‘What a load of rubbish ...’ etc., but this was the way this particular individual talked. It was probably said out of irritation, but was not causing a breach of the peace.) A possible alternative in this situation may be found in the Town Police Clauses Act 1847, which creates an offence of using obscene language in the street to the annoyance of residents or people using the street (but not police officers, someone else has to be there).

Protests (such as hunt protests)

If it is intended to intercept and arrest protestors (such as hunt protestors) then the police must be able to provide evidence that there is a real threat of a breach of the peace as defined in *R v Howell* above. A certain police force has paid out unlawful arrest damages to protestors half a mile from a hunt, who were showing no signs of doing anything more than exercising their lawful right to make their feelings known (page 3 Times Law 16.11.99).

Domestic Incidents

In *McConnell V Chief Constable of Greater Manchester Police* (1990) 1 All ER 423, one of the judges stated that ‘a purely domestic dispute will rarely amount to a breach of the peace’. He was referring to an angry shouting match which was not likely to develop any further. In the *McConnell* case it was also stated that if the argument affected neighbours or promised to spill onto the street, there was a greater chance of it becoming a breach of the peace. As with many incidents, an officer must

act in good faith in the light of the circumstances facing them after applying the 'Howell' definition.

This case has been further developed in by *McQuade v the Chief Constable of Humberside Police* 2001 (2001), EWCA Civ 1330. The daughter of M reported a serious domestic dispute between M and her mother at her parent's home (having heard part of it on the phone). The police subsequently arrested M (in his home) because he had been drinking and was in an angry mood. He kept trying to get past the officers to get to his wife, was acting aggressively, shouting and swearing. They feared the dispute may develop further. He sued on the basis that the dispute had not spilt out of the privacy of the home and he had never actually hit his wife (his wife gave evidence to that effect).

On appeal the Court stated that a breach of the peace could occur in the privacy of one's home in the right circumstances. In this case the officers had been right to arrest M whose conduct went much further than the shouting match in *McConnell*. You must be quite clear that the Court did still uphold the principles in *McConnell*, stating that the power to arrest in a purely private domestic dispute should only be used in circumstances which were 'exceptional'.

Power of entry into private premises

A breach of the peace can occur on private premises (one of the principal decisions in the *McConnell* case). If the police have genuine grounds to apprehend such a breach, they have a right to enter private premises to make an arrest or ensure that one does not occur; *Thomas v Sawkins* (1935) All ER Rep 655. The right of entry is not absolute, but must be weighed against the degree of disturbance which is threatened. For example, smashing down a door to stop a drunken argument is likely to be excessive unless it is threatening to escalate towards violence.

An officer must not remain on private premises once a breach has finished (assuming it is not likely to re-occur), but so long as he is lawfully on the premises in the first instance, he is entitled to be given the opportunity to withdraw; *Robson v Hallett* 1967 (1967) 2 QB 939.

There are, of course, other powers of entry for protecting life or property (the principle one being of PACE) which may be of assistance. On some occasions one of the parties involved may have called the police and lawfully invited an officer onto the premises for his/her assistance (albeit a breach has not occurred).

Court orders/evictions/bailiffs

Officers attending private premises with officials may have to enter with them to prevent a breach of the peace whilst a Court Order of some type is being enforced. In those circumstances:

- (i) personally check that the order is valid - a careful check may avoid problems.
- (ii) do not enter the premises if there is no threat of a breach - unless invited voluntarily by a lawful occupier.

The following case illustrates the dangers:

A Court order was made for a man to collect clothing from his ex-wife's home (if the ex-wife didn't deliver it). Police attended at his solicitor's request, because he feared a breach of the peace. The ex-wife was not at home and her mother allowed the husband and solicitor to enter. The police followed to check off the list of clothes being removed. The ex-wife returned and protested, but the police allowed the articles to be taken. It transpired that the court order gave the ex-wife three more days to deliver the clothing and the husband had no right to enter the premises until that period had expired.

The police were sued for entering the premises and it was held that there had been no lawful reason for their action, which was an invasion of privacy; *McLeod v UK* (1998) 27 EHRR 493.

Mode of Trial and Penalty

Bind over to keep the peace for a period of time

Powers of Arrest

ANY PERSON (including a police officer) can arrest:

- (a) where a breach of the peace is committed by the person arrested in the presence of the person making the arrest; OR
- (b) where the person making the arrest reasonably believes that such a breach will be committed in the immediate future by the person whom he has arrested, although no breach has occurred at that stage; OR
- (c) where a breach of the peace has been committed by the person arrested and the person making the arrest reasonably believes that a renewal of it is threatened.

Important: To justify an arrest using (b) or (c) above the threat of a breach of the peace or renewal must be both REAL and IMMINENT (*Foulkes v CC Merseyside* 1998 3 ALL ER 705). This may be difficult if the subject of the arrest is acting quite lawfully whilst the police are dealing with him (it is the culprit, not the righteous that should be arrested). In the case of *Bibby v CC of Essex Police* 2000 3 164 JP 297, the Court outlined the following rules for making an arrest where a breach of the peace was imminent in such circumstances:

1. There must be the clearest of circumstances and a sufficiently real and present (imminent) threat to the Peace to justify the extreme step of depriving of his liberty a citizen who is not at the time acting unlawfully.
2. The threat of a breach of the peace must come from the person to be arrested, whose conduct must be unreasonable.
3. The conduct must clearly interfere with the rights of others (e.g. you cannot cause a breach of the peace screaming abuse on the North Yorkshire Moors five miles from the nearest person. The same abuse screamed at someone in the street might have a completely different effect).

4. The natural consequence of the conduct must be violence from a third party, (e.g. a person being abused by an individual making threats might react badly to his tormenter).

5. The violence in 4 must not be wholly unreasonable

Whether a Breach of the Peace is imminent is a question of judgement for the officer. Provided he or she honestly believes in the imminence of the Breach of the Peace and has reasonable for that belief, then any reasonable, necessary and proportionate intervention will be lawful even if they were later shown that the threat to the Peace was neither imminent nor real.

Final important note

If an individual has been arrested to prevent a breach of the peace, it is not always necessary to take him/her before a court. There is a duty at common law to release a detained person if there is no danger of a renewal/continuation of the breach. If there is a continued danger then s/he should be detained for court (see *Albert v Lavin* 1981 3 All ER 878) because breach of the peace is not a criminal offence, there is no power to bail to court (confirmed in *Williamson v the Chief Constable of West Midlands Police* 2003 EWCA Civ 337). This release may occur at any stage, not only after the offender has arrived at the police station, but also whilst the officer is detaining him/her at the scene or after s/he has taken the offender from the scene (perhaps, for example, after taking him/her to a relative's house to calm down).

'Extracted PNLD 3 August 2010'

Section 42 Criminal Justice and Police Act 2001 - Police directions stopping harassment of person at home

Notes - Points to Prove

That the group or individual is outside or within the vicinity of a premise being used as a dwelling.

That the Constable has reasonable grounds to believe that the presence of the individual or group is causing or likely to cause harassment, alarm or distress to a victim of the dwelling (no victim need actually be present, the likelihood of harassment etc. is sufficient).

That the Constable has reasonable grounds to believe that the purpose of the individual or group is to persuade the resident or another person that they should not do something which he is entitled to do or to do something which they are not under an obligation to do.

That any direction is given by the most senior officer, in terms of rank present.

A direction can be given orally and can be to an individual, a group or to individuals in a group.

The type of direction which can be given is extremely broad and can include all such things as the officer considers necessary to prevent harassment, alarm or distress for example:

- i) Leave the vicinity of the premises immediately,
- ii) Move a specified distance from the dwelling,
- iii) Stop a particular activity such as use of amplified sound,
- iv) Leave the vicinity of the premises after a specified period of time.

Offence

Person who knowingly contravenes a direction given under this section shall be guilty of an offence.

Mode of Trial and Penalty

Summary offence

VERBAL WARNINGS

Warning (To Be Given By Senior Officer Present)

I BELIEVE] YOU ARE HERE TO MAKE REPRESENTATIONS TO

[MR] [MRS] [MISS] [MS] [specify the name(s) of the affected occupants if known and if there is no good reason for withholding it/them, alternatively use [THE PERSON] [PEOPLE]

[WHO LIVE(S) AT][WHO IS/ARE AT] [specify the address e.g. 2 The Drive. The town name may be unnecessary]

IN RELATION TO [specify the purpose of the protestors' presence. They must be trying to make someone do something or restrain from doing something, but see section 42 for more].

I BELIEVE THAT YOUR PRESENCE HERE [AMOUNTS TO] [IS LIKELY TO RESULT IN] THE HARASSMENT OF [THIS PERSON] [THESE PEOPLE] OR IS LIKELY TO CAUSE THEM ALARM OR DISTRESS. THEREFORE I AM DIRECTING YOU TO [specify the directions considered necessary].

IF YOU KNOWINGLY FAIL TO COMPLY WITH MY DIRECTION(S) YOU WILL COMMIT AN OFFENCE CONTRARY TO SECTION 42(7) OF THE CRIMINAL JUSTICE AND POLICE ACT 2001 AND MAY BE ARRESTED.

If The Person Fails To Leave

"YOU ARE UNDER ARREST FOR FAILING TO COMPLY WITH A DIRECTION GIVEN UNDER SECTION 42 OF THE CRIMINAL JUSTICE AND POLICE ACT 2001."

Section 42A Criminal Justice and Police Act 2001 -

Notes

Currently, section 42 gives the police the power to issue a direction to any person who is outside or in the vicinity of a person's home and who they reasonably believe is there to represent to the resident, or persuade the

resident, that he should not do something that he is entitled to do (or should do something that he is not obliged to do) and his presence amounts to or is likely to cause the resident harassment, alarm or distress.

Section 42A criminalises behaviour of broadly the same kind as that which currently enables the police to issue a direction under Section 42.

Whether to give a direction or whether to arrest will depend upon the circumstances and is for the officer to decide. This section will also allow flexibility as it may be impractical to arrest at the time of the offence, but an arrest can be made post event if practicable.

Mode of Trial and Penalty

Summary offence

'Extracted PNLD 20 August 2010'

Section 50 Police Reform Act 2002 - Persons acting in an anti-social manner

If a constable in uniform has reason to believe that a person has been or is acting in an anti-social manner; has reason to believe that a constable may require that person to give their name and address to the constable when required to do so. Any person who fails to give their name and address or gives a false/inaccurate name and address is guilty of an offence.

Notes

Anti-social Manner is described under Section 1 Crime and Disorder Act 1998 (in relation to Anti-Social Behaviour Orders).

Anti-social behaviour may have been committed in public or private.

In the event a person is required to give their name and address to a constable a P.O. Box number is not sufficient. Requires the provision of a correct name and address.

The meaning of 'anti-social manner'

'Anti-social manner' refers to a person acting in a manner that caused, or was likely to cause harassment, alarm or distress to one or more persons not of the same household as that person

The meaning of 'harassment'

Harassment means to subject someone to constant and repeated physical and/or verbal persecution.

The meaning of 'alarm'

Alarm means a frightened anticipation of danger.

The meaning of 'distress'

Distress means to cause trouble, pain, anguish or hardship.

These terms are not defined in the Act and are therefore given in their ordinary meanings.

These words should be seen in context with the term 'likely to be caused'. What may distress a vulnerable person may not distress others. The

conduct has to be seen in its full context. Remember that a third party, (not the one subjected to the behaviour), may experience distress, alarm or harassment.

Note: There is no power to require a date of birth within this legislation. The officer should consider the context of the incident they are dealing with before acting i.e. the prevailing circumstances. For example, what may be more 'acceptable' behaviour outside a football game on a Saturday afternoon will probably not be acceptable outside a sheltered housing scheme in the early hours of the morning. This legislation can include third parties, i.e. those person(s) who the anti-social behaviour is not directed at. For example, the residents inside the sheltered accommodation affected by the anti-social behaviour of persons acting outside. The behaviour does not need to be directed at the people who are caused alarm or distress, to fall within the legislation.

Mode of Trial and Penalty

Summary fine - arrest without warrant

Section 1 Public Order Act 1986 - Riot

Section 1 of the Public Order Act 1986 creates the offence of riot.

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, each of the persons using unlawful violence for the common purpose is guilty of riot.

It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

The common purpose may be inferred from conduct.

No person of reasonable firmness need actually be, or likely to be, present at the scene.

Riot may be committed in private as well as in public places.

Notes:

“Present together” means that all the persons concerned were actually present at the scene of the incident.

“Common purpose” must be proved either by admission or as above by inference. It can be either lawful or unlawful.

Mode of Trial and Penalty

Maximum 10 years imprisonment and/or fine

Arrest without warrant

‘Extracted PNLD 11 January 2011’

Section 2 Public Order Act 1986 - Violent disorder

Section 2 of the Public Order Act 1986 creates the offence of violent disorder.

Where 3 or more persons 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, each of the persons using or threatening unlawful violence is guilty of violent disorder.

It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

No person of reasonable firmness need actually be, or be likely to be, present at the scene.

Violent disorder may be committed in private as well as in public places.

Notes

(i) "Three or more persons" means that as long as 3 or more persons can be proved to have been present together and using violence, even if intent can only be proved against 1 person, then that person can be convicted - it is not necessary that 'three or more persons' be charged with the offence. Following *R v Mahroof 1988*, it is good practice to specify 'others' in the charge, even if their identity is not known and they were not arrested.

(ii) "Present together" means 'three or more people using or threatening violence in the same place at the same time' *R v NW 2010*. 'At the same time' should be taken to mean at some point during the incident rather than simultaneously.

(iii) Intent to use or threaten violence must, therefore, be proved for each individual. This means that even if only one man has the intent he can still be charged if it can be proved that at least two others were using or

threatening violence and they were present together. Words only may suffice for the threats.

(iv) Section 6 of the Act deals with the mental elements required to commit this offence and also provides for where the suspect is intoxicated.

Mode of Trial and Penalty

Either Way

Summary: maximum 6 months imprisonment and/or fine not exceeding the statutory maximum.

Indictment: maximum 5 years imprisonment and/or fine.

Arrest without warrant

'Extracted PNLD 11 January 2011'

Section 3 Public Order Act 1986 - Affray

Section 3 of the Public Order Act 1986 creates the offence of affray.

3(1) 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.

3(2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

3(3) For the purposes of this section a threat cannot be made by the use of words alone.

3(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

3(5) Affray may be committed in private as well as in public places.

Notes

(i) Section 6 of the Act deals with the mental elements required to commit this offence and also provides for where the suspect is intoxicated.

(ii) The use or threat of violence must be directed towards a person and not property. There are really three parties involved in an affray:

- the individual making threats;
- the person subject of the threats;
- the bystander of reasonable firmness who does not need to be physically present as long as evidence is available to prove that such a person would be affected.

However, the purpose of the offence of affray is to prevent incidents of public disorder. If an individual is simply threatening another and no-one else is involved or likely to be worried by the incident, then other offences such as common assault etc. exist to deal with the situation. For an affray, the threat of violence needs to be capable of affecting others. The

primary objective of the offence is to protect the general public, not the participants. In *R v Plavec* 2002 a doorman pushed a female customer out of a night club doorway and she fell over. He was charged with assault and affray. The assault charge could not be sustained, but he was convicted of affray. On appeal the court said that affray was a public order offence and was inappropriate where the incident was basically one on one, the conviction was quashed.

Mode of Trial and Penalty

Either Way

Summary: A fine not exceeding the statutory maximum or six months imprisonment.

Indictment: Three years imprisonment.

Arrest without warrant

'Extracted PNLD 11 January 2011'

Section 4 Public Order Act 1986 - Causing fear or provocation of violence

Section 4 of the Public Order Act 1986 creates the offence of causing fear or provocation of violence, often known as 'threatening behaviour'.

4(1) A person is guilty of an offence if he -

(a) uses towards another person threatening, abusive or insulting words or behaviour, or

(b) 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.

4(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

Notes

(i) Section 6 of the Act deals with the mental elements required to commit this offence and also provides for where the suspect is intoxicated.

(ii) "Threatening" includes verbal and physical threats, and also violent conduct; "abusive" means using degrading or reviling language; "insulting" has been held to mean scorning, especially if insolent or contemptuous. It does not mean behaviour which might give rise to irritation or resentment (e.g. running onto a tennis court at Wimbledon blowing a whistle and stopping the game - *Brutus v Cozens* 1973 AC 854).

(iii) If this offence is racially aggravated, the more serious offence under section 31(1) (a) of the Crime and Disorder Act 1998 should be considered.

(iv) It is not bad for duplicity if the three alternatives 'threatening, abusive or insulting', are charged though all three need not be present.

(v) There is a power of entry to premises under section 17 of PACE in order to arrest anyone committing this offence (This offence can be committed in a private place).

(vi) When a charge of 'threatening behaviour' under this section of the Act has been brought, the person who has been provoked or put in fear must be identified and this point proved. The 'other person' may be a police officer, but the fact that he was provoked or put in fear must be proved. It is likely that the court will look at the basic principles in DPP v Orum 1988 2 All ER 449 which was concerned with disorderly conduct under section 5. It is likely that the court will only decide that a police officer was put in fear or provoked if the actions of the defendant were more than the conduct which an officer could regularly expect in the course of his duty - e.g.: a drunk and incapable person threatening to take a swipe may not be sufficient, but a drunken football yob (with others nearby) making threats towards a lone officer who becomes fearful for his safety should be sufficient.

(vii) The term 'distributes or displays' is not defined by the Act itself. The words should therefore be given their natural meaning as defined by the Oxford dictionary - distribute means spread or disperse; and display means a visual presentation, the action, or act of displaying or exhibiting to view or the presentation of printed matter in such a way as to make it visually prominent

'Extracted PNLD 3 August 2010'

Section 4A Public Order Act 1986 - Causing intentional harassment, alarm or distress

Section 4A of the Public Order Act 1986 creates the offence of causing intentional harassment, alarm or distress.

4A (1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he -

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

Thereby causing that or another person harassment, alarm or distress.

4A (2) An offence under this section may be committed in a public or private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

4A(3) It is a defence for the accused to prove -

(a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(b) that his conduct was reasonable.

Notes

(i) The offence is very similar to section 5 of the Act, but requires intent to cause harassment, alarm or distress. However, the penalty is considerably greater than that for section 5

(ii) If this offence is racially aggravated or religiously, the more serious offence under section 31(1) (b) of the Crime and Disorder Act 1998 should be considered.

(iii) Although the offence can be committed on private premises, there is no specific power of entry (such as can be found for section 4 of the Act) and officers should consider breach of the peace powers or whether the offence is sufficiently serious to require action under section 4.

Mode of Trial and Penalty

Summary: Six months imprisonment and/or a fine not exceeding level five on the standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 5 Public Order Act 1986 - Threatening, abusive or insulting in a way which is likely to cause harassment, alarm or distress

Section 5 of the Public Order Act 1986 creates an offence of being threatening, abusive or insulting in a way which is likely to cause harassment, alarm or distress.

5(1) A person is guilty of an offence if he -

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) 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 thereby.

5(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

5(3) It is a defence for the accused to prove -

(a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or

(b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(c) that his conduct was reasonable.

Notes

(i) See notes under POA 1986 s.6 for mental element of this offence

(ii) There is no longer a requirement to give a warning prior to making an arrest under this section. An arrest can be made as long as the requirements under section 24 of PACE are met.

(iii) If this offence is racially aggravated or religiously, the more serious offence under section 31(1) (c) of the Crime and Disorder Act 1998 should be considered.

(iv) Threatening includes verbal and physical threats, and also violent conduct, abusive means using degrading or reviling language, insulting has been held to mean scorning, especially if insolent or contemptuous.

- It does not necessarily mean behaviour which might give rise to irritation or resentment (e.g. running onto a tennis court at Wimbledon blowing a whistle and stopping the game - *Brutus v Cozens* 1972 AC 854).
- Using a concealed video camera to film customers undressing and trying on swimwear in a changing room is insulting behaviour for the purposes of this offence. The ruling in this case stated that the act of placing the camera in a location where the appellant knew customers would be distressed if they were to notice it, was sufficient to constitute the offence, regardless of whether it was actually functioning or indeed discovered. The Court likened the conduct to peeping through the changing room curtains rather than using a camera. The victim's distress would be just the same. (*Vigon v DPP* 1998 Crim LR 289).
- *Percy v DPP* 2001 EWHC Admin 1125: A protester defaced an American flag (the defendant's own property) and stamped upon it outside an American exhibition. It was held that she should not have been convicted of this offence; as such a conviction is a breach of an individual's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights. The defendant

had a right to make her disapproval of America known. A criminal prosecution was not a proportionate response to that particular protest. Note: Each case must turn on its own facts and this was, basically, a peaceful protest albeit may have insulted some American servicemen. This case does not exclude prosecutions in more extreme circumstances.

- Director of Public Prosecutions v Hammond [2004] All ER (D) 50 (Jan) found that the displaying of a sign with anti-homosexual remarks by a preacher was insulting behaviour.

(v) **Words or behaviour** - are alternatives and one or other should be specified in the charge, and must be proved.

(vi) **Disorderly behaviour** is not defined by the Act and there is no relevant case law, but 'disorderly' is defined by the Oxford Dictionary as 'unruly, unrestrained, turbulent or riotous'.

(vii) It is not bad for duplicity if all three alternatives are charged; 'threatening, abusive or insulting', though all three need not be used.

(viii) **Urinating** in public (e.g. a shop doorway) would ordinarily breach a local byelaw and the offender should be reported for summons. However, where the offender displays more 'exhibitionist' tendencies, then consideration could be given to reporting for a section 5 offence if indecent exposure would not be appropriate, subject to all the surrounding circumstances.

(ix) When investigating this offence consideration must be given to the public order charging standards.

(x) The term 'harassment, alarm or distress' is not defined by the statute, therefore the words should be given their ordinary meaning; harassment, means to subject someone to constant and repeated physical and/or verbal persecution; alarm, means a frightened anticipation of danger and; danger, means to cause trouble, pain, anguish or hardship. These words should be seen in context with the term 'likely to be caused' (see note (xiii) below). What may distress an old woman of 75 years may not

distress a young man of 20 years. The conduct has to be seen in its full context. It has been held that the alarm caused to one person can be for the safety of someone else, and not necessarily for oneself; *R v Lodge* 1989 C.O.D 179

(xi) A person likely to be caused harassment, alarm or distress must be proved in order to convict an individual for an offence under this section. For example, it must be proved that some person or persons were nearby and within sight or hearing and that they were likely to be caused such feelings. The evidence of other persons in the area can be given by the police officer(s) in the case; witness statements do not usually need to be taken from them. The term can also include a police officer, but only in limited circumstances; *DPP v Orum* [1988] All ER 449. In that case the prosecution were criticised for not including evidence that other persons known to have been nearby, were likely to have been caused alarm etc., even though the words, behaviour or display may not have been directed at them. The basic principle is that a police officer cannot be alarmed etc. by conduct which, although it would alarm others had they been present, is conduct a police officer meets regularly in the course of his duty. He is expected to be able to cope with 'everyday' misconduct without being particularly alarmed etc. Also be aware of the case *Harvey V DPP* 2011 concerning the way in which the phrase "F*** off" is used to police officers. (pg 116 of this Legislation Guide refers)

(xii) Section 6 of the Act deals with the mental elements required to commit this offence and also provides for where the suspect is intoxicated.

Mode of Trial and Penalty

Summary: A fine not exceeding level three on a standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 6 Public Order Act 1986 - Mental element

Section 6 of the Public Order Act 1986 provides for the mental element required for some of the offences under this Act.

6(1) a person is guilty of riot only if he intends to use violence or is aware that his conduct may be violent.

6(2) a person is guilty of violent disorder or affray only if he intends to use or threaten violence or is aware that his conduct may be violent or threaten violence.

6(3) a person is guilty of an offence under section 4 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

6(4) a person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

6(5) for the purposes of this section a person whose awareness is impaired by intoxication shall be taken to be aware of that of which he would be aware if not intoxicated, unless he shows either that his intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

6(6) in subsection (5) 'intoxication' means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

6(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

Note

Even if intent can only be proved against two persons but they were part of a group of thirteen who can be shown to have used unlawful violence, the two can still be convicted of riot.

'Extracted PNLD 3 August 2010'

Section 11 Public Order Act 1986 - Advance notice of public processions

Section 11 of the Public Order Act 1986 provides that written notice be given in advance of a public procession by the organisers in certain circumstances.

11(1) Written notice shall be given in accordance with this section of any proposal to hold a public procession intended -

(a) to demonstrate support for or opposition to the views or actions of any person or body of persons,

(b) to publicise a cause or campaign, or

(c) to mark or commemorate an event,

Unless it is not reasonably practicable to give any advance notice of the procession.

11(2) Subsection (1) does not apply where the procession is one commonly or customarily held in the police area (or areas) in which it is proposed to be held or is a funeral procession organised by a funeral director acting in the normal course of his business.

11(3) The notice must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or one of the persons) proposing to organise it.

11(4) Notice must be delivered to a police station -

(a) in the police area in which it is proposed the procession will start, or

(b) where it is proposed the procession will start in Scotland and cross into England, in the first police area in England on the proposed route.

11(5) If delivered not less than 6 clear days before the date when the procession is intended to be held, the notice may be delivered by post by the recorded delivery service; but section 7 of the Interpretation Act 1978

(under which a document sent by post is deemed to have been served when posted and to have been delivered in the ordinary course of post) does not apply.

11(6) If not delivered in accordance with subsection (5), the notice must be delivered by hand not less than 6 clear days before the date when the procession is intended to be held or, if that is not reasonably practicable, as soon as delivery is reasonably practicable.

11(7) Where a public procession is held, each of the persons organising it is guilty of an offence if -

(a) the requirements of this section as to notice have not been satisfied, or

(b) the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in the notice.

11(8) It is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements or (as the case may be) the difference of date, time or route.

11(9) To the extent that an alleged offence turns on a difference of date, time or route, it is a defence for the accused to prove that the difference arose from circumstances beyond his control or from something done with the agreement of a police officer or by his direction.

Notes

Public assembly

means an assembly of 2 or more persons in a public place which is wholly or partly open to the air; this applies in England and Wales only.

Public place means -

(a) any highway, or in Scotland any road within the meaning of the Roads (Scotland) Act 1984, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

Public procession means a procession in a public place.

Mode of Trial and Penalty

Summary: a fine not exceeding level three on the standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 12 Public Order Act 1986 - Imposing conditions on public processions

Section 12 of the Public Order Act 1986 provides for a senior officer to impose conditions on public processions where he believes serious public disorder, serious damage to property or serious disruption to life of the community may result or if he believes the organisers will intimidate or compel others to do unlawful acts.

12(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that -

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

He may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

12(2) in subsection (1) the senior police officer means -

(a) in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and

(b) in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police.

12(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

12(4) A person who organises a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

12(5) A person who takes part in a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence to prove that the failure arose from circumstances beyond his control.

12(6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

Notes

(i) See the case of DPP v Jones (1999) All ER 257 which deals with the application of powers of this kind and whether demonstrations can necessarily be considered as obstructions of the highway.

(ii) The exercise of these powers is subject to judicial review, so the police must be able to show they have acted rationally and have confined their assessment of the situation to relevant considerations, see Kent v MPC

(iii) In addition, the Human Rights Act 1998 will affect the exercise of discretion under these powers. Police officers should use these powers proportionately to the disorder they are seeking to avert (see Steel v UK, McLeod v UK The Times 1 Oct 1998.) They should give special weight to the value of “political” protest.

(iv) Conditions imposed that are outside the legal powers may subsequently be severed by the court but this does not invalidate the whole notice (DPP v Jones [2002] All ER 157).

Mode of Trial and Penalty

Offences under section 12(4):

Summary: Maximum 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale

Offences under section 12(5):

Summary: A fine not exceeding level 3 on the standard scale

Offences under section 12(6):

Summary: Maximum 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 13 Public Order Act 1986 - Prohibiting public processions

Section 13 of the Public Order Act 1986 provides for the prohibiting of public processions by a chief officer of police on application to the district council if he considers it necessary to avoid serious public disorder. The council if in agreement require the consent of the Secretary of State.

13(1) If at any time the chief officer of police reasonably believes that, because of particular circumstances existing in any district or part of a district, the powers under section 12 will not be sufficient to prevent the holding of public processions in that district or part from resulting in serious public disorder, he shall apply to the council of the district for an order prohibiting for such period not exceeding 3 months as may be specified in the application the holding of all public processions (or of any class of public procession so specified) in the district or part concerned.

13(2) On receiving such an application, a council may with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State.

13(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

13(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that, because of particular circumstances existing in his police area or part of it, the powers under section 12 will not be sufficient to prevent the holding of public processions in that area or part from resulting in serious public disorder, he may with the consent of the Secretary of State make an order prohibiting for such period not exceeding 3 months as may be specified in the order the holding of all public processions (or of any class of public procession so specified) in the area or part concerned.

13(5) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsections (1) and (2) or subsection (4), as the case may be.

13(6) Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.

13(7) A person who organises a public procession the holding of which he knows is prohibited by virtue of an order under this section is guilty of an offence.

13(8) A person who takes part in a public procession the holding of which he knows is prohibited by virtue of an order under this section is guilty of an offence.

13(9) A person who incites another to commit an offence under subsection (8) is guilty of an offence.

Notes

(i) The City of London and Metropolitan Police apply direct to the Secretary of State.

(ii) Where a prohibition order is in force, offences are committed by those who organise or take part in such a public procession or incite the commission of such offences.

(iii) The City of London means the City as defined for the purposes of the Acts relating to the City of London police.

(iv) The Metropolitan Police District means that district as defined in section 76 of the London Government Act 1963.

Mode of Trial and Penalty

Offences under section 13(7):

Summary: maximum 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale

Offences under section 13(8):

Summary: a fine not exceeding level 3 on the standard scale

Offences under section 13(9):

Summary: maximum 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 14 Public Order Act 1986 - Imposing conditions on public assemblies

Section 14 of the Public Order Act 1986 allows a senior officer of police to impose certain conditions on a public assembly where he reasonably believes serious public disorder, serious damage to property or serious disruption to life of the community may result or if he believes the organisers will intimidate or compel others to do unlawful acts.

14(1) If the senior officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that -

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

14(2) In subsection (1) the senior police officer means -

(a) in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and

(b) in relation to an assembly intended to be held, the chief officer of police.

14(3) A direction given by a chief officer of police by virtue of subsection (2) (b) shall be given in writing.

14(4) A person who organises a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence,

but it is a defence for him to prove that the failure arose from circumstances beyond his control.

14(5) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

14(6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

Notes

(i) See also the case of DPP v Baillie [1995] Crim LR 426.

(ii) See also the notes on imposing conditions on public processions which are also relevant and prohibiting trespassory assemblies.

(iii) Section 14A deals with trespassory assembly.

(iv) Conditions imposed that are outside the legal powers may subsequently be severed by the court but this does not invalidate the whole notice (DPP v Jones [2002] All ERD 157).

DPP v Baillie 1994

B sent out general information about various free events and festivals which would be of interest to travellers and other similar persons. He had an 'answer only' pre-recorded message on an answer phone and distributed various newsletters. He was served with a notice under section 14(1) (a) of the Public Order Act 1986 which, summarised, states:

'If a senior police officer, having regard to the time or place at which and circumstances in which any public assembly is being held or intended to be held, reasonably believes that it may result in serious public disorder or damage or disruption he may give directions imposing conditions on the organisers or persons taking part. If the event has not begun these conditions are imposed by the service of a notice'.

The notice which imposed conditions on B was in relation to a future festival which the police believed would take place and it referred to 'a proposed festival on 12 June et sequentes (and those days following) at North West Hampshire'. Such wide terms demonstrated that the police did not have specific information about an event attributable to B's activities, nor was there any proof that any such public assembly ever took place.

B was subsequently charged with failing to comply with the notice, when he continued to give details of a 'summer solstice' around Crawley. He was found 'not guilty' by the Crown Court and the prosecution appealed asking for clarification of the following grounds:

1. Whether B's activities made him the organiser of an event.
2. Whether the police could serve a notice for an event, the time and place of which were unknown
3. Whether an offence of failure to comply with the notice had been committed even though, at the time of his arrest, the event had not occurred and he still had time to comply with the conditions.

HELD

Appeal dismissed. Acquittal upheld.

The Court did not attempt to give an answer to 3 above. So far as the other two points, the Crown had put forward that it was possible to argue that B's role in directing people to the event was, on the face of it, a crucial part of the organisation because no formal announcement of time and place would ever be made in any other way.

However, it was impossible to identify the timing or location of the event (including the vital information that it was going to take place in public - it was even possible that the event was to be held on private premises so no public assembly would have taken place), therefore a notice under section 14 must be invalid.

Mode of Trial and Penalty

Offences under section 14(4):

Summary: Maximum 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale

Offences under section 14(5):

Summary: Fine not exceeding level 3 on the standard scale

Offences under section 14(6):

Summary: Maximum 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 14A of the Public Order Act 1986 - Prohibiting trespassory assemblies

Section 14A of the Public Order Act 1986 provides a chief officer of police the authority to apply for an order prohibiting trespassory assemblies ('mass trespasses') in that area, in certain circumstances.

14A(1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only a limited right of access and that the assembly -

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result -

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or part of it, as specified.

14A (2) On receiving such an application, a council may -

(a) in England and Wales, with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State; or

(b) in Scotland, make an order of the application.

14A (3) Subsection (1) does not apply in the City of London or the metropolitan police district.

14A (4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that an assembly is intended to be held at a place on land to which the public has no right of access or only a limited right of access in his police area and that the assembly -

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result -

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in the area or a part of it, as specified.

14A (5) An order prohibiting the holding of trespassory assemblies operates to prohibit any assembly which -

(a) is held on land to which the public has no right of access or only a limited right of access, and

(b) takes place in the prohibited circumstances, that is to say, without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.

14A(6) No order under this section shall prohibit the holding of assemblies for a period exceeding 4 days or in an area exceeding an area represented by a circle with a radius of 5 miles from a specified centre.

14A(7) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsection (1) and (2) or subsection (4), as the case may be.

14A (8) Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.

14A (9) in this section and sections 14B and 14C -

Assembly

means an assembly of 20 or more persons;

Land

means land in the open air;

Limited

in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case of a highway or road) or is subject to other restrictions;

Occupier means -

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; or

(b) in Scotland, the person lawfully entitled to natural possession of the land,

And in subsections (1) and (4) includes the person reasonably believed by the authority applying for or making the order to be the occupier;

Public

includes a section of the public; and

Specified

means specified in an order under this section.

14A(9A) In relation to Scotland, the references in this section to the public's rights (or limited right) of access do not include any right which the public or any member of the public may have by way of access rights within the meaning of the Land Reform (Scotland) Act 2003.

14A (10) In relation to Scotland, the references in subsection (1) above to a district and to the council of the district shall be construed -

(a) as respects applications before 1 April 1996, as references to the area of a regional or islands authority and to the authority in question; and

(b) as respects applications on and after that date, as references to a local government area and to the council for that area.

14A(11) In relation to Wales, the references in subsection (1) above to a district and to the council of the district shall be construed, as respects applications on and after 1 April 1996, as references to a county or county borough and to the council for that county or county borough.

'Extracted PNLD 19 January 2012'

Section 14B of the Public Order Act 1986 - Offences in connection with trespassory assemblies

Section 14B of the Public Order Act 1986 creates three offences relating to section 14A

14B (1) A person who organises an assembly the holding of which he knows is prohibited by an order under section 14A is guilty of an offence.

14B (2) A person who takes part in an assembly which he knows is prohibited by an order under section 14A is guilty of an offence.

14B (3) In England and Wales, a person who incites another to commit an offence under subsection (2) is guilty of an offence.

14B (4) repealed

Mode of Trial and Penalty

Offences under section 14B (1):

Summary: Maximum 51 weeks imprisonment and/or a fine not exceeding level 4 on the standard scale

Offences under section 14B (2):

Summary: Fine not exceeding level 3 on the standard scale

Offences under section 14B (3):

Summary: Maximum 51 weeks imprisonment and/or a fine not exceeding level 4 on the standard scale

Arrest without warrant

'Extracted PNLD 19 January 2012'

Section 14C of the Public Order Act 1986 - Stopping persons from proceeding to trespassory assemblies

Section 14C of the Public Order Act 1986 allows the police to prevent persons moving towards a trespassory assembly which is subject to an order under section 14A banning such an assembly.

14C(1) If a constable in uniform reasonably believes that a person is on his way to an assembly within the area to which an order under section 14A applies which the constable reasonably believes is likely to be an assembly which is prohibited by that order, he may, subject to subsection (2) below -

(a) Stop that person, and

(b) direct him not to proceed in the direction of the assembly.

14C (2) the power conferred by subsection (1) may only be exercised within the area to which the order applies.

14C (3) A person who fails to comply with a direction under subsection (1) which he knows has been given to him is guilty of an offence.

14C (4) repealed

14C (5) penalty only - see below

Notes

(i) The effect is that assemblies on private land can be more tightly regulated than those on public land.

(ii) Section 14A deals with prohibiting trespassory assemblies and section 14B deals with offences committed regarding trespassory assemblies.

Mode of Trial and Penalty

Summary: A fine not exceeding level three on the standard scale

Arrest without warrant

'Extracted PNLD 19 January 2012'

Section 17 Public Order Act 1986 - Definition of Racial Hatred

Section 17 of the Public Order Act 1986 defines 'racial hatred' for the purposes of Part III of the Act (sections 17 to 29).

17 In this Part racial hatred means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Notes

(i) 'Racial hatred' in Part III of the Public Order Act 1986 includes hatred manifested in Great Britain but directed against a racial or religious group outside Great Britain.

'Extracted PNLD 3 August 2010'

Section 18 Public Order Act 1986 - Racist words or behaviour or display of writing

Section 18 of the Public Order Act 1986 creates the offence of using words or behaviour, or displaying written material with intent to stir up racial hatred. This offence also applies if; having regard to all the circumstances racial hatred is likely to be stirred up.

18(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if -

(a) he intends thereby to stir up racial hatred, or

(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

18(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

18(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

18(5) A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

18(6) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

Notes

(i) Types of conduct which may amount to using threatening, abusive or insulting words or behaviour include -

(a) threats made or abuse directed towards individuals carrying out public service duties or jobs, e.g. ambulance workers, fire fighters or bus/train drivers;

(b) throwing of missiles by a person taking part in a demonstration/public gathering where no injury is caused;

(c) scuffles or incidents of minor violence or threats of violence committed in the context of a brawl (e.g. in or within the vicinity of a public house);

(d) incidents between neighbours or within domestic relationships which do not justify a charge of assault.

(ii) Section 1 of the Malicious Communications Act 1988 is a useful charge if a letter/other article have been sent to a person(s) to cause distress or anxiety. It is of particular use as an alternative to section 18 Public Order Act 1986; where the material sent is to a selected individual(s) with a racially motivated hostile intent, but the (section 18) intention to stir up racial hatred is not present.

(iii) The offence may take place in a public or private place. But no offence is committed if such conduct takes place inside a dwelling and the person to whom it is directed is inside that or another dwelling.

Mode of Trial and Penalty

Either Way

SUMMARY: Six months imprisonment and/or a fine not exceeding the statutory maximum.

INDICTMENT - Seven years imprisonment and/or a fine.

Consent of Attorney-General required for prosecution.

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 29A Public Order Act 1986 - Meaning of 'Religious Hatred'

Section 29A of the Public Order Act 1986 provides for the meaning of "religious hatred" in sections Part IIIA of the Public Order Act 1986. This is with a view to the institution of offences of inciting religious hatred (in parallel to offences against the incitement of racial hatred).

29A in this part religious hatred means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

Notes

(i) The definition does not seek to define what amounts to a religion or a religious belief. It will cover established religions but minority sects which have been otherwise seen as contrary to the public interest in the past (e.g. Scientology) are equally covered. The offences are designed to include hatred against a group where the hatred is not based on the religious beliefs of the group or even on a lack of any religious belief (such as Atheists), but based on the fact that the group do not share the particular religious beliefs of the perpetrator (e.g. relating to rival sects within a church).

(ii) Before this insertion religious hatred was a factor taken into account in sentencing (see Anti-terrorism, Crime and Security Act 2001 section 39) but incitement to it was not an offence in itself.

'Extracted PNLD 3 August 2010'

Picketing

Section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 - Peaceful picketing

This act creates provisions in relation to peaceful picketing.

220(1) It is lawful for a person in contemplation or furtherance of a trade dispute to attend,

(a) at or near his own place of work, or

(b) if he is an official of a trade union, at or near the place of work of a member of the union whom he is accompanying and whom he represents,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

220(2) If a person works or normally works,

(a) otherwise than at any one place, or

(b) at a place the location of which is such that attendance there for a purpose mentioned in subsection (1) is impracticable,

his place of work for the purposes of that subsection shall be any premises of his employer from which he works or from which his work is administered.

220(3) In the case of a worker not in employment where,

(a) his last employment was terminated in connection with a trade dispute, or

(b) the termination of his employment was one of the circumstances giving rise to a trade dispute,

in relation to that dispute in his former place of work shall be treated for the purposes of subsection 1 above as being his place of work.

220(4) A person who is an official of a trade union by virtue only of having been elected or appointed to be a representative of some of the members of the union shall be regarded for the purposes of subsection (1) as representing only those members; but otherwise an official of a union shall be regarded for those purposes as representing all its members.

NOTES:

(i) This section does not authorise pickets to enter onto private land. (British Airports Authority v Ashton [1993] 1 WLR 1079).

(ii) The above section restricts lawful picketing to 'primary' picketing outside the person's own place of work

(iii) This section does not place a restriction on the number of pickets, however an inordinate number may give the impression that they intend to intimidate. (Broome v DPP [1974] AC587).

(iv) A place of work does not include a place that the employer has moved to since dismissing the individuals picketing. (News Group Newspapers Ltd v SOGAT '82 (No2) [1987] ICR 181).

(v) If there is a real danger of public order offences being committed pickets have no right to attend at premises under this section. (Piddington v Bates [1960] 3 All ER 660).

Section 244 of the Trade Union and Labour Relations

(Consolidation) Act 1992 provides an interpretation of the term "trade dispute". It states:

244(1) In this Part a "trade dispute" means a dispute between workers and their employer which relates wholly or mainly to one or more of the following

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment between workers or groups of workers;

(d) matters of discipline;

(e) a worker's membership or non-membership of a trade union;

(f) facilities for officials of trade unions; and

(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

'Extracted PNLD 27 September 2010'

Section 224 of the Trade Union and Labour Relations (Consolidation) Act 1992 - Secondary Picketing

This provides for instances of secondary picketing. It states:

224(1) An act is not protected if one of the facts relied on for the purpose of establishing liability is that there has been secondary action which is not lawful picketing.

224(2) There is secondary action in relation to a trade dispute when, and only when, a person

(a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or

(b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

and the employer under the contract of employment is not the employer party to the dispute.

224(3) Lawful picketing means acts done in the course of such attendance as is declared lawful by section 220 (peaceful picketing)

(a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or

(b) by a trade union official whose attendance is lawful by virtue of subsection (1)(b) of that section.

224(4) For the purposes of this section an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute.

224(5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute.

Primary action means such action as is mentioned in paragraph (a) or (b) of subsection (2) where the employer under the contract of employment is the employer party to the dispute.

224(6) In this section "contract of employment" includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

'Extracted PNLD 27 September 2010'

Section 241 Trade Union and Labour Relations (Consolidation) Act 1992 - Intimidation/annoyance by violence/otherwise

Notes

A protestor who prevents workmen from progressing with construction work can be charged under Section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992 with wrongfully and without lawful authority hindering them in their work with a view to compelling them to abstain from work. The application of this section is not just confined to the context of trade disputes.

A person must be prevented from working or likely to be prevented or intended to be prevented from doing an act that they are legally entitled to do (including working).

It is vital that this evidence is obtained before arrest. An option would be to use the EGT to record (video or audio) a victim statement. A written statement can then be obtained afterwards.

VERBAL WARNINGS

Warning for Senior Officer to Protestor

"YOU ARE PREVENTING, LIKELY TO PREVENT OR DELIBERATELY TRYING TO PREVENT (*name person*) FROM DOING SOMETHING WHICH HE/SHE HAS A LEGAL RIGHT TO DO (*state action*). I REQUIRE YOU TO STOP WHAT YOU ARE DOING. FAILURE TO DO SO MAY MAKE YOU LIABLE TO ARREST."

Arresting Officer to Individual

"YOU HAVE BEEN ASKED TO STOP THIS ACTION. IS THERE ANYTHING I CAN REASONABLY SAY OR DO TO MAKE YOU STOP?"

Allow a short amount of time, depending on the circumstances, to give the person the opportunity to stop their action.

"YOU ARE COMMITTING THE OFFENCE OF WRONGFULLY AND WITHOUT LEGAL AUTHORITY HINDERING THIS PERSON FROM WORKING, OR SPECIFICALLY (*state act*) WITH A VIEW TO COMPELLING HIM/HER FROM ABSTAINING FROM WORK. I AM THEREFORE ARRESTING YOU."

Caution.

Mode of Trial and Penalty

Summary. Six months imprisonment and/or a fine

Powers of Arrest

Arrest without warrant

'Extracted PNLD 27 September 2010'

Trespassing

Section 61(1) Criminal Justice and Public Order Act 1994 - Power to remove trespassers on land

Section 61(1) of the Criminal Justice and Public Order Act 1994 allows the senior police officer attending the scene of an incident involving a trespass or nuisance on land to order trespassers to leave the land and to remove their vehicles as soon as reasonably practicable.

61(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 by or 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 property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, OR

(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

Subsection (4) creates offences of failing to leave the land and, having left, returning within three months. Subsection (6) provides the defences.

61(4) If a person, knowing that a direction under subsection (1) has been given which applies to him-

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence.

61(6) In proceedings for an offence under this section it is a defence to for the accused to show -

(a) that he was not trespassing on the land, or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

Notes

(i) Regarding common land see subsections (7) and (8).

(ii) What is a 'reasonable time to leave the land' is an objective test not a subjective one (i.e. what would the impartial average citizen consider reasonable, as opposed to the personal opinions of the trespassers or the police (Kampa v DPP - Times LR 31.12.88)).

Mode of Trial and Penalty

Summary: Fine not exceeding level 4 on the standard scale and/or maximum three months imprisonment

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 68 Criminal Justice and Public Order Act 1994 - Aggravated trespass/disrupting lawful activity

Section 68 of the Criminal Justice and Public Order Act 1994 makes it an offence for a trespasser to disrupt or obstruct any lawful activity taking place on that land or adjoining land.

68(1) A person commits the offence of aggravated trespass if he trespasses on land ('land' includes any building - see sub-section (5) below) and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, 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,

(b) of obstructing that activity, OR

(c) of disrupting that activity.

68(2) Activity on any occasion on the part of a person or persons on land is lawful for the purposes of this section if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

68(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

Notes

(i) Under section 69(1) the police can give a direction/warning to potential offenders to leave the land.

(ii) Under section 69(3) an offence is committed if they fail to do so.

(iii) Trespasser is someone who goes on land without an invitation of any sort and whose presence is either unknown to the lawful occupier of the land or is known but objected to by him in a practical way (e.g. if a

landowner allowed local people to take a short cut across his land and did not try to stop them, in time they would no longer be trespassers. If he put up signs or gates to stop the practice, but it continued despite these efforts, then the people crossing the land would continue to be trespassers indefinitely).

(iv) In relation to the phrase -any lawful activity which persons were engaging/about to engage in on.... land- note that in the cases of DPP v Tilly and others and Tilly v DPP (2002 Crim LR 128), it was decided that such persons must be present on the land for this offence to be committed.

(v) Simply occupying the land could only constitute an act intending to intimidate if there was a 'distinct and overt' action separate from the act of trespass (Barnard V DPP 1999 The Times, 9 November 1999) (e.g. three hundred protestors marching onto an open-cast mining site shouting and jeering as opposed to half a dozen protesters wandering through the gateway and standing there).

Mode of Trial and Penalty

Summary: Fine not exceeding level 4 on the standard scale and/or maximum 3 months imprisonment

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 69 Criminal Justice and Public Order Act 1994 - Power to remove trespassers

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; or

(b) that two or more persons are trespassing on land 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 a lawful activity,

He may direct that person or (as the case may be) those persons (or any of them) to leave the land.

Notes

An offence of Aggravated Trespass need not have been committed yet; in order for a senior police officer to exercise this power.

Following changes to the legislation in January 2004, Aggravated Trespass can now be committed in buildings and/or land in the open air.

This offence can cover the trespassory occupation of buildings or protest outside buildings in respect of activity taking place inside, e.g. breeding of animals in sheds for vivisection, or laboratory testing of animals would fit this criteria.

VERBAL WARNINGS

Warning To Be Given By Senior Officer Present

"I BELIEVE THAT YOU [HAVE COMMITTED] [ARE COMMITTING] [INTEND TO COMMIT] THE OFFENCE OF AGGRAVATED TRESPASS ON THIS LAND CONTRARY TO SECTION 68 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 IN THAT, AS TRESPASSERS, YOU [HAVE ACTED] [ARE ACTING] [ARE INTENDING TO ACT] IN A WAY WHICH [HAS INTIMIDATED, OBSTRUCTED OR DISRUPTED] [IS INTIMIDATING OBSTRUCTIVE OR

DISRUPTIVE TO] ** (specify here the people affected and if those people are on adjoining land also name the land they are on). YOUR ACTIONS [HAVE BEEN DETERRING] [ARE DETERRING] [ARE LIKELY TO DETER] THEM FROM ENGAGING IN ** (specify here the nature of the activity being deterred) WHICH IS A LAWFUL ACTIVITY.

UNDER THE POWERS CREATED BY SECTION 69 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 AND AS THE SENIOR POLICE OFFICER PRESENT I AM DIRECTING YOU TO LEAVE THIS LAND. IF YOU FAIL TO DO SO AS SOON AS IS PRACTICABLE YOU WILL COMMIT A CRIMINAL OFFENCE AND CAN BE ARRESTED. IT IS ALSO AN OFFENCE TO RETURN TO THIS LAND WITHIN THREE MONTHS."

Arresting Officer to Individual

"I AM ARRESTING YOU FOR FAILING TO LEAVE LAND ON WHICH YOU ARE TRESPASSING AS I BELIEVE THAT YOUR ACTIONS ARE INTENDED TO INTIMIDATE, OBSTRUCT OR DISRUPT ANY PERSONS ENGAGED IN LAWFUL ACTIVITY."

State necessity for the arrest and caution.

Note

Ensure that the warning is capable of being heard by all the persons involved (and that fact can be proved). If necessary other police officers can pass on the message once the senior officer has issued the warning. It must be the senior officer present giving the warning. Where equal ranks are present and no one is officially acting up, use dates of promotion as to seniority or date of joining for constables (even if the officers are present in different roles -e.g. one beat duties and the other part of an operational support group).

Mode of Trial and Penalty

Summary offence

'Extracted PNLD 20 August 2010'

Section 145 Serious Organised Crime and Police Act 2005 - Interference with contractual relationships - animal research organisations

Notes

There are two steps involved in establishing whether an offence has been committed:

Firstly, a person needs to either commit a crime or a tortious act causing loss or damage, or threaten someone that they or someone else will commit a crime or such a tortious act, with the intention of harming an 'Animal Research Organisation'.

Secondly, this needs to be likely or intended to cause the person against whom the crime or relevant tortious act is committed or threatened, to:

- Fail to perform a contractual obligation,
- To withdraw from a contract or,
- To decide not to enter into a contract.

For this purpose 'contract' and 'contractual' include non-contractual arrangements.

A tortious act is an act which is wrong in civil law but is not a criminal offence. The normal remedy is for the victim of the tort to sue for damages in the civil courts. The effect of the section is to make a tortious act which causes loss or damage, and which is committed with the necessary intention, a criminal offence. By virtue of subsection 3(B), no offence is committed if the only relevant act is inducement to breach a contract. The effect of this subsection is to ensure that no offence is committed by those peacefully advocating or representing that one person should cease doing business with another on the basis of the other's connection to an animal research organisation.

Harming an Animal Research Organisation is defined as causing the organisation to suffer loss or damage of any kind, or to prevent or hinder such an organisation from carrying on any of its activities.

The offence will not be committed where the act on which it might otherwise be based is an act done in contemplation or furtherance of a "Trade Dispute" (see Section 241 Trade Union and Labour Relations (Consolidation) Act 1992).

Power of Arrest

Arrest without warrant

Section 146 Serious Organised Crime and Police Act 2005 - Intimidation of persons connected with animal research organisations

Notes

This offence is committed where a person (A), with the intention of causing another person (B) not to do something he is entitled to do, or to do something he is not obliged to do, threatens B that a himself or someone else will commit a crime or do a tortious act causing loss or damage to B or someone else, and A does so wholly or mainly because B has a connection with an animal research organisation.

Persons who are connected, directly or indirectly, with an Animal Research Organisation for the purpose of the offence includes:

- Employees and office holders of animal research organisations; people with a financial interest in those organisations (including shareholders) or who give financial support to them; suppliers and customers and those with a financial interest in them or who financially support them, and people personally known to these people; students at educational establishments that are animal research organisations are included. In turn, those who supply and are customers of these people, or are known to them, are also included.

The term “office holder” includes directors, managers and secretaries of companies, charity trustees, and partners in partnerships.

The terms “customer” and “supplier” include customers and suppliers of goods, services and facilities.

The Secretary of State has the power to amend the list of connected persons.

This excludes acts done in contemplation or furtherance of a trade dispute from the scope of the offence.

Powers of Arrest

Arrest without warrant

Licensing

Section 160 Licensing Act 2003 - Orders to close premises in area experiencing disorder

Part 8 of the Licensing Act 2003 concerns provisions which empower courts and the police to make temporary closure orders in respect of certain premises. Section 160 sets out the power to close all premises with a premises licence or in respect of which a temporary event notice has effect which are located in a particular geographical area for a period not exceeding 24 hours. The power is exercisable by a magistrates' court on application from a police officer of the rank of superintendent or above and only where the court think such an order is necessary to prevent disorder. It is an offence to keep open premises that are the subject of a closure order. Section 171(2) and (3) make provision about when premises are 'open' for these purposes.

160(1) Where there is or is expected to be disorder in any local justice area, a magistrate's court acting for the area may make an order requiring all premises:

- (a) which are situated at or near the place of the disorder or expected disorder, and
- (b) in respect of which a premises licence or a temporary event notice has effect

to be closed for a period, not exceeding 24 hours, specified in the order.

160(2) A magistrates' court may make an order under this section only on the application of a police officer who is of the rank of superintendent or above.

160(3) A magistrates' court may not make such an order unless it is satisfied that it is necessary to prevent disorder.

160(4) Where an order is made under this section, a person to whom subsection (5) applies commits an offence if he knowingly keeps any

premises to which the order relates open, or allows any such premises to be kept open, during the period of the order.

160(5) This subsection applies:

- (a) to any manager of the premises,
- (b) in the case of licensed premises, to:
 - (i) the holder of a premises licence in respect of the premises, and
 - (ii) the designated premises supervisor (if any) under such a licence, and
- (c) in the case of premises in respect of which a temporary event notice has effect, to the premises user in relation to that notice.

160(6) penalty (see below)

160(7) A constable may use such force as may be necessary for the purpose of closing premises ordered to be closed under this section.

Mode of Trial and Penalty

Summary fine not exceeding level 3 on standard scale

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 161 Licensing Act 2003 - Closure orders for identified premises

Part 8 of the Licensing Act 2003 concerns provisions which empower courts and the police to make temporary closure orders in respect of certain premises. Section 161 provides a senior police officer with the power to close specific premises for up to 24 hours. A closure order may be made upon two grounds, the first of which is where there is actual or likely disorder to the extent that the closure of the related premises is necessary in the interests of public safety. The second ground is where closure is necessary to prevent a public nuisance, owing to the noise emanating from the premises. The senior police officer can issue a closure order where he reasonably believes that the conditions are satisfied. The purpose of this provision is to allow discretion in cases, where, for example, it is clear that those managing the premises are treating the disorder or disturbance with sufficient gravity and are taking steps to reduce it or bring it under control.

161(1) A senior police officer may make a closure order in relation to any relevant premises if he reasonably believes that:

(a) there is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety, or

(b) a public nuisance is being caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance.

161(2) A closure order is an order under this section requiring relevant premises to be closed for a period not exceeding 24 hours beginning with the coming into force of the order.

161(3) In determining whether to make a closure order in respect of any premises, the senior police officer must have regard, in particular, to the conduct of each appropriate person in relation to the disorder or disturbance.

161(4) A closure order must:

- (a) specify the premises to which it relates,
- (b) specify the period for which the premises are to be closed,
- (c) specify the grounds on which it is made, and
- (d) state the effect of section 162 - 168.

161(5) A closure order in respect of any relevant premises comes into force at the time a constable gives notice of it to an appropriate person who is connected with any of the activities to which the disorder or nuisance relates.

161(6) A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of a closure order or any extension of it.

161(7) penalty (see below)

161(8) In this section:

relevant premises

means premises in respect of which one or more of the following have effect:

- (a) a premises licence,
- (b) a temporary event notice; and

senior police officer

means a police officer of, or above, the rank of inspector.

Mode of Trial and Penalty

Summary - imprisonment not exceeding three months or a fine not exceeding 20,000 or both

Arrest without warrant

'Extracted PNLD 3 August 2010'

Road Traffic

Section 137 Highways Act 1980 - Wilful obstruction of the highway

Section 137 of the Highways Act 1980 (as amended by sections 38 and 46 of the Criminal Justice Act 1982 and the Police and Criminal Evidence Act 1984, Schedule 7) provides an offence of wilful obstruction of the highway.

137(1) An offence is committed if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway.

Notes

(i) In the case of *Hirst & Agu v Chief Constable of West Yorkshire Police* 1986 Cr App Rep 143 (when some animal rights supporters were peacefully handing out leaflets) the court held that proof of the offence of wilful obstruction of the highway should be considered in three stages:

* is there an obstruction? Any stopping or slowing of traffic on the highway (more than a trivial hold-up) is an obstruction (traffic could be vehicular, animal or pedestrian in this context).

* is the obstruction 'wilful' or deliberate (as opposed to accidental). The activity in which the person is engaged must cause an obstruction, but there is no requirement to show there was an intent to cause an obstruction.

* is the wilful obstruction without lawful excuse? Lawful excuse may be by way of express permission, such as the licensing of charity collections or the observance of directions from a traffic police. However, any lawful activity carried out in a reasonable manner may amount to lawful excuse. The concept of implied lawful excuse may be relevant to political demonstrators provided their protests are reasonably limited in space and time, mere transitory inconvenience to traffic (including pedestrians) may not amount to an offence.

(ii) Obstructions of the highway may also be an offence at common law under public nuisance.

See also the following which provide other similar offences:

- Section 77 Criminal Justice and Public Order Act 1994 which provides a power for local authorities to direct unauthorised campers (and their vehicles) to leave land
- Wilful obstruction of police
- Breach of the Peace, as being under common law
- Public Order Act offences 1986

Mode of Trial and Penalty

Summary: A fine not exceeding level three on the standard scale

Can arrest without warrant, under PACE Section 24 (5) (v)

'Extracted PNLD 3 August 2010'

Notes

DPP v Jones [1999]. In this case, the House of Lords held that the public highway was a public place on which all manner of reasonable activities might go on, finding that:

- Such a reasonable user test was consistent with the law relating to wilful obstruction of the highway where reasonable use provided a lawful excuse for a technical obstruction of the highway.

The right contained in ECHR Article 11(1) (right to peaceful assembly) is denied if there is a failure to recognise that assembly on the public highway may be lawful. Provided such activities are reasonable, do not involve the commission of a public or private nuisance and do not amount

to an obstruction of the highway by unreasonably impeding the primary right of the general public to pass and trespass, they should not constitute a trespassory assembly.

- The question of whether or not the use amounts to an unreasonable obstruction of the highway depends on all the circumstances, including the length of time the obstruction continues, the place where it occurs, the purpose for which it is done and whether it does in fact cause an actual obstruction as opposed to a potential obstruction.

Subject to these qualifications, there was a public right to peaceful assembly on the public highway.

Section 22A Road Traffic Act 1988 - Cause danger to road users

Section 22A of the Road Traffic Act 1988, creates the offence of intentionally taking some action (e.g. putting an obstruction in the road, tampering with traffic lights, deflating tyres) which causes the potential for danger to someone on or near a road.

22A (1) A person is guilty of an offence if he intentionally and without lawful authority or reasonable cause -

- (a) causes anything to be on or over a road, or
- (b) interferes with a motor vehicle, trailer or cycle, or
- (c) interferes (directly or indirectly) with traffic equipment,

In such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.

22A (2) "Dangerous" refers to danger either of injury to any person while on or near a road, or of serious damage to property on or near a road; and in determining for the purposes of that subsection what would be obvious to a reasonable person in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

In this section "road" does not include a footpath or bridleway.

Notes

(i) Although it is a road traffic offence, elements of 22A (1) (b) and (c) could occur off the road. The tyres could be let down in someone's driveway or the traffic equipment, which is attacked, could be mounted near the road rather than on it. However, the circumstances under which it could be dangerous must relate to something on or near a road.

(ii) In the absence of specific legislation, it has been suggested that the offence under Section 22A (1) (a) may be used for persons using laser pointers to distract or dazzle drivers. The matter does not seem to have come before an appeal court as yet, so it is difficult to know if such a strategy has been fully successful anywhere in the country. A prosecution for pouring water onto a road to create an ice slide has been brought under this section.

(iii) This offence will not generally be committed by drivers, although the offence of interference with traffic equipment could be. In determining for the purposes of this section what would be obvious to a reasonable person in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware, but also to any circumstances shown to have been within his knowledge.

(iv) If a person deflates a car tyre to a low pressure or interferes with its brakes or steering, then that person clearly interferes with the vehicle for the purposes of this section, as it would be obvious to a reasonable person that to do so would be dangerous.

(v) The removal of a warning lamp from road works may or may not lead a reasonable person to believe that danger would result. If there were several lamps set closely together, it will be a question of fact as to whether or not danger would be obvious. However, if one person removes a lamp and then his two companions also remove lamps, the element of danger increases and these actions, in relation to each person involved, are circumstances which are within the knowledge of each of them.

(vi) If persons place large pieces of concrete on the parapet of a motorway bridge, they cause those objects to be 'over' a road and it would be obvious to a reasonable person that danger existed. If they then fall onto the road, danger is caused whether traffic is or is not on the road at the time.

(vii) This offence does not extend to Scotland.

Mode of Trial and Penalty

Either Way

SUMMARY: A fine not exceeding the statutory maximum and/or six months imprisonment.

INDICTMENT: A fine and/or seven years imprisonment.

Arrest without warrant

'Extracted PNLD 3 August 2010'

Section 21 of the Town Police Clauses Act 1847 - Power to prevent obstructions during public processions

Section 21 of the Town Police Clauses Act 1847 allows a local authority to make orders and give directions to prevent obstructions in a street during public processions as well as during other situations.

21 The local authority may from time to time make orders for the route to be observed by all carts, carriages, horses and persons in order to prevent obstruction in the street in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed.

The local authority may give directions to constables for keeping order and preventing obstruction of the streets around places of public resort, including places of entertainment.

A breach of such an order or direction is an offence.

Note

In connection with public protests (public processions and assemblies), consider the powers given to the Police under sections 12 and 14 of the Public Order Act 1986, or section 52 of the Metropolitan Police Act 1839.

Mode of Trial and Penalty

Summary: Fine not exceeding level 3 on the standard scale

Arrest without warrant

'Extracted PNLD 10 February 2011'

Section 14 of the Road Traffic Regulation Act 1984 - Temporary prohibition/restriction

Section 14 of the Road Traffic Regulation Act 1984 allows traffic authorities to make temporary orders or notices prohibiting or restricting traffic on roads in their area in special cases.

14(1) if the traffic authorities for a road are satisfied that traffic on the road should be restricted or prohibited-

(a) because works are being or are proposed to be executed on or near the road; or

(b) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or

(c) for the purpose of enabling the duty imposed by section 89(1)(a) or (2) of the Environmental Protection Act 1990 (litter clearing and cleaning) to be discharged,

the authority may by order restrict or prohibit temporarily the use of that road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, to such extent and subject to such conditions or exceptions as they may consider necessary.

14(2) The traffic authority for a road may at any time by notice restrict or prohibit temporarily the use of the road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, where it appears to them that it is-

(a) necessary or expedient for the reason mentioned in paragraph (a) or the purpose mentioned in paragraph (c) of subsection (1) above; or

(b) necessary for the reason mentioned in paragraph (b) of that subsection,

that the restriction or prohibition should come into force without delay.

14(3) When considering the making of an order or the issue of a notice under the foregoing provisions an authority shall have regard to the existence of alternative routes suitable for the traffic which will be affected by the order or notice.

'Part of this section extracted PNLD 10 February 2011'

Section 16A of the Road Traffic Regulation Act 1984 - Order to restrict traffic flow

Section 16A of the Road Traffic Regulation Act 1984 provides for traffic management of roads in connection with sporting or social events, allowing traffic authorities to make orders to prohibit or restrict traffic flow, where there is a relevant event. Section 16B relates to restrictions on such orders.

16B(1) An order under section 16A must not remain in force for more than three days beginning with the day on which it comes into force unless:

(a) It is made by the Secretary of State as the traffic authority for the road concerned; or

(b) before it is made he has agreed that it should remain in force for a longer period.

16B(2) Where an order under section 16A has not ceased to be in force and the relevant event to which it relates has not ended the Secretary of State may, subject to subsections (4) and (5), direct that it will continue in force for a further period not exceeding three days beginning on the on which it should have otherwise ceased.

16B(3) A direction under subsection (2) may relate may relate to all the roads to which the original order relates or to specified roads.

16B(4) & (5) Where an order under section 16A relates only to roads for which the Secretary of State is not the traffic authority, he will not give a direction under subsection (2) unless requested by the traffic authority for any road to which the order relates or he does so with the authority's consent.

16B(6) Where an order has been made under section 16A in a calendar year, no further order may be made under that section in that year which affects any length of road affected by the previous order, unless the subsequent order:

(a) Is made by the Secretary of State as the traffic authority for the road concerned; or

(b) is made with his consent.

16B (7) for the purposes of subsection (6), a length of road is affected by a relevant order if the order contained provisions:

(a) Prohibiting or restricting traffic on that length of road; or

(b) suspending a statutory provision applying to traffic of that length of road.

Section 16C creates an offence of failing to comply with such an order.

16C (1) A person who contravenes, or who uses or permits the use of a vehicle in contravention of, a restriction or prohibition imposed by an order under section 16A commits an offence.

16C (2) & (3) Provides for the Secretary of State to make regulations concerning the procedures to be followed when making an order under section 16A and for ensuring the notification of the public.

Mode of Trial and Penalty

Summary: A fine not exceeding level three on the standard scale

Arrest without warrant

'Part of this section extracted PNLD 10 February 2011'

Corporate Manslaughter

Corporate Manslaughter and Corporate Homicide Act 2007

Section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007 defines the offence of corporate manslaughter (England, Wales and Northern Ireland) and corporate homicide in Scotland.

1(1) An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised -

- (a) causes a person's death, and
- (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

1(2) The organisations to which this section applies are -

- (a) a corporation;
- (b) a department or other body listed in Schedule 1;
- (c) a police force;
- (d) a partnership, or a trade union or employers' association, that is an employer.

1(3) An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred in subsection (1)

1(4) For the purposes of this Act -

- (a) relevant duty of care has the meaning given by section 2, read with sections 3 to 7 -
- (b) a breach of a duty of care by an organisation is a gross breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;

(c) senior management, in relation to an organisation, means the persons who play significant roles in:

(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or

(ii) the actual managing or organising of the whole or a substantial part of those activities.

1(5) The offence under this section is called -

(a) corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;

(b) corporate homicide, in so far as it is an offence under the law of Scotland.

1(6) An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.

1(7) The offence of corporate homicide is indictable only in the High Court of Justiciary.

Notes

(i) Liability for the offence depends on a finding of gross negligence in the way in which the activities of the organisation are run. The offence is committed where an organisation owes a duty to take reasonable care for a person's safety and the way in which activities of the organisation have been managed or organised amounts to a gross breach of that duty and causes a person's death. How the activities were managed or organised by senior management must be a substantial element of the gross breach.

(ii) The organisation must owe a 'relevant duty of care' to the victim as set out in section 2 and must be in breach of that duty of care as a result of the way in which the activities of the organisation were managed or organised. Section 8 sets out a number of factors for the jury to take into account.

(iii) The offence applies to corporations, which are any body corporate (whether incorporated in the United Kingdom or elsewhere) and includes companies incorporated under companies legislation, as well as bodies incorporated under statute (as is the case with many non-departmental public bodies and other bodies in the public sector) or by Royal Charter. The offence applies to partnerships, trade unions and employers' associations and does not apply to a corporation sole. If the organisation concerned is an employer as defined in section 25. The definition of partnership extends to partnerships covered by the Partnership Act 1890 and limited partnerships registered under the Limited Partnerships Act 1907 but not to limited liability partnerships created under the Limited Liability Partnerships Act 2000, which are bodies corporate and therefore organisations to which the offence applies by virtue of section 1(2)(a).

(iv) The Act applies to a range of Crown bodies and Crown Servants and agents, such as government departments, but does not bind the crown. Crown bodies rarely have a separate legal personality. Where they do, the application of the offence to corporations (and the Act's application to the Crown) means that the offence will also apply to these bodies. Where they do not, a mechanism is required to identify which Crown bodies are covered by the offence and this is achieved by applying the offence to a list of government departments and other bodies set out in Schedule 1. Section 22 sets out the procedure for amending the Schedule.

(v) The offence is triable only in the Crown Court in England and Wales and Northern Ireland and the High Court of Justiciary in Scotland and involve proceedings before a jury. The sanction is an unlimited fine and a possible remedial order (section 9) and a publicity order (section 10) on a convicted organisation.

Section 2 of the Corporate Manslaughter and Corporate Homicide Act 2007 provides the meaning of 'relevant duty of care'.

2(1) A 'relevant duty of care', in relation to an organisation, means any of the following duties owed by it under the law of negligence -

- (a) a duty owed to its employees or to other persons working for the organisation or performing services for it;
- (b) a duty owed as occupier of premises;
- (c) a duty owed in connection with -
 - (i) the supply by the organisation of goods or services (whether for consideration or not),
 - (ii) the carrying on by the organisation of any construction or maintenance operations,
 - (iii) the carrying on by the organisation of any other activity on a commercial basis, or
 - (iv) the use or keeping by the organisation of any plant, vehicle or other thing;
- (d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.

2(2) A person is within this subsection if -

- (a) he is detained at a custodial institution or in a custody area at a court, police station or customs premises; (aa) he is detained in service custody premises;
- (b) he is detained at a removal centre or short-term holding facility;
- (c) he is being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements;
- (d) he is living in secure accommodation in which he has been placed;
- (e) he is a detained patient.

2(3) Subsection (1) is subject to sections 3 to 7.

2(4) A reference in subsection (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.

2(5) for the purposes of this Act, whether a particular organisation owes a duty of care to a particular individual is a question of law.

The judge must make any findings of fact necessary to decide that question.

2(6) For the purposes of this Act there is to be disregarded -

(a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;

(b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of his acceptance of a risk of harm.

2(7) In this section -

Construction or maintenance operations

means operations of any of the following descriptions -

(a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of -

(i) any building or structure,

(ii) anything else that forms, or is to form, part of the land, or

(iii) any plant, vehicle or other thing;

(b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

custodial institution

means a prison, a young offender institution, a secure training centre, a young offenders institution, a young offenders centre, a juvenile justice centre or a remand centre;

Customs premises

means premises wholly or partly occupied by persons designated under section 3 (general customs officials) or 11 (customs revenue officials) of the Borders, Citizenship and Immigration Act 2009;”

detained patient

means -

(a) a person who is detained in any premises under -

(i) part 2 or 3 of the Mental Health Act 1983 (“the 1983 Act”), or

(ii) part 2 or 3 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (“the 1986 Order”);

(b) a person who (otherwise than by reason of being detained as mentioned in paragraph (a)) is deemed to be in legal custody by -

(i) section 137 of the 1983 Act,

(ii) article 131 of the 1986 Order, or

(iii) article 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078);

(c) a person who is detained in any premises, or is otherwise in custody, under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or part 6 of the Criminal Procedure (Scotland) Act 1995 or who is detained in a hospital under section 200 of that Act of 1995;

Immigration escort arrangements

means arrangements made under section 156 of the Immigration and Asylum Act 1999;

The law of negligence

includes -

(a) in relation to England and Wales, the Occupiers’ Liability Act 1957, the Defective Premises Act 1972 and the Occupiers’ Liability Act 1984;

(b) in relation to Scotland, the Occupiers’ Liability (Scotland) Act 1960;

(c) in relation to Northern Ireland, the Occupiers' Liability Act (Northern Ireland) 1957, the Defective Premises

(Northern Ireland) Order 1975 (S.I. 1975/1039 (N.I. 9)), the Occupiers' Liability (Northern Ireland) Order 1987 (S.I. 1987/

1280 (N.I. 15)) and the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001;

Prison escort arrangements

means arrangements made under section 80 of the Criminal Justice Act 1991 or under section 102 or 118 of the Criminal Justice and Public Order Act 1994;

Removal centre and short-term holding facility

have the meaning given by section 147 of the Immigration and Asylum Act 1999;

Secure accommodation

means accommodation, not consisting of or forming part of a custodial institution, provided for the purpose of restricting the liberty of persons under the age of 18.

Notes

(i) The offence only applies in circumstances where an organisation owed a duty of care to the victim under the law of negligence. Duties of care commonly owed by corporations include the duty owed by an employer to his employees to provide a safe system of work and by an occupier of buildings and land to people in or on, or potentially affected by, the property. Duties of care also arise out of the activities that are conducted by corporations, such as the duty owed by transport companies to their passengers.

(ii) In certain circumstances the duty of care has been superseded by statutory provision. For example, the Occupiers' Liability Acts 1957. In some circumstances, liability in the law of negligence has been superseded by statutory provision imposing strict liability, for example, the liability of carriers is governed by the Carriage by Air Act 1961.

(iii) An organisation may also owe duties of care to those whose work it is able to control or direct, even though they are not formally employed by it. This might include contractors, secondees, or volunteers.

(iv) The offence will only apply where an organisation owes a duty of care:

a) to its employees or other persons working for the organisation

b) as an occupier of premises

c) when the organisation is supplying goods or services

d) when constructing or maintaining buildings, Infrastructure or vehicles etc. or when using plant or vehicles etc;

e) when carrying out other activities on a commercial basis

f) because a person is held in custody

(v) Whether a duty of care exists is a matter of law and will be solely for the judge to decide. However whether that duty was breached, and whether it amounts to gross-negligence, will be matters of fact and therefore for the jury to decide.

Section 5 of the Corporate Manslaughter and Corporate Homicide

Act 2007 deals with policing and law enforcement activities performed by the police and other law enforcement bodies.

5(1) Any duty of care owed by a public authority in respect of -

(a) operations within subsection (2),

(b) activities carried on in preparation for, or directly in support of, such operations, or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,

is not a “relevant duty of care.”

5(2) Operations are within this subsection if -

- (a) they are operations for dealing with terrorism, civil unrest or serious disorder,
- (b) they involve the carrying on of policing or law-enforcement activities, and
- (c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.

5(3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a "relevant duty of care" unless it falls within, section 2(1) (a) (b) or (d).

5(4) In this section policing or law-enforcement activities includes -

- (a) activities carried on in the exercise of functions that are -
 - (i) functions of police forces, or
 - (ii) functions of the same or a similar nature exercisable by public authorities other than police forces;
- (b) activities carried on in the exercise of functions of constables employed by a public authority;
- (c) activities carried on in the exercise of functions exercisable under chapter 4 of part 2 of the Serious Organised Crime and Police Act 2005 (protection of witnesses and other persons);
- (d) activities carried on to enforce any provision contained in or made under the Immigration Acts.

Notes

(i) Section 5(1) provides an exemption that applies to the police and other law enforcement bodies in respect of all categories of duty of care referred to in section 2, i.e., including those duties of care owed by an organisation as an employer or the occupier of premises. But this wide exemption is

available only in limited circumstances: specifically, operations dealing with terrorism, civil unrest or serious disorder in which an authority's officers or employees come under attack or the threat of attack; or where the authority in question is preparing for or supporting such operations; or where it is carrying on training with respect to such operations.

(ii) This reflects the approach adopted in the existing law of negligence, which has already recognised that the policing of violent disorder where the police come under attack or the threat of attack will not give rise to liability on the part of an employer. The requirement in section 5(2) that the operations being carried on, or prepared for, or supported, amount to "policing or law enforcement activities" does not mean that only the police can benefit from this exemption: it is potentially available to bodies such as immigration authorities (section 5(4)(d), and other bodies which in dealing with, say, civil disorder, are exercising functions similar to police functions. But it does mean that organisations that do not carry out policing and law enforcement activities are excluded from the scope of the exemption.

(iii) Subsection (3) confers an exemption that applies to a wider range of policing and law enforcement activities, but not in respect of the duty of care owed as employer (or occupier). The exemption therefore operates to exclude circumstances where the pursuit of law enforcement activities has resulted in a fatality to a member of the public.

(iv) Many of the activities to which this will be relevant will be ones that are not in any event covered by the offence either because no duty of care is owed or because they do not amount to the supply of services or the activities are exclusively public functions. However, this might not always be the case and some areas may give rise to question. Subsection (3) makes it clear that policing and law enforcement activities are not, in this respect, covered by the offence. This will include decisions about and responses to emergency calls, the manner in which particular police operations are conducted, the way in which law enforcement and other coercive powers are exercised, measures taken to protect witnesses and the arrest and detention of suspects. This exemption is not confined to

police forces. It extends to other bodies operating similar functions and to other law enforcement activity. For example, it would cover the activities of Her Majesty's Revenue and Customs when conducting investigations and the activities of traffic officers. It also extends to the enforcement of immigration law, and so would cover circumstances where, for example, the immigration authorities are taking action to arrest, detain or deport an immigration offender.

(v) As with other matters not covered by the Act, this does not exempt individuals from investigation or prosecution for individual offences, as the Act does not have a bearing on the question of individual liability.

'Part of the section extracted PNLD 21st May 2012'

Health and Safety

Section 2 of the Health and Safety at Work etc. Act 1974 - Duties of employers to employees

Section 2 of the Health and Safety at Work etc. Act 1974 details the duties owed by an employer to all employees and requirements as to the preparation of health and safety policy, the appointment of unions, the promotion and provision of measures to ensure health and safety and where required to establish a committee to take responsibility of reviewing health and safety measures.

2(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

2(2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular -

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks

to health, and adequate as regards facilities and arrangements for their welfare at work.

2(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees.

2(4) Regulations made by the Secretary of State may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have such other functions as may be prescribed.

Note

See Police (Health and (Safety) Regulations 1999, (SI 1999/860) made under sub-section (4).

2(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

2(7) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in subsection (4) above, to establish, in accordance with regulations made by the Secretary of State, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

Notes

(i) An offence is committed under section 33(1)(a) if a person fails to discharge a duty to which a person is subject by virtue of this section. Schedule 3A provides the mode of trial and maximum penalties.

(iii) At common law an employer has a duty to provide employees as far as is reasonably practicable with a safe place in which to work.

(iv) In proceedings for breach of this section the burden of proof is reversed. See *Davies v HSE*.

'Part of the section extracted PNLD 7 February 2011'

Section 3 of the Health and Safety at Work etc. Act 1974 - Duties of employers to others

Section 3 of the Health and Safety at Work etc. Act 1974 places a duty on employers or those self employed in respect of persons other than those who are employees. It provides that the employer or self employed person has a duty not to expose others to risks and if there are any to provide information as to such.

3(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

3(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

3(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

Note

(i) An offence is committed under section 33(1)(a) if a person fails to discharge a duty to which a person is subject by virtue of this section. Schedule 3A provides the mode of trial and maximum penalties.

(iii) In proceedings for breach of this section the burden of proof is reversed. See *Davies v HSE*.

'Extracted PNLD 7 February 2011'

Firework Offences

Regulation 7 Fireworks Regulations 2004 - Prohibitions on use after 11pm and before 7am (subject to exceptions)

Regulation 7 of the Fireworks Regulations 2004 prohibits the use of a firework (apart from gun caps, throwdowns etc.) after 11pm at night. Exceptions are given as to users and events.

Note: Breach of these prohibitions is an offence under SECTION 11 of the Fireworks Act 2003

7(1) Subject to paragraph (2) (exception) below, no person shall use an adult firework during night hours.

Notes

- (i) An adult firework is any firework except certain category 1 Indoor Fireworks - cap, cracker snap, novelty match, party popper, serpent, sparkler or throwdown.
- (ii) Any person who breaches/contravenes this prohibition is guilty of an offence under section 11(1) of the Fireworks Act 2003.
- (iii) Breaching this prohibition, committing this offence, does not apply to use as given in the exceptions below.

Exceptions

7(2) Paragraph (1) above shall not prohibit the use of a firework -

- (a) during a permitted fireworks night; or
- (b) by any person who is employed by a local authority and who uses the firework in question -
 - (i) for the purposes of putting on a firework display by that local authority; or
 - (ii) at a national public celebration or a national commemorative event.

7(3) In this regulation, "**NIGHT HOURS**" means the period beginning at 11pm and ending at 7am the following day

and a "**PERMITTED FIREWORKS NIGHT**" means a period -

(a) beginning at 11pm on the first day of the Chinese New Year and ending at 1am the following day;

(b) beginning at 11pm and ending at midnight on 5 November;

(c) beginning at 11pm on the day of Diwali and ending at 1am the following day; or

(d) beginning at 11pm on 31 December and ending at 1am the following day.

Mode of Trial and Penalty

Summary: Imprisonment for a term not exceeding six months and/or fine not exceeding level five on the standard scale

Arrest without warrant

'Extracted PNLD 6 September 2011'

Section 80 Explosives Act 1875 - Penalty for throwing fireworks in a public place

Section 80 of the Explosives Act 1875 makes it an offence to throw fireworks in various public places.

Section 80 states if any person throws, cast, or fire any fireworks in or into any highway, street, thoroughfare, or public place; he shall be guilty of an offence.

Notes

The Pyrotechnic Articles (Safety) Regulations 2010 (SI 2010/1554) paragraph 2 states that "firework" means a pyrotechnic article intended for entertainment purposes.

Mode of Trial and Penalty

Summary: A fine not exceeding level five on the standard scale

Also consider - penalty notices for disorder

Arrest without warrant

'Extracted PNLD 6 September 2011'

Section 131 Highways Act 1980 - Damaging the highway/traffic signs

Section 131 of the Highways Act 1980 creates offences relating to damaging the highway and traffic signs.

131(1) An offence is committed if a person, without lawful authority or excuse:

- (a) makes a ditch or excavation in a highway which consists of or comprises a carriageway, or
- (b) removes any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the highway authority for the highway, or
- (c) deposits anything whatsoever on a highway so as to damage the highway, or
- (d) lights any fire, or discharges any firearm or firework, within 50 feet from the centre of a highway which consists of or comprises a carriageway, and in consequence thereof the highway is damaged.

131(2) An offence is committed if a person without lawful authority or excuse pulls down or obliterates a traffic sign placed on or over a highway, or a milestone or direction post (not being a traffic sign) so placed.

Defence

It is a defence in any proceedings under section 131(2) above to show that the traffic sign, milestone or post was not lawfully so placed.

Note

It is an essential element of the offence in section 131(1) that damage to the highway must have been caused.

Mode of Trial and Penalty

Summary: A fine not exceeding level three on the standard scale

Arrest without warrant

'Extracted PNLD 6 September 2011'

Section 161 Highways Act 1980 - Cause injury/danger/annoyance on the highway

Section 161 of the Highways Act 1980 creates various offences relating to causing danger on the highway.

161(1) If a person, without lawful authority or excuse, deposits any thing whatsoever on a highway in consequence of which a user of the highway is injured or endangered, that person is guilty of an offence.

161(2) If a person without lawful authority or excuse:

(a) lights any fire on or over a highway which consists of or comprises a carriageway;

or

(b) discharges any firearm or firework within 50 feet of the centre of such a highway,

and in consequence a user of the highway is injured, interrupted or endangered, that person is guilty of an offence.

161(3) If a person plays at football or any other game on a highway to the annoyance of a user of the highway he is guilty of an offence.

161(4) If a person, without lawful authority or excuse, allows any filth, dirt, lime or other offensive matter or thing to run or flow on to a highway from any adjoining premises, he is guilty of an offence

Mode of Trial and Penalty

Section 161 (1) and (2)

Summary: A fine not exceeding level three on the standard scale

Arrest without warrant

'Extracted PNLD 6 September 2011'

Miscellaneous

Section 5 Police, Factories &c. (Miscellaneous Provisions) Act 1916 - Regulations regarding street collections

The majority of street collections are lawful and are attended by properly constituted charities, however some unlawful collections are carried out (i.e. where an authority or permit has not been obtained) to collect monies or sell articles in a street or public place. There is evidence to suggest that some unlawful street collections have funded, directly or indirectly, activities that have resulted in financing extremist criminality linked to 'protest' activity. It is of fundamental importance that the public should have the confidence that the money they willingly donate is not being misused.

The Act allows regulations to be made with regard to persons collecting donations or selling articles in a street or public place.

Section 5(1) states that each of the authorities (as specified below) may make regulations with respect to the places where and the conditions under which persons may be permitted in any street or public place, within their area, to collect money or sell articles for the benefit of charitable or other purposes, and it is an offence for any person to act in contravention of any such regulation.

Authorities included are:

- The council of each district;
- The Common Council of the City of London;
- The Police Authority for the Metropolitan Police District

Offence

Regulations made under this Act will vary not merely between different police force areas, but also from district to district. In general, regulations will provide for:

- Issue of licences
- Dates and times of collections
- Location of collections
- Number of people who may collect in a group
- Minimum ages and supervision of younger collectors

It is important therefore that police officers make themselves aware of the street collection regulations appertaining to their policing area. They should be encouraged to contact their local district councils for details of specific provisions or access them on the internet to fully understand their content.

Within the regulations, collectors are normally required to produce a written authority 'forthwith' on request from a constable. This will apply to every collector or person assisting at the stall, not just a nominee. The authority to collect authorises someone to stand in a street or public place and collect money in a tin. It does not authorise a stall or any other obstruction of the highway.

Warning

"This street collection is in breach of the regulations granted under Section 5 Police Factories etc. (Miscellaneous Provisions) Act 1916, I require you to stop".

Wording upon arrest

"You are in breach of the regulations granted under Section 5 Police Factories etc. (Miscellaneous Provisions) Act 1916, I am arresting you for failing to comply with those regulations".

A police officer may arrest without warrant subject to the necessity test required by Section 24 Police and Criminal evidence Act 1984.

PACE caution**Meaning of 'street':**

This includes any highway and any public bridge, lane, road, footway, square, court, alley, or passage, whether a thoroughfare or not.

Meaning of 'public place':

Although not defined within the Act, it has been held to mean any place to which the public have or are permitted access, whether on payment or otherwise.

This will obviously include shopping centres and other areas where the public have access.

Notes: If officers take action on an unlawful street collection they should secure evidence accordingly. It will be necessary to evidence the collection of money. It is good practice to evidence a number of observed occasions when money was taken. The law only applies to cash. This money should be seized along with other relevant material to prove the offence. There is no difference in practice between collecting and donating. Evidence of any occasion where the donation has been hidden is also useful in prosecuting this offence. CCTV, if available, can facilitate this requirement. Under this legislation there is no Section 1 PACE power of search, unless police are investigating a criminal offence such as theft or fraud.

'Extracted PNLD 3 August 2010'

**Section 98 Police Act 1996 - Cross-border aid
(England/Wales - Scotland/Northern Ireland)**

Section 98 of the Police Act 1996 allows for the chief officer of a police force in England, Wales, Scotland or Northern Ireland to be able to request that the chief officer of an English, Welsh, Scottish or Northern Ireland police force provide constables or other assistance.

If the Secretary of State considers it to be expedient in the interests of public safety or order that a police force should be reinforced or require assistance then s/he can direct a chief officer to provide constables or other assistance. The request is made with the purpose of enabling the requesting force to meet any special demands on its resources.

98(1) The chief officer of police of a police force in England or Wales may, on the application of the chief officer of a police force in Scotland or the chief constable of the Police Service of Northern Ireland, provide constables or other assistance for the purpose of enabling the Scottish force or the Police Service of Northern Ireland to meet any special demand on its resources.

98(2) The chief officer of a police force in Scotland may, on the application of the chief officer of police of a police force in England or Wales or the chief constable of the Police Service of Northern Ireland, provide constables or other assistance for the purpose of enabling the English or Welsh force or the Police Service of Northern Ireland to meet any special demand on its resources.

98(3) The chief constable of the Police Service of Northern Ireland may, on the application of the chief officer of police of a police force in England or Wales or the chief officer of a police force in Scotland, provide constables or other assistance for the purpose of enabling the English or Welsh force or the Scottish force to meet any special demand on its resources.

98(3A) Repealed

98(4) If it appears to the Secretary of State -

(a) to be expedient in the interests of public safety or order that a police force should be reinforced or should receive other assistance for the purpose of enabling it to meet any special demand on its resources, and

(b) that satisfactory arrangements under subsection (1), (2) or (3) cannot be made, or cannot be made in time,

he may direct the chief officer of police of any police force in England or Wales, the chief officer of any police force in Scotland, the chief constable of the Police Service of Northern Ireland, as the case may be, to provide such constables or other assistance for that purpose as may be specified in the direction.

98(5) While a constable is provided under this section for the assistance of another police force he shall, notwithstanding any enactment -

(a) be under the direction and control of the chief officer of police of that other force (or, where that other force is a police force in Scotland or the Police Service of Northern Ireland, of its chief officer or the chief constable of the Police Service of Northern Ireland respectively; and

(b) have in any place the like powers and privileges as a member of that other force has in that place as a constable.

98(6) The police authority maintaining a police force for which assistance is provided under this section shall pay to the police authority maintaining the force from which that assistance is provided such contribution as may be agreed upon between those authorities or, in the absence of any such agreement, as may be provided by any agreement subsisting at the time between all police authorities generally, or, in the absence of such general agreement, as may be determined by the Secretary of State.

Please note that changes made to this by the Police Reform and Social Responsibility Act 2011 are to be appointed. This Act also inserts Section 98(6B), on a date to be appointed.

98(6A) Repealed

98(7) in the application of this section to Scotland, any expression used in this section and in the Police (Scotland) Act 1967 shall have the same meaning in this section as in that Act.

98(8) **Constable**, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000.

'Extracted PNLD 6 September 2011'

Section 44 Serious Crime Act 2007 - Intentionally encourage/assist the commission of an either way offence

Section 44 of the Serious Crime Act 2007 deals with the offences of intentionally encouraging or assisting the commission of an offence.

44(1) A person commits an offence if

- (a) he does an act capable of encouraging or assisting the commission of an offence; and
- (b) he intends to encourage or assist its commission.

44(2) But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

Notes

(i) See further section 47 for relevant provisions in connection with the requirements to prove offences under this section. See also section 49 for supplemental provisions.

(ii) An offence under this section is triable in the same way as the anticipated offence (see section 55).

(iii) For the applicable penalties for offences committed under this section, see section 58.

(iv) Under section 59 of the Act, the common law offence of inciting the commission of another offence is abolished. Therefore, specific provisions concerning the application of this section are included in paragraph 6 of Schedule 13 to the Act as follows:

6(1) This paragraph applies where, in any proceedings -

- (a) a person ("D") is charged in respect of the same act both with an offence under section 44 and with the common law offence of inciting the commission of another offence;

(b) the only thing preventing D from being found guilty of the offence under section 44 is the fact that it has not been proved beyond reasonable doubt that the time when the act took place was after the coming into force of that section; and

(c) the only thing preventing D from being found guilty of the common law offence is that it has not been proved beyond reasonable doubt that that time was before the coming into force of section 59 (1 October 2008).

6(2) For the purpose of determining D's guilt it shall be conclusively presumed that the time when the act took place was before the coming into force of section 44 (1 October 2008).

(v) Nothing in any provision of part 2 (sections 44 - 67) affects the operation of -

(a) any rule of the common law; or

(b) any provision made by or under an Act or Northern Ireland legislation in relation to offences committed wholly or partly before the commencement of the provision in part 2 concerned (1 October 2008 – see SI 2008/2504).

For these purposes, an offence is partly committed before commencement if -

(a) a relevant event occurs before commencement; and

(b) another relevant event occurs on or after commencement.

(In this paragraph "relevant event", in relation to an offence, means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence). (Paragraph 5 of Schedule 13 to the Act).

Mode of Trial and Penalty

Arrest without warrant

'Extracted PNLD 7 September 2011'

Section 45 Serious Crime Act 2007 - Encouraging/assisting an offence believing it will be committed

Section 45 of the Serious Crime Act 2007 deals with the offences of encouraging or assisting the commission of other offence believing it will be committed.

45 A person commits an offence if

(a) he does an act capable of encouraging or assisting the commission of an offence; and

(b) he believes -

(i) that the offence will be committed; and

(ii) that his act will encourage or assist its commission.

Notes

(i) See further section 47 for relevant provisions in connection with the requirements to prove offences under this section. See also section 49 for supplemental provisions.

(ii) An offence under this section is triable in the same way as the anticipated offence (see section 55).

(iii) For the applicable penalties for offences committed under this section, see section 58.

(iv) Nothing in any provision of part 2 (sections 44 - 67) affects the operation of-

(a) any rule of the common law; or

(b) any provision made by or under an Act or Northern Ireland legislation

-

in relation to offences committed wholly or partly before the commencement of the provision in part 2 concerned (1 October 2008 – see SI 2008/2504).

For these purposes, an offence is partly committed before commencement if-

- (a) a relevant event occurs before commencement; and
- (b) another relevant event occurs on or after commencement.

(In this paragraph “relevant event”, in relation to an offence, means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence). (Paragraph 5 of Schedule 13 to the Act).

Mode of Trial and Penalty

Arrest without warrant

‘Extracted PNLD 7 September 2011’

Case Law

Case Law in Subject Area

Breach of the Peace	<p>Duncan v Jones [1936] 1 KB 218 and Moss v McLaughlan [1985] IRLR 76</p> <p>R v Howell [1982] QB 416</p> <p>Percy v DPP [1995] 1 WLR 1382</p> <p>McLeod v UK [1999] 27 EHRR 493 at para.42</p> <p>Redmond-Bate v DPP [1999] Crim LR 998</p> <p>R (Laporte) v Chief Constable of Gloucestershire Constabulary [2004] EWCA 253</p>
Containment	<p>Austin and Others v The United Kingdom [2012] ECHR 459</p> <p>Moos V the Commissioner of Police of the Metropolis [2011] EWHC 957 and [2012] EWCA Civ 12</p> <p>Castle v Met Commissioner [2011] EWHC 2317</p>
Highway Obstruction	<p>Hirst and Agu v Chief Constable of West Yorkshire [1987] 85 Cr. App. R. 143</p> <p>DPP v Jones and Another [1999] 2 AC 240</p>
Notice of intention	<p>Kay v The Commissioner of Police of the Metropolis [2008] UKHL 69</p>
Protest on Private Land	<p>Appleby v UK [2003] 37 EHRR 38</p>

Use of force	R v Duffy [1967] 1 QB 63 Beckford V R (the Queen 1988) AC 130 Jordan v UK [2001] 37 EHRR 43 Nachova v Bulgaria (2006) 42 EHRR 43 Samut Karabulut (ECtHR) 27 January 2009 HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 192)
ECHR Article 2 - Life; Right to	McCann v UK [1995] 21 EHRR 97 Osman v UK [2000] 29 EHRR 245 Giulliani and Gaggio v Italy [2009] App. No. 23458/02
ECHR Article 8 - Everyone has the right to respect for his private and family life, his home and his correspondence	Wood v Commissioner of Police for the Metropolis [2009] EWCA Civ 414
Health and Safety - Reversal of burden of truth is justified, necessary and proportionate.	Davies v HSE 2002 EWCA Crim 2949
Public Order Act 1986	Harvey v DPP 2011 QBD (Admin) 17/11/2011

Case Law in Alphabetical Order

Appleby v UK [2003] 37 EHRR 38

"The European Court of Human Rights has considered the scope of the State's positive obligations to secure the exercise of the rights under ECHR Articles 10 and 11 in relation to private land. In *Appleby v UK*, a number of individuals wanted to assemble and set up a stall to canvass views from the public in a privately owned shopping centre (which effectively constituted the town centre). The shopping centre had been built by a public entity on public land before the transfer into private ownership. The private company which owned the shopping centre refused the individuals permission to use the shopping centre for their activities. The individuals argued that the State owed them a positive obligation to secure the exercise of their rights to freedom of expression and assembly within the private shopping centre.

The European Court of Human Rights recognised the key importance of the freedoms of expression and assembly and noted that genuine, effective exercise of these freedoms do not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. However the Court concluded that notwithstanding the importance of the freedoms of expression and assembly, neither ECHR Article 10 nor ECHR Article 11 bestowed any freedom of forum for the exercise of the right. The Court found that the restriction on the individuals' ability to communicate their views was limited to the entrance areas and passageways of the private shopping centre and did not prevent them from obtaining individual permission from businesses within the shopping centre or from distributing leaflets on public pathways or to communicate their views to fellow citizens through other methods. As such, there was no violation of ECHR Article 10 or Article 11.

The Court noted that where, however, the bar on access to property had the effect of preventing any effective exercise of the freedoms of expression or assembly, or it could be said that the essence of the rights

had been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights. The Court suggested that an example might be a corporate town where the entire municipality was controlled by a private body.” HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 204, 205)

Austin and Others v The United Kingdom**[2012] ECHR 459**

The applicants complained that they were deprived of their liberty without justification, in breach of Article 5 of the European Convention on Human Rights (right to liberty and security) by being contained in a police cordon.

This was the first time the European Court had been asked to consider the application of the Convention to the containment of a group of people by the police on public order grounds.

The Facts

The police became aware that on 1 May 2001 protest groups intended to stage various protests against globalisation. The organisers of the ‘May Day Monopoly’ protest did not make any contact with the police or attempt to seek authorisation for the demonstrations. By 2pm on that day there were over 1,500 people in Oxford Circus and more were steadily joining them. The police, fearing public disorder, took the decision at approximately 2pm to contain the crowd and cordon off Oxford Circus. Controlled dispersal of the crowd was attempted throughout the afternoon but proved impossible as some members of the crowds, both within and outside the cordon, were very violent, breaking up paving slabs and throwing debris at the police. The dispersal was completed at around 9.30pm.

Ms Lois Austin and her partner had attended a protest against globalisation outside the World Bank before walking with other protesters to Oxford Circus, arriving at about 2pm. Around 3.45pm, Ms Austin needed to leave the demonstration to collect her daughter from the crèche. She explained her situation to two police officers maintaining the

cordon but was told that she could not leave and that it was not known how long it would be before she would be able to leave the area. She was finally allowed to leave at about 9.30pm.

Between 2 and 2.30pm, Mr Black attempted to cross Oxford Circus to go to a bookshop on Oxford Street. He was forced into Oxford Circus at about 2.30pm and immediately asked to be allowed out of the cordon. He was diverted to an exit for non-protesters at the Bond Street side of Oxford Circus, but when he went there he was told that there was no exit. Mr Black was not able to exit the cordon until 9.20pm.

Ms Lowenthal had no connection with the demonstration. She worked in the Oxford Circus area and was on her lunch break at 2.10pm when she was prevented from returning to her workplace by a line of police officers blocking the road. She was held within the cordon at Oxford Circus until 9.35pm. She repeatedly requested to be allowed to leave the cordoned area but was told by the policemen she approached that they were under orders to allow no-one to pass.

Mr O'Shea also worked in the Oxford Circus area and was caught up in the cordon while walking through Oxford Circus on his lunch break. He was able to leave at approximately 8pm.

The Claim

In April 2002, Ms Austin had brought proceedings against the Commissioner of Police of the Metropolis, claiming damages for false imprisonment and for a breach of her rights under Article 5 of the European Convention on Human Rights. In March 2005 her claims were dismissed. Her subsequent appeals were then also dismissed both by the Court of Appeal and in January 2009 by the House of Lords. The House of Lords concluded that Ms Austin had not been deprived of her liberty and that Article 5 of the Convention did not therefore apply.

The Decision of the European Court

In deciding whether there had been a 'deprivation of liberty' within the meaning of Article 5, the Court said that Article 5 did not have to be

interpreted in such a way as to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public.

Secondly, it had to be taken into account that various Articles of the Convention placed a duty on the police to protect individuals from violence and physical injury.

Thirdly, the context in which the measure in question had taken place was relevant. The Court said that 'members of the public were often required to endure temporary restrictions on freedom of movement in certain contexts, such as travel by public transport or on the motorway, or attendance at a football match.' The Court did not consider that such commonly occurring restrictions could be described as 'deprivations of liberty' within the meaning of Article 5, so long as they were unavoidable because of circumstances beyond the control of the authorities, were necessary to avert a real risk of serious injury or damage, and were kept to the minimum required for that purpose.

The Court also emphasised that it was for the domestic courts to establish the facts and the Court would generally follow the findings of facts reached by the domestic courts. In this case, the Court accepted the facts found by Mr Justice Tugendhat from the High Court, following a three week trial and the consideration of substantial evidence.

Accordingly, the Court accepted that the police had expected between 500 and 1000 violent demonstrators to gather at Oxford Circus at around 4pm. The police had also anticipated a real risk of serious injury, even death, and damage to property if the crowds were not effectively controlled. Given that, about two hours earlier, over 1,500 people had already gathered there, the police had decided to impose an absolute cordon as the only way to prevent violence and the risk of injured people and damaged property. There had been space within the cordon for people to walk about and there had been no crushing. However, the conditions had been uncomfortable with no shelter, food, water or toilet facilities.

The Court accepted that although the police had tried, continuously throughout the afternoon, to start releasing people, their attempts were repeatedly suspended because of the violent and uncooperative behaviour of a significant minority. As a result, the police had only managed, at about 9.30pm, to complete the full dispersal. However, 400 individuals who could clearly be identified as not involved in the demonstration or who had been seriously affected by being confined, had been allowed to leave before that time.

The Court found that the cordon was imposed to isolate and contain a large crowd in dangerous and volatile conditions. Given the circumstances that had existed at Oxford Circus on 1 May 2001, an absolute cordon had been the least intrusive and most effective means available to the police to protect the public, both within and outside the cordon, from violence.

In this context, the Court did not consider that the putting in place of the cordon had amounted to a 'deprivation of liberty'.

However, the Court emphasised the fundamental importance of freedom of expression and assembly in all democratic societies. The Court said that national authorities should not use measures of crowd control to stifle or discourage protest, but rather only when necessary to prevent serious injury or damage.

The European Court of Human Rights decided, by a majority, that there had been no violation of Article 5 of the European Convention on Human Rights. (COLLEGE OF POLICING Digest April 2012)

Beckford V R (the Queen 1988) AC 130

Lord Griffiths:

'On 28 March 1985 the defendant was convicted of murder and sentenced to death. On 10 October 1985 the Court of Appeal of Jamaica dismissed his appeal against conviction, and gave leave to appeal certifying the following questions as of exceptional public importance:

(a) Must the test to be applied for self-defence be based on what a person reasonably believed on reasonable grounds to be necessary to resist an attack or should it be what the accused honestly believed? (b) Where, in the instant case, on a trial of an indictment for murder the issue of self-defence is raised is it a proper direction in law for the jury to be told by the trial judge: a man who is attacked in circumstances where he reasonably believes his life to be in danger or that he is in danger of serious bodily injury may use such force as on reasonable grounds he thinks necessary in order to resist the attack and if in using such force he kills his assailant he is not guilty of any crime even if the killing is intentional.'

Bukta and others v Hungary [2007] App. No. 25691/04

"The police must not prevent or restrict peaceful protest except to the extent allowed by ECHR Article 11 (2) ... In addition, the police have a duty in certain circumstances to safeguard the right to peaceful assembly", HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p197)

Castle v Met Commissioner [2011] EWHC 2317

The defendants' aged 16, 16 and 14 years were contained within Whitehall on 24 November 2010 from midday until after 7pm. As part of their case, the claimants contended that the police should have ensured in the planning that their functions are discharged having regard to the need to safeguard and promote the welfare of children in accordance with Section 11 Children Act 2004.

The claim was dismissed as it was shown that the need to protect vulnerable people had been considered in the planning and during the containment.

Davies v HSE 2002 Reversal of burden of proof is justified, necessary and proportionate. [2002] EWCA Crim 2949

D operated a plant hire firm and had three employees. He also employed three self-employed sub contractors. One of the sub contractors, G, was

crushed to death through being trapped between two reversing plant vehicles that were being driven by D and another employee but with no 'banksman' (see note below) being used. Prior to moving the vehicles D had told G that he should go home.

During the trial a witness gave expert evidence to the effect that nearly a quarter of deaths involving vehicles at work occur whilst the vehicle is reversing and at low speed. These are preventable through the use of banksman. D contended that he had never had a banksman and did not consider that one was required. The defence contended that by telling G to go home prior to the accident and by shouting the instruction to the other driver, which G should have heard, and further, that the vehicles were fitted with flashing lights and audible warning sounds D had done all that was reasonably practicable for health and safety requirements. The prosecution argued that D had not done this and had failed to ensure that G was safely out of the way before returning to his vehicle and that he could have guided the other vehicle himself.

Section 40 of the Health and Safety at Work Act 1974 reverses the burden of proving that the accused did all that was reasonably practicable or that it was not reasonably practicable to do more than had been done, on to the defendant. This raised the issue of whether this reversal of the burden was incompatible with the presumption of innocence pursuant to article 6 of the European Convention on Human Rights. D argued that it could only be compatible if read down so as to impose an evidential burden.

Held

Appeal dismissed. Conviction upheld.

The imposition of the reversed burden of proof in section 40 of the 1974 Act is justified, necessary and proportionate.

The Act is regulatory and designed to protect the health and safety of individuals affected by the activities covered in section 2 to 6. The reversal takes into account that the duty holders have chosen to undertake in work or commercial activity and are therefore not simply

members of the public. In taking the choice they have, these people must also be taken to accept the regulatory controls that go with it that imposes a continuing duty to ensure a safety standard.

Where an enforcement authority can show that this undertaking has not been met it is neither unjustifiable nor unfair to expect the duty holder who is either the creator or controller of the risk, to prove that it was not reasonably practicable to do more or that he could have done more than he did to prevent or avoid that risk.

Prior to any reversal of the burden the prosecution must still prove that a duty is owed by the accused to the person affected (see section 3) and that the safety standard has been breached. Once this has been proved it is for the defendant to raise and prove a defence. The defence is flexible by enabling the defendant to show that what has been done is what is reasonably practicable and the reversal is only applicable to section 2 to 6. It does not apply to section 7. There is no reversal applicable to employers or any company officers.

Any facts relied upon to prove the defence will be well within the knowledge of the defendant and whether more should have been done will be judged objectively. If there was no reversal then a trial would focus on what the enforcing authority says should be done rather than on what the defendant had, or ought to have, done. In complicated cases which are usually the most serious the prosecution may face huge difficulties where specialist knowledge is required.

Finally in these cases there is no risk to the liberty of the defendant. The consequences may be newsworthy but the morality is different from that involved in truly criminal cases and invariably the defendant is a company rather than an individual.

Note

A 'banksman' oversees, directs and ensures safety whilst heavy or large vehicles are reversing.

DPP v Jones and another [1999] 2 AC 240

"A 1999 case concerned the prosecution of individuals who were part of a peaceful non-obstructive assembly which had gathered on a roadside verge adjacent to the perimeter fence of Stonehenge. The area was subject to an order under section 14A of the Public Order Act 1986 prohibiting "trespassory assemblies" and the individuals had been charged with taking part in a trespassory assembly contrary to section 14B of the Act.

The central issue of the case turned on two inter-related questions:

1. What are the limits of the public's right of access to the public highway?
2. What is the particular purpose for which the public has a right to use the public highway?

The House of Lords held the following:

- The public's right to use the highway was not restricted to the right of passage and activities that are incidental or ancillary to the exercise of that right of passage. This would place an unrealistic and unwarranted restriction on commonplace day-to-day activities.
- The public highway was a public place on which all manner of reasonable activities might go on.
- The right contained in ECHR Article 11(1) is denied if there is a failure to recognise that assembly on the public highway may be lawful. Provided such activities are reasonable, do not involve the commission of a public or private nuisance and do not amount to an obstruction of the highway by unreasonably impeding the primary right of the general public to pass and trespass, they should not constitute a trespassory assembly.
- Such a reasonable user test was consistent with the law relating to wilful obstruction of the highway where reasonable use provided a lawful excuse for a technical obstruction of the highway.

- The question of whether or not the use amounts to an unreasonable obstruction of the highway depends on all the circumstances, including the length of time the obstruction continues, the place where it occurs, the purpose for which it is done and whether it does in fact cause an actual obstruction as opposed to a potential obstruction.
- Subject to these qualifications, there was a public right to peaceful assembly on the public highway.
- Restrictions on the right of freedom of assembly may be justified where necessary for the protection of the rights and freedoms of others.” HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 201 - 202)

Duncan v Jones [1936] 1 KB 218 and Moss v McLaughlan [1985] IRLR 76

“The basic principle is that a police officer may take reasonable action to stop a breach of the peace which is occurring, or to prevent one which the police officer reasonably anticipates will occur in the near future.

Reasonable action can include arresting a person, entering premises or taking other action such as stopping people from moving from one place to another”, HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 207)

Giulliani and Gaggio v Italy [2009] App. No. 23458/02

“ECHR Article 2 applies not only to intentional killing but also to situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life”, HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 193)

Harvey v DPP 2011 QBD (Admin) 17/11/2011

Two police officers stopped a group of people in the public area of a block of flats, whom they suspected of being in possession of cannabis.

Amongst them was H, who the police wished to search. H objected to the search and responded in the following terms:

"Fuck this, I haven't been smoking anything."

He was warned as to his behaviour and threatened with an arrest under section 5 of the Public Order Act 1986. Following the search, which revealed nothing, H said:

"I told you, you wouldn't find fuck all."

He was further warned, and in response to a question to give his full name he replied:

"I have already fucking told you."

He was then arrested for a section 5 offence, and subsequently convicted before the Magistrates' Court. Neither of the officers had given evidence that they had been caused harassment, alarm or distress as a result of H's language. Nor was there evidence that anyone else had been.

H appealed against the conviction by way of case stated.

The questions for determination were:

(i) were the justices entitled to conclude that the language used by the appellant amounted to threatening, abusive or insulting words and/or behaviour, or disorderly conduct;

(ii) were the justices entitled to conclude that either of the police officers were likely to have been caused harassment, alarm or distress as a result of language used by the appellant in the absence of any specific evidence that either officer felt threatened by the appellant's conduct or felt harassed, alarmed or distressed;

(iii) were the justices entitled to conclude that the bystanders who witnessed the incident or who may have been in the open area of flats or resident in their homes were persons likely to be caused harassment, alarm or distress, in the absence of any specific evidence that such a result was likely.

Held

Appeal allowed.

In answer to (i) above, the court noted that police officers in particular regrettably hear this language all too frequently as part of their job and are less likely to be affected by it. (DPP v Orum 1988 applied.) Although there was no doubt that such language was capable of causing harassment, alarm or distress, whether it did or not was fact-dependent. In the instant case, the Crown Prosecution Service adduced no evidence at all from the officers, or any other witnesses, that the words had caused them harassment, alarm or distress.

The answer to questions (ii) and (iii) was no. Neither officers nor witnesses were likely to have been caused harassment, alarm or distress in the absence of express evidence to the contrary.

The court considered that, of the only other people who could have been caused harassment, alarm or distress were the young people within the vicinity at the time. It was highly unlikely that these young people had experienced any of these feelings upon hearing such commonplace swear words. Had there been evidence that neighbours had been hanging out of their windows or there were others within earshot then there might have been a possible basis for inferring harassment, alarm or distress, but even then one would be on thin ground.

Hirst and Agu v Chief Constable of West Yorkshire [1987] 85 Cr. App. R. 143

“The question of whether an individual is guilty of wilful obstruction of the highway turns on three questions,

(i) Was there an obstruction? Any stopping on the highway, unless de minimise, counts as an obstruction.

(ii) Was the obstruction deliberate (as opposed to accidental)?

(iii) Was the obstruction without lawful excuse or authority? Any lawful activity carried out in a reasonable manner may amount to lawful excuse. If the obstruction was not unlawful in itself, the question is whether the activity in which the individual was engaged was an unreasonable user of

the highway”, HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 202)

Jordan v UK [2001] 37 EHRR 43

“The investigation [of killings] should be independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, capable of leading to a determination of whether the force used was or was not justified in the circumstances and afforded a sufficient element of public scrutiny of the investigation or its results”, HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 195)

Kay v The Commissioner of the Police of the Metropolis [2008] UKHL 69

“The House of Lords recently considered the requirement under the Public Order Act 1986 for organisers of public processions to give advance written notice to the police. Kay v Commissioner of the Police of the Metropolis concerned the Critical Mass cycle rides taking place in London on the last Friday of every month. Lord Rodger commented that it was significant that the section 11 notice requirement was confined to certain kinds of public procession and concluded that: the essential purpose of section 11 (1) is not so much to warn the police of possible interference with traffic as to warn them of a procession whose aim might provoke opposition and so give rise to public order problems. This is, of course, consistent with the provision being included in the Public Order Act. The narrow issue for consideration by the House of Lords was whether Critical Mass was a procession “commonly or customarily held in the police area (or areas) in which it is proposed to be held” so that it fell within the exemption from notification granted by section 11(2) of the Public Order Act 1986. The key questions were:

1. Was the Critical Mass cycle ride that takes place each month the same procession?
2. Was that procession “commonly or customarily held” in the Metropolitan area?

The House of Lords noted that the notice requirement does not apply where the procession is one “commonly or customarily” held in the police area on the ground that the purpose of the exception is to remove the obligation to give advance warning in the case of processions which the police know about anyway and so can take appropriate steps to control.” HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 200, 201)

**R (Laporte) v Chief Constable of Gloucestershire Constabulary
[2004] EWCA 253**

“To be compatible with the Human Rights Act 1998, action can only be taken by the police when they honestly and reasonably believe that there is a real risk of an imminent breach of the peace, [meaning proximate in time] reasonably close by [meaning proximate in place] and any action taken must be intended to ensure public safety; to prevent disorder or crime and/or to protect the rights of others and must be necessary and proportionate.” HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 207)

McCann v UK [1995] 21 EHRR 97

“In light of the importance of the protection afforded by Article 2, the Court will subject deprivations of life by the police to the most careful scrutiny, taking into consideration not only the actions of the police, but also all the surrounding circumstances, including the planning and control of the actions under examination. Police officers responsible for operations where the use of force is a possibility should so far as possible plan and control them to minimise recourse to the use of lethal or potentially lethal force.”, HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 194)

McLeod v UK [1999] 27 EHRR 493 at para.42

“A breach of the peace is committed ... “when an individual acts in a manner the likely consequence of which would be to provoke violence in others”, HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 207)

Moos V the Commissioner of Police of the Metropolis [2011] EWHC 957 and [2012] EWCA Civ 12

"The principal issue in these proceedings is whether the containment at the Climate Camp between 7.07pm on 1 April 2009 and 11.15pm or so was necessary, proportionate and justified in law. To be justified in law as being the lawful exercise of the common law power to take reasonable steps to prevent a breach of the peace and as not constituting an unlawful deprivation of liberty under Article 5 of the Convention, the police had reasonably to apprehend an imminent breach of the peace at the Climate Camp or, if not at the Climate Camp, so associated with the Climate Camp that containing the Climate Camp itself was reasonably necessary. A breach of the peace is imminent if it is likely to happen. Immediacy or imminence is an essential condition which should not be diluted, although it may be applied with a degree of flexibility. If a breach of the peace is imminent, the police may lawfully take preventive action, provided that there is no other way of preventing the imminent breach of the peace. They must take no more intrusive action than appears necessary to prevent the breach of the peace, and it must be reasonable and proportionate. The police may only take such preventive action as a last resort catering for situations about to descend into violence. What is imminent is to be judged in the context under consideration. There have to be proper advanced preparations. It is only when the police reasonably believe that there is no other means whatsoever to prevent an imminent breach of the peace that they can as a matter of necessity curtail the lawful exercise of their rights by third parties. The test of necessity is met only in truly extreme and exceptional circumstances. The action taken has to be both reasonably necessary and proportionate and taken in good faith. The case of *Austin*, where the containment was held to be lawful, was a very exceptional case."

In the result, the claimants succeeded in establishing that (a) the containment of the Climate Camp, and (b) the pushing operation to move the crowd approximately 20 to 30m, to the North at the southern end of the Climate Camp were not lawful police operations, except that

temporary containment at the northern end became justified at around 9.30pm.

19 January 2012 - [2012] EWCA Civ 12

The commissioner then appealed the decision to the Court of Appeal (heard 13 and 14 December 2011). The appeal was allowed on the basis that:

- the Divisional Court appeared to have formed its own view on imminence of a breach of the peace rather than assessing the reasonableness of the decisions taken in light of the information available at the time;
- there had been no justified basis for concluding that the view of the senior police officer in charge on the matter of the imminence of a breach of the peace had been unreasonable; and
- the containment of the climate camp had been justified on the senior police officer's own evidence."

Nachova v Bulgaria (2006) 42 EHRR 43

"The European Court of Human Rights has indicated that it would not be "absolutely necessary" to use lethal or potentially lethal force to arrest an individual unless he or she was violent and posing a threat to life or limb. This effectively aligns the use of lethal force to effect an arrest with the use of lethal force to defend any person from unlawful violence", HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 193)

Osman v UK [2000] 29 EHRR 245

"ECHR Article 2 requires the police not only to refrain from the intentional and unlawful taking of life, but also, in certain well-defined circumstances, to take positive steps to protect individuals whose lives are at risk. Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices that must be made in terms of priorities and resources, such an obligation must be

interpreted in a way that does not impose an impossible or disproportionate burden on the police. What is required is that the police take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known.” HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 194)

Percy v DPP [1995] 1 WLR 1382

In relation to Breach of the Peace HMIC (2009b, p 208) states that, “Action cannot be taken against individuals on the basis that they are acting in a manner the likely consequence of which would be to provoke violence in others if their conduct is reasonable or the actual or potential violence provoked in others is “wholly unreasonable”.

R v Duffy [1967] 1 QB 63

“The primary responsibility for using force rests with individual officers who are answerable to the law. The Criminal Law Act 1967, the Police and Criminal Evidence Act 1984 and the common law apply to all uses of force by the police and require that any use of force should be “reasonable” in the circumstances. Reasonable in this context should be interpreted as meaning “strictly necessary” in the execution of police duties. In assessing the reasonableness of the force used, three questions need to be asked:

1. Was force used to achieve a lawful objective, e.g. the prevention of crime or to make a lawful arrest?
2. Was the force justified in the circumstances?
 - (a) Was there a need for any force at all?
 - (b) How serious was the offence which was being prevented or in respect of which an arrest was being made?
3. Was the force excessive in the circumstances?
 - (a) What was the nature and degree of the threat posed or the force used against the officer?

(b) What was the nature and the degree of force used by the officer?

All the circumstances of each case must be considered very carefully when assessing whether the use of force was both necessary and reasonable.”

HMIC Adapting to Protest - Nurturing the British Model of Policing.

(2009b, p 191)

R v Howell [1982] QB 416

“A breach of the peace is committed when an individual causes harm, or appears likely to cause harm, to a person, or in that person’s presence, to his/her property, or puts that person in fear of such harm being done”,

HMIC Adapting to Protest - Nurturing the British Model of Policing.

(2009b, p 207)

Redmond-Bate v DPP [1999] Crim LR 998

With regard to Breach of the Peace HMIC (2009b, p 208) states that, “The guiding principle is that lawful conduct will rarely, if ever, be other than reasonable; and conversely, a violent reaction to the lawful conduct of others will rarely, if ever, be other than wholly unreasonable”.

Samut Karabulut (ECtHR) 27 January 2009

“The case concerned the forceful dispersal of a small crowd of protesters. Turkish security forces received information that the Human Rights Association would hold an un-notified demonstration at a central square. At 8pm, around 30-35 persons gathered at the square holding candles, photos and banners, and sat down on the street. The police warned the demonstrators to disperse and a passage was opened by the police for the demonstrators to leave. Two persons, including K, remained. The police used force to arrest them.

The European Court of Human Rights found violations of ECHR Articles 3 (prohibition against torture, inhumane or degrading treatment), 10 (freedom of expression) and 11 (freedom of peaceful assembly). It held the following:

1. The police intervention and the subsequent arrest of K constituted an interference with his rights under ECHR Article 11. The Government had failed to explain the exact grounds why the demonstration was deemed “unlawful”. Unlawful conduct such as the failure to notify does not justify an infringement of freedom of assembly and should not represent a hidden obstacle to freedom of peaceful assembly.
2. Although no prior notification was given to the authorities about the protest, the police had received information that there would be a gathering on that date. The security forces were thus able to take appropriate measures. As a result, it cannot be said that the police were called upon to react without prior preparation.
3. The dispersal of the protesters was not necessary for preventing disorder and protecting public safety within the meaning of ECHR Article 11(2).
4. The dispersal was quite prompt and consequently K did not have sufficient time, together with his fellow demonstrators, to manifest his views. As such, the police intervention against the demonstration was disproportionate. Accordingly, there was a violation of ECHR Article 11.
5. The medical reports matched K’s allegations of having received a blow on the head. The court found this injury sufficiently serious to bring it within the scope of ECHR Article 3.
6. ECHR Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to affect an arrest. However, such force may be used only if indispensable and must not be excessive.
7. There was nothing to suggest that the police had encountered any violent or active physical resistance on the part of K during the arrest which would explain the injury sustained.” HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 192)

Wood v Commissioner of Police for the Metropolis [2009] EWCA

Civ 414: HMIC Adapting to Protest - Nurturing the British Model of Policing. (2009b, p 129-134).

There is unlikely to be a violation of ECHR Article 8 when the police take photographs and video images of persons participating in a protest for use in the investigation and prosecution of criminal offences provided that (i) the photographs relate to the public incident (the protest) in which the individuals were voluntarily participating; (ii) the photographs are solely for the purposes of recording the character of the demonstration and the conduct of the participants to assist any subsequent investigation of criminal offences committed; and (iii) the persons photographed remain anonymous in that no names are noted down and the personal data recorded or photographs taken are not entered into a data processing system. (However NB note the decision of *Peck v UK App.* No. 44647/98 (28 January 2003) which recognises that the disclosure, without sufficient safeguards, of a photographic record of an individual's movements on a public street may in certain circumstances constitute an interference with the individual's right to private life under ECHR Article 8.)

In deciding whether interference is necessary, the court will have regard to the nature of the right in issue; the importance of the right to the individual; the nature and extent of the interference; and the objective of the interference.

The retention by the police of photographs must be justified and the justification must be all the more compelling where the interference with a person's rights is in pursuit of the protection of the community from the risk of low level crime or disorder as opposed to protection against the danger of terrorism or really serious criminal activity.

In *R v Wood*, the CA found that the police interference with the rights of W was disproportionate:

- i. The police had no reason to believe that W had taken part in any unlawful activity but nevertheless he was followed by a police car and then questioned about his identity by four officers.
- ii. The retention of the photographs for more than a few days could not be justified as furthering the aim of identifying individuals who may have committed criminal offences during that day.

- iii. A possible brief association between W and a person who had a history of unlawful activity did not provide any justification for a lengthy retention of the photographs.
- iv. Once it became clear that W had not committed any offence, there was no reasonable basis for fearing that W might attend and commit an offence at a future event in several months. There was no more likelihood that W would commit an offence if he went to a future event than any other citizen of good character who happened to go. There was a breach of ECHR Article 8 in this case.