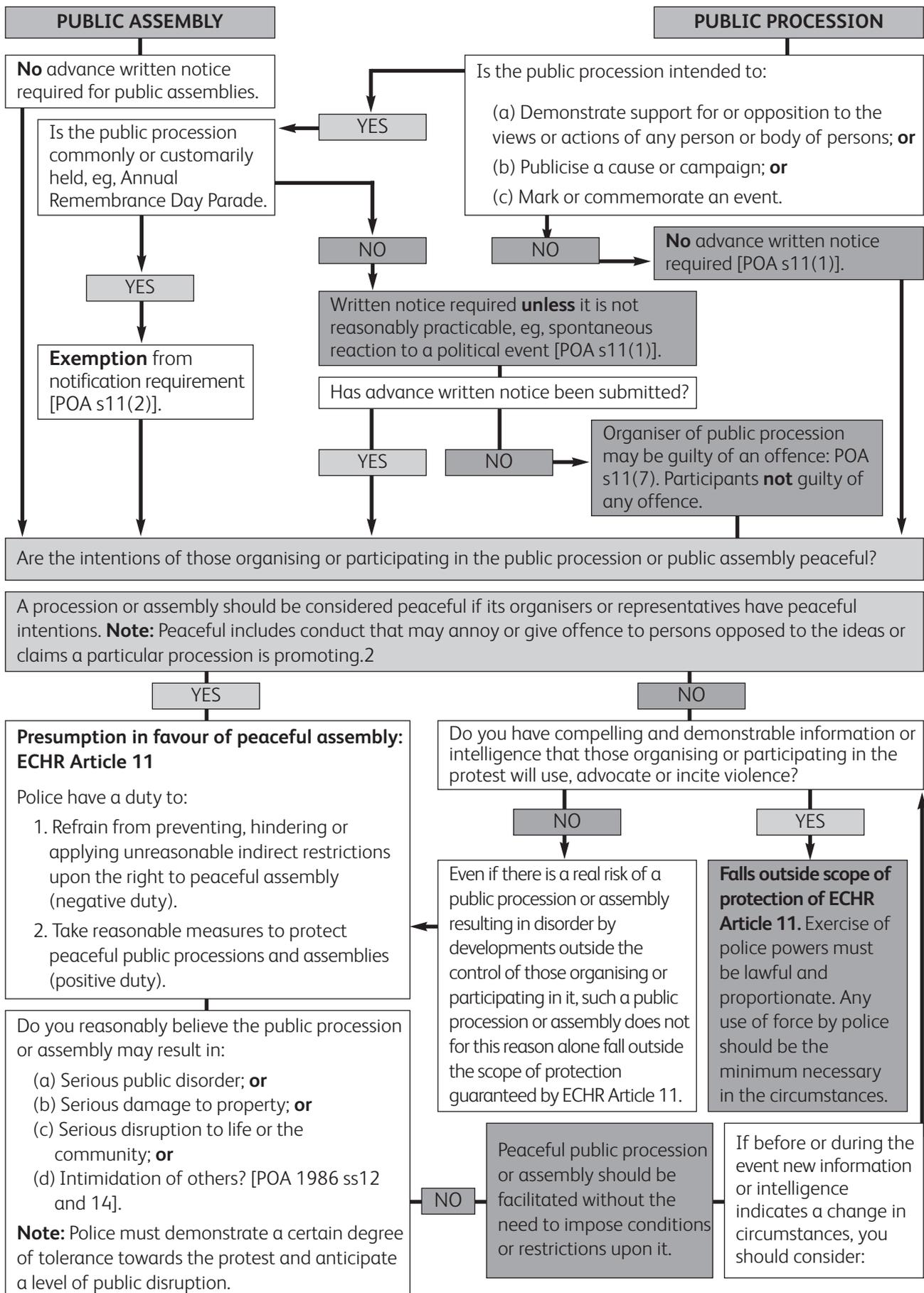


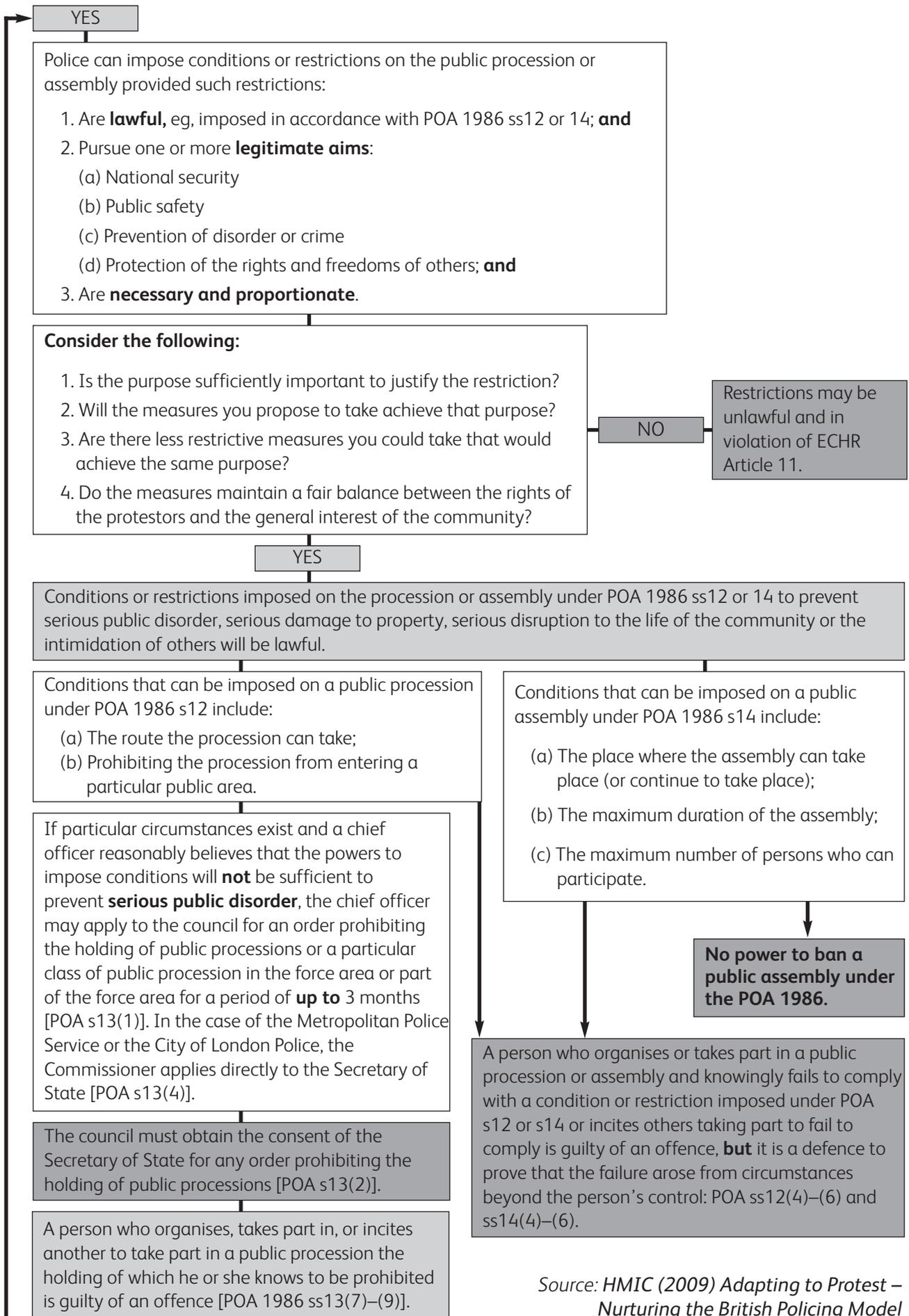
Police Response to Protest Flow Charts

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

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

Facilitating Peaceful Protest (England and Wales). The equivalent legislation in Northern Ireland is the Public Processions (Northern Ireland) Act 1998 and the Public Order (Northern Ireland) Order 1987.





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

Protests on Private Land. S 68/69 of the Criminal Justice and Public Order Act 1994 extend to Northern Ireland. References to the Public Order Act 1996 should be read as the Public Order (Northern Ireland) Order 1987.

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

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

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

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

NO

YES

A positive obligation may arise for the Government to take positive steps to protect the enjoyment of Articles 10 and 11 by regulating property rights.
NO action for police to take.

ECHR Protocol 1, Article 1: Every person is entitled to peaceful enjoyment of his or her possessions, including his or her (private) property.

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

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

CIVIL TRESPASS:

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

Police may have powers to intervene to prevent a breach of the peace.

CRIMINAL TRESPASS

Aggravated trespass

Trespassory assembly

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

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

YES

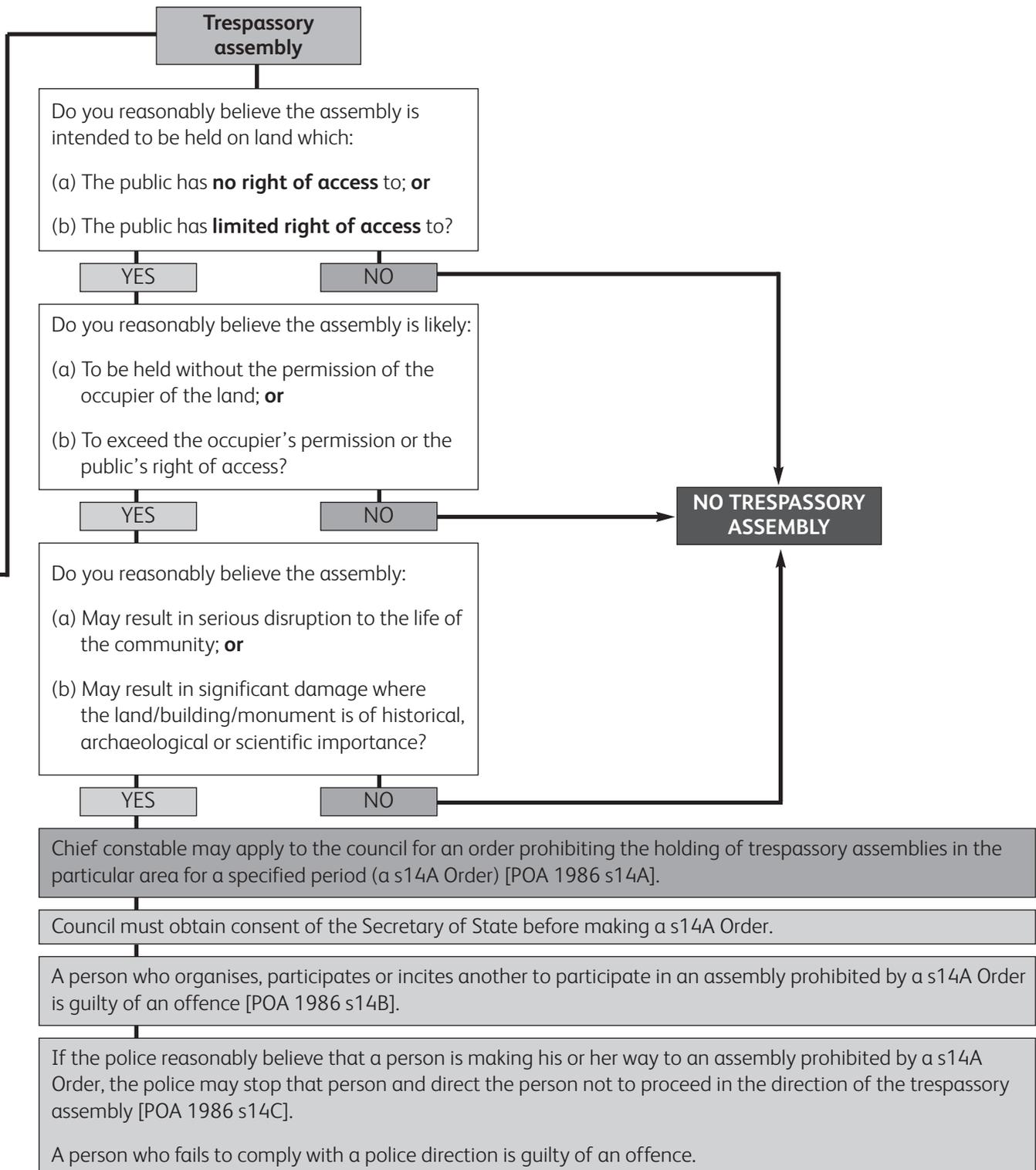
NO

NO AGGRAVATED TRESPASS

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

Police have powers to remove persons participating in aggravated trespass [CJPOA 1994 s69].

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



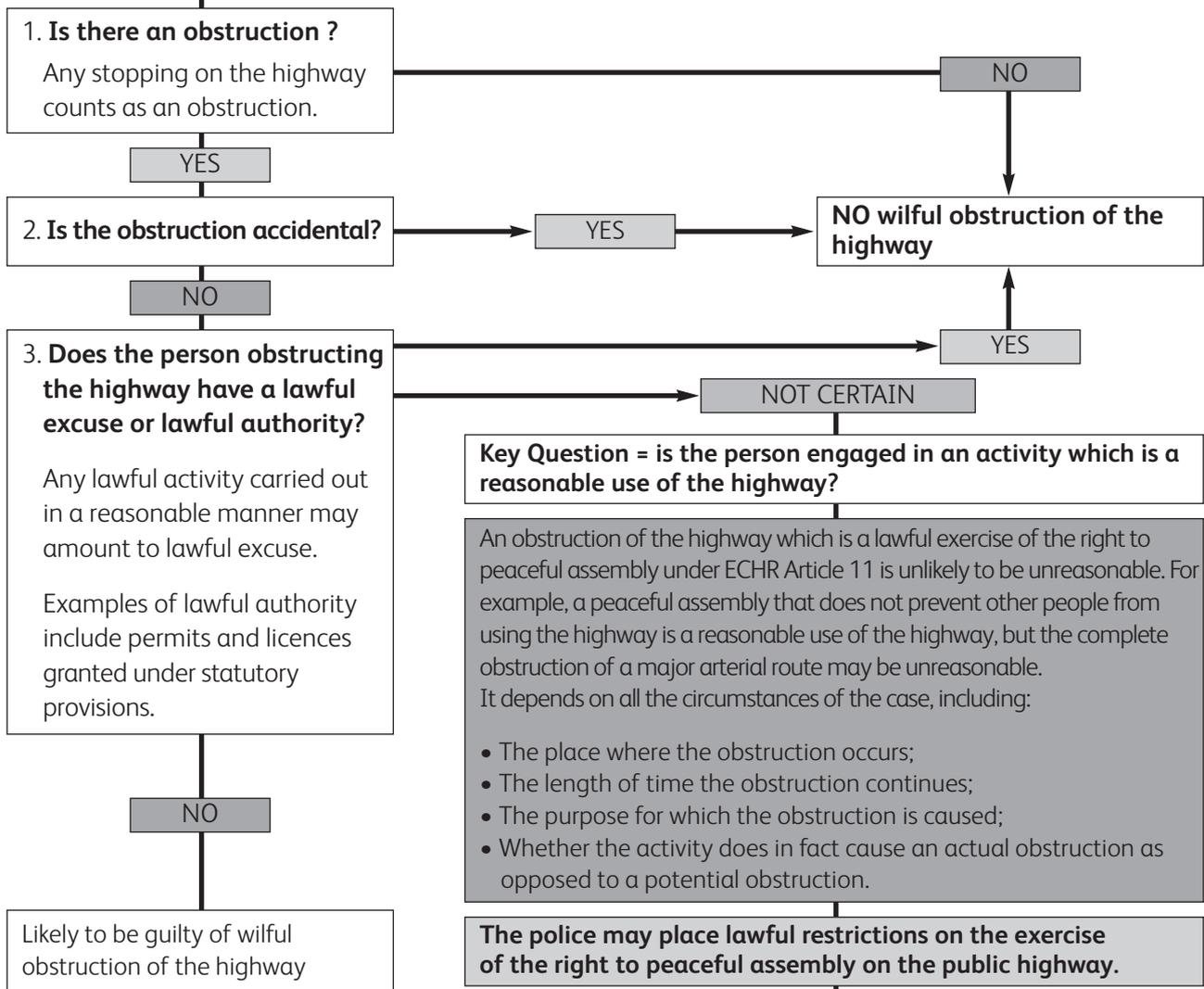
Use of Public Highway. For Northern Ireland see Article 20 of the Public Order (Northern Ireland) Order 1987.

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

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

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

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



Any restrictions imposed on the exercise of the right to freedom of assembly must be in accordance with ECHR Article 11(2). They must:

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

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

ACPOS – Facilitating Peaceful Protest

