

# Activists' Legal Project

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## Legal Briefing 3: A Guide to Possible Offences

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The aim of this briefing is to give an idea of the most likely offences that you may find yourself charged with when you participate in direct action. We have given only the barest minimum of detail about each offence. If there are specific offences that you want to know more about then please contact us.

We have listed the maximum penalties set down by law for each offence. But please remember that the sentence you can expect to receive will vary according to the exact facts of your case, any previous convictions that you may have and in the case of fines, your means. Please see Legal Briefing 2: A brief guide to trial procedure in the magistrates court, for more information on sentencing.

### 1. Trespass offences

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

#### a. Aggravated trespass (sec 68)

You may commit this offence if you go onto private land, without the consent of the owner (a recent change in the law means this now includes inside buildings), with the intention of intimidating, disrupting or obstructing someone from going about their lawful activity. It is also possible to commit this offence whilst on a public bridleway or footpath crossing private land (but not on a public highway).

The section says;

‘(1) A person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaged in on the land, does

there anything which is intended by him to have the effect of:

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

The section goes on to define 'lawful activity' as an activity which can be engaged in without committing an offence or trespassing on land.' So if the activity wasn't lawful or there was no actual activity taking place then you will have a defence.

This offence can only be tried in a Magistrates court. The maximum penalty is 3 months imprisonment, a fine of up to £2,500, or both.

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

This section states that an offence is committed;

'(1) if the senior police officer present at the scene reasonably believes:

- (a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land 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 lawful activity he may direct that person or (as the case may be) those persons (or any of them) to leave the land.

(2) a direction... if not communicated to the persons referred to [above] by the police officer giving the direction, may be communicated to them by any constable at the scene.

(3) if a person knowing that a direction..... has been given which applies to him

- (a) fails to leave the land as soon as is practicable, or
- (b) having left again enters the land as a trespasser within the period of three months...

(4)...it is a defence for the accused to show

- (a) that he was not trespassing on land, or
- (b) that he had reasonable excuse for failing to leave the land as soon as practicable or ....for again entering the land as trespasser.'

This offence can only be tried in a Magistrates court. The maximum penalty is 3 months imprisonment, a fine of up to £2,500, or both.

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

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

The Act states;

'(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken on behalf of the occupier to ask them to leave and

- (a) that any of those persons has caused damage to the land or to the property on the land or used threatening, abusive or insulting behaviour or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his,
- (b) that those persons have between them six or more vehicles on the land he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.'

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

This offence can only be tried in a Magistrates court. The maximum penalty is 3 months imprisonment, a fine of up to £2,500 or both.

## **d. Trespass on a designated site**

It is an offence to trespass (enter land or buildings without the consent of the owner) on any 'designated site' (sec 128 Serious Organised Crime and Police Act 2005, SOCPA). The Secretary of State has powers to designate land or buildings as a 'designated site' where the land is either Crown land, the private property of the Queen or the heir to the throne or it appears to the Secretary of

State that it is appropriate to designate the site in the interests of national security. Many UK and US military bases (in the UK) are now designated sites.

Unlike the offence of aggravated trespass there is no requirement that you must have been interfering with a lawful activity, you just have to be there without permission. You will have a defence if you can prove that you didn't know, and had no reasonable cause to suspect, that the site was a designated site.

This offence can only be tried in a Magistrate's court. There is a maximum penalty of 51 weeks imprisonment, or a fine not exceeding £5,000 or both.

## 2. Highway offences

### a. Obstruction of the highway

This charge is often used by the police to remove demonstrators who are standing outside buildings, to remove people sitting down blockading entrances or roads and in many other public order situations. You commit this offence if, without lawful authority or excuse, you wilfully obstruct the free passage of the highway. The 'highway' includes the road, the pavement, grass verges and private property used as a public thoroughfare. 'Obstruction' includes anything that prevents passing and repassing along the highway. It is not necessary for the whole of the highway to be blocked for the offence to be committed. The offence is obstructing the highway, not other highway users, so it is not necessary to prove that anyone was actually obstructed. The obstruction has to be 'wilful', so you will often be asked to move and if you do not then this will be used as evidence of your 'wilful' obstruction in court.

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

### b. Additional powers to prevent obstructions in London

The Metropolitan Police Act 1839, the City of London Act 1839 and the Town Police Clauses Act 1847 allow the Commissioners of Police in London and town councils outside London to make regulations to prevent obstructions and keep order. There are no conditions which need to be satisfied before these regulations or directions are

made. If you know that directions have been given, for example, not to proceed down a particular street and you do not comply then you commit an offence. You could also be charged with obstruction of a police officer (see section 4). When directions are made they can give the police very wide powers to control protests, demonstrations, raves and festivals and to restrict the movement of pickets, travellers and protestors etc. For example during the Wapping newspaper dispute, the Metropolitan police were given directions to close streets and to stop anyone walking or driving in Tower Hamlets, even residents and when a Stop the City action was planned in the City of London, the Police Commissioner gave directions to the police to arrest people handing out leaflets or gathering in groups of three or more.

### c. Demonstrations near Parliament

#### i) Demonstrating without authorisation in a designated area

Any person who organises a demonstration in a public place in a 'designated area', or takes part in a demonstration is guilty of an offence if authorisation for the demonstration has not been given (sec 132 SOCPA). It is a defence if you can show that you reasonably believed that authorisation had been given. The area around the Houses of Parliament, shown on the map on page 11, marked with a thick line is a 'designated area'. So unless the vigils/demonstrations etc that you organise or attend outside Downing Street, in Parliament Square or outside the Houses of Parliament have been authorised by the Commissioner of Police in advance you and the other participants will be in breach of this legislation.

If you are the organiser of the demonstration the maximum penalty is a term of imprisonment not exceeding 51 weeks, or a fine not exceeding £2,500, or both. If you are a participant then the maximum penalty is a fine not exceeding £1,000.

If the demonstration has been authorised then conditions can be imposed by the Commissioner which set the time, place and duration of the demonstration, numbers of people, banners and placards and noise levels. Breach of the conditions is an offence with a maximum penalty for organisers of 51 weeks imprisonment, or a fine not exceeding £2,500, or both, if you are not an organiser then a fine not exceeding £1,000. These offences can only be tried in the Magistrates court.

If your demonstration is really a march or procession then sections 11, 12 and 13 of the Public Order Act 1986 and

the Metropolitan Police Act 1839 continue to apply (see below).

## **ii) Dispersal of Assemblies or Processions**

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

This offence can only be tried in the magistrates court, the maximum penalty is a fine of £400. Fines of £100 have been imposed, but there have also been many acquittals.

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

If a police officer considers that you are causing, have just caused, or are about to cause a breach of the peace they have a common law power to arrest you. They must reasonably believe that you are using violence, or are about to use violence against persons or, in their presence, against their property. They can also arrest you, if they think others are being, or may be violent in response to your actions. There must be a “real and imminent threat to the peace”. The police have often threatened to arrest people for this offence in the past when they have occupied offices or other private property, they would probably now be more likely to arrest you for aggravated trespass (see section 1a above).

Breach of the peace is not a criminal offence but a civil wrong and the only possible penalty is a bind-over order. This is not a criminal conviction but an undertaking given to the court about your future conduct. After arrest the police will hold you in custody until you can be brought before a magistrate to be bound over to be of good behaviour for a period of time in a specified sum of money e.g. for one year in the sum of £100. If you refuse the bindover and the court agrees that you have caused or provoked imminent violence the magistrate will have no choice but to immediately imprison you, for a maximum of six months. However you can get out of prison at any

time if you ‘purge your contempt’ by agreeing to the bind-over order. If you breach the bind over order and are brought back to court then you will have to pay all or part of the sum of money. Sometimes bind-over orders are offered to protesters to settle their cases, the Crown Prosecution Service will for example offer to drop charges such as obstruction of the highway or obstruction of a police officer if the defendant agrees to be bound over. Some will see this as an admission of guilt and will refuse, others will see it as a chance to get the case over and avoid a conviction.

## **4. Assaulting or obstructing a police officer**

Under the Police Act it is an offence to assault, resist or wilfully obstruct a constable in the execution of his/her duty. The threat to arrest for obstruction is widely used by the police at demonstrations. Wilful obstruction of a police officer means doing any act which makes it more difficult for the officer to carry out their lawful duty e.g. ignoring their instructions, stopping them doing something, deterring someone, deliberately misleading them, or giving a false name and/or address. A more determined attempt to mislead could result in a charge of attempting to pervert the course of justice. It has to be shown by the prosecution that the police officer was acting in the execution of his/her duty at the time of the offence, i.e. attempting to protect life and limb, keeping the peace, preventing crime or detecting crime. See section 12 for more information on what amounts to an assault.

These offences can only be tried in the magistrates court. There is a maximum sentence of six months imprisonment for the assault offence and/or a fine not exceeding £5,000 and one month in prison and/or a fine of £1,000 for the obstruction offence.

## **5. Marches and Assemblies**

There are a series of offences connected with the organisation of or participation in marches or demonstrations which are set out in the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994 (CJA). All must be tried in the magistrates court.

### **a. Public processions (sections 12 and 13)**

It is an offence under the Public Order Act 1986 to

organise a political march or procession (the law does not provide a minimum number, so even 2 or 3 people moving along a route could constitute a procession) without giving the police 7 days notice in writing. Advance notice must be given if the march/ procession is: intended to show support for or opposition to the views or actions of any group; publicise a cause or campaign or mark or commemorate an event. Advance notice does not need to be given where it is not reasonably practicable to do so, if for example its a spontaneous march or its called at very short notice. But if you want to keep within the law a last minute phone call to the police might be advisable. Failure of the organiser to notify the police of the march or to change the start time or route without giving further notice is an offence with a maximum penalty of a fine up to £1,000. However in practice, where no notice has been given, it has been very difficult for the police to prove who has organised a march.

The Chief Constable can impose conditions in advance of the march or the senior police officer can impose conditions on the day of the march where he/she reasonably believes there will be serious public disorder, serious property damage or serious disruption to the life of the community ( section 12). Conditions can be imposed which restrict the route, the duration, types of banner and the numbers of participants. It is an offence, either as an organiser or as a participant, if you know that a condition has been imposed and you do not comply with it. It is also an offence to incite others not to comply. It is a defence to prove that any failure to comply was beyond your control. The Chief Constable must apply for a banning order, to prevent the march going ahead at all, if he/she is satisfied that imposition of conditions on a march will not be sufficient to prevent serious public disorder (section 13). It is an offence to organise, take part or incite others to participate in a banned march.

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

### **b. Public assemblies (section 14)**

In addition to the general powers the police use to move or disperse a crowd (breach of the peace, obstruction of the highway, local bye-laws etc) they also have specific powers set out in the Public Order Act 1986 to control public assemblies (static demonstrations including vigils). A 'public assembly' is two or more people gathered

together in a public place in the open air. This includes highways, parks, shopping precincts, shops and offices, restaurants, pubs or any other place to which the public have access or partial access. Although there is no power to ban a public assembly altogether and there is no need to give advance notice (except when it's within the designated area around Parliament, see earlier), the police can impose conditions on a public assembly ( section 14). Conditions can be imposed which restrict the place, the duration and the numbers, 'as they appear necessary to prevent serious disorder, disruption of the life of the community, or intimidation'. Conditions can be imposed in advance or by the senior police officer who is at the assembly. Breach of the conditions is an offence with the same penalties as for breach of the conditions for a public assembly.

### **c. Trespassory assemblies**

A trespassory assembly is defined as twenty or more people on land in the open air without permission from the occupier. Unlike a public assembly, the police have the power, under the Criminal Justice and Public Order Act 1994, sections 70 and 71, to ban a trespassory assembly where there is a risk of serious disruption to the life of the community or where there is a risk to an important site or building. The police can impose a ban over an area of up to five miles from the site, prevent people travelling to the assembly and arrest those who organise it or take part in the assembly. These sections have, for example, been used in the past to prevent Solstice celebrations at Stonehenge. The maximum penalty for breaching these bans is 3 months imprisonment or a fine of £2,500.

These three sections of the Public Order Act give the police extremely wide discretionary powers to remove organisers and/or participants from the scene of a march or demonstration.

### **d. Dispersal of groups**

A new police power under the Antisocial Behaviour Act 2003 allows a superintendent to authorise that an area is subject to antisocial behaviour and that a member of the public has been intimidated, harassed, alarmed or distressed by the behaviour of a group of two or more people. For example an area outside the offices of your favourite corporation could be authorised as subject to an order. The authorisation must be publicised, must have the consent of the local authority and can last for up to six months. Once such an authorisation is made any police

officer can order a group of 2 or more people to disperse. It doesn't apply to anyone engaged in a lawful industrial dispute or a demonstration authorised under the Public Order Act. The penalty for non-compliance is a maximum of £2,500 or 3 months in prison.

## 6. Public order offences

The Public Order Act 1986 also sets out a series of public order offences. In increasing order of severity they are:

### a. disorderly conduct (section 5)

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

It is an offence under this section 'if a person

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

(ii) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress'.

The offence can be committed either in public or in private. There is a two stage power of arrest; the police can only make an arrest if you have been warned to stop the disorderly conduct and have then gone on to repeat it. The conduct does not need to be directed towards another person, but you must have intended your conduct to be threatening, abusive or insulting or disorderly or were aware that it might be. There must be a victim present at the scene and the prosecution must prove that the conduct took place within the hearing or sight of another person (including a police officer) who was likely to be caused harassment, alarm (for him/herself or for a third party) or distress by your action. Where the only person involved is a police officer, the court might decide that the words or behaviour used did not have the effect of causing harassment alarm or distress, because a police officer may be taken to be more robust and used to, say, strong language.

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

The offence can only be dealt with in the magistrates court and carries a maximum sentence of a fine of £1,000.

There is no power to send a person convicted of this offence to prison.

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

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

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

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

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

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

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

### c. Fear of violence (section 4)

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

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

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

Prosecutions have been brought where threats, abuse or insults have been made by rival football supporters, on picket lines or between rival demonstrators. The words

or behaviour or the display must be directed towards another person. This can include words on a banner or placard, a tee-shirt or a badge.

This offence can only be tried in a magistrates court. Maximum of six months imprisonment and/or a fine not exceeding £5,000.

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

Under this section 'a person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety'. A threat must be more than words and violence must be violence towards a person and not property. This is a public order offence intended to protect a bystander, so what is important is not whether the person towards whom the violence or threat is directed fears for their safety but whether a third person of 'reasonable firmness' (who need not actually be present) would, if he/she had seen the violence or threat, have feared for his/her own safety. Street fighting with or without weapons may be an affray.

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

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

The offence of violent disorder is committed 'where 3 or more people who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety'. This offence is often used for group violence such as at football matches or where weapons are involved. It has also been used in animal rights cases where missiles have been thrown at people or property.

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

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

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

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

## **7. Harassment Offences**

The Protection from Harassment Act 1997 was brought in ostensibly to address the problem of stalking. But it has also been used extensively against animal rights activists.

**Harassment of one person** - the Protection from Harassment Act states that it is an offence to pursue a 'course of conduct' which amounts to harassment of another, and which the perpetrator knows or ought to know amounts to harassment of another. It is a defence that the course of conduct was pursued for the purpose of preventing or detecting crime or that in the particular circumstances it was reasonable.

The offence can only be tried in a magistrates court and carries a maximum sentence of 6 months imprisonment or a fine up to £5000.

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

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

**Harassment of two or more persons** - The Protection from Harassment Act has been extended by section 125 of SOCPA to include a new offence of harassment of two or more people.

It is an offence if you engage in a 'course of conduct', which SOCA defines as the harassment of two or more persons, which you know or ought to know involves the harassment of those persons, and it is your intention to persuade any person not to do something that they are entitled or required to do, or to do something that they are not under any obligation to do. What this means for activists is not yet clear, but leafleting/talking to two or more workers at a factory gate with the intention of persuading them not to go to work could now be an offence.

This offence can only be tried in the magistrates court. The maximum penalty is 6 months imprisonment or a fine of £5,000, or both.

**Harassment of a person at their home** - The Criminal Justice and Police Act 2001 sec 42 which gives the police powers to direct people to move away from people's homes if they are there to persuade the resident to do/not do something they are entitled to do/not do has been extended by section 126 of SOCA to create a new offence of harassment of people in their homes, where no direction to move away has been given.

The offence is committed if you are present outside or in the vicinity of someone's home and you are there for the purpose of persuading the resident or another person at the home that the resident (or the other person) should not do something that they are entitled or required to do; or that they should do something that they are not under any obligation to do.

You must either intend your presence, or you must know or ought to know that your presence is likely to result in the harassment of, or to cause alarm or distress to, the resident.

In addition your presence must either amount to the harassment of, or cause alarm or distress to, the resident, someone in the home or a neighbour, or is likely to result in the harassment of, or to cause alarm or distress to, one of those people.

This offence can only be tried in a magistrates court. The maximum penalty is 51 weeks imprisonment or a fine of £2,500.

## 8. Interference with contractual relations

SOCPA has brought in a new criminal offence of interference with contractual relations. The act turns what were formerly civil wrongs (torts) into criminal offences, where they are carried out with the intention of hindering an animal research organisation or with the intention of persuading someone to sever their links with such an organisation. It is an offence (sec 145 SOCPA) if, with the intention of harming an animal research organisation, you commit either a criminal offence or a civil wrong (known as a tort), which causes loss or economic damage to another person (including a company) and which is intended or is likely to cause the person not to perform a contractual obligation, to terminate a contract or not to enter into a contract with a third person. A noisy demonstration outside a company's offices, which could amount to the civil wrong of private nuisance, or handing out a defamatory leaflet which could be held to be the civil wrong of defamation, are criminalised under SOCPA.

Though specifically directed at animal rights activists the legislation allows this offence to be extended to other forms of protest with the minimum of Parliamentary scrutiny. The Secretary of State has the power (sec 149 SOCPA) to make an order applying these provisions to any other persons or organisations, in the same way that they apply to animal rights organisations, where there has been a series of acts which if the organisation had been an animal rights organisation would have been criminal offences. In other words there is the possibility of extending this offence to cover interference with the activities of any kind of company eg: arms companies, oil corporations.

If the offence is minor then it will be tried in the Magistrates court the maximum sentence is 12 months or a fine not exceeding £5,000, or both. If more serious it will be dealt with in the Crown court the maximum sentence is imprisonment for a term not exceeding five years or an unlimited fine or both.

## 9. Anti-Social Behaviour Orders ('ASBO')

The Crime and Disorder Act 1998 introduced antisocial behaviour orders (ASBO) into the legal lexicon. ASBOs can be obtained against behaviour which, whilst offensive to society, had not previously warranted criminal sanction.

ASBO orders have been obtained for: wearing a hat, not wearing anything, feeding birds, letting pigs escape. Activists have also been ASBOed forbidding them from behaviour such as waving a banner or being in a certain area.

The police, a local council (or any other relevant authority as determined by the Secretary of State, including unaccountable bodies) can apply to a court for an ASBO where it appears to the authority that you have acted in an anti-social manner ie you have caused or are likely to cause harassment, alarm or distress and that the order is necessary to protect others from further anti-social acts by you (section 1). If the court accepts these conditions are fulfilled it can impose an ASBO, defining what you cannot do.

ASBO's, with their lower burden of proof, can serve as a short cut to getting a criminal conviction without the need to prove the original 'crime'. Although an ASBO itself is not a criminal sanction, breaching an ASBO is a criminal offence.

If the offence is dealt with in the magistrates court the maximum sentence is imprisonment for a term not exceeding six months or a £5,000, or both; if the case is more serious and goes to the Crown Court, the maximum sentence is imprisonment for a term not exceeding five years or to an unlimited fine, or to both.

## 10. Criminal damage/arson/going equipped

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

Criminal damage is an indictable offence. Where the value of the damage is less than £5,000 then the case must be

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

If you were to use fire to destroy or damage property then the offence is arson: section 1(3) of the Criminal Damage Act. This is an indictable offence which must be tried in the Crown court. The maximum sentence for arson is life imprisonment.

If you have with you any article for use in the course of or in connection with certain specified offences then you commit the offence of going equipped. The specified offences include criminal damage, burglary and theft. Activists found by police on their way to an action with boltcroppers and jemmies etc have been charged with going equipped to cause criminal damage. This is an indictable offence triable in the Crown Court. The maximum sentence is three years imprisonment.

## 11. Theft/burglary

These offences are set out in the Theft Act 1968. The offence of theft is defined as follows: 'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it': section 1(1) of the Theft Act 1968. Protestors have successfully argued that they did not intend to 'permanently deprive' and have therefore been acquitted. Theft is an indictable offence which must be tried in the Crown Court. The maximum sentence is 7 years imprisonment.

The offence of burglary is committed if a person enters a building as a trespasser intending or actually stealing or attempting to steal anything in the building or inflicting or attempting to inflict on any person in the building grievous bodily harm, rape or criminal damage: Section 9 of the Theft Act 1968. This is a very wide offence and has been used against protestors participating in an office occupation who were arrested on suspicion of intending to cause criminal damage. This is an indictable offence, which can be tried either in a magistrates court or the Crown Court depending upon the seriousness of the activities. The

maximum sentence is 14 years imprisonment where the building was a dwelling and 10 years imprisonment for any other type of building.

## 12. GBH/ABH/common assault

If you cause actual injury to an individual, you could be charged with either grievous bodily harm (GBH) or assault occasioning actual bodily harm (ABH) under the Offences Against the Person Act 1861. If the injury was serious then the charge would be GBH and if relatively minor then it could be ABH or common assault. There is

much room for argument as to whether particular injuries cause an offence to fall within one category or the other, for example a broken nose can be dealt with as either GBH or ABH. The current charging guidelines mean that where there is some bruising or scratching the charge is more likely to be common assault rather than ABH.

Throwing a bottle, punching or kicking out, either intentionally or recklessly, which causes a person to expect immediate personal violence, may also be common assault. Unwanted touching or shaking a fist at someone can also amount to a common assault. There is no need for any actual injury to have been caused. There is also a related offence of assaulting a police officer in the execution of his/her duty, see section 4.

These are indictable offences. The maximum penalty for GBH with intent (triable only in the Crown Court) is life imprisonment, for GBH without intent (triable either way) five years imprisonment and for ABH (triable either way) it is also five years imprisonment.

Common assault can only be tried in the magistrate's court. The maximum penalty for this offence is six months imprisonment and/or a fine not exceeding £5,000.

## 13. Terrorism Act Offences

The Terrorism Act 2000 has the potential to treat many types of nonviolent direct action as acts of terrorism. An act of terrorism is defined as any act that causes serious economic damage, endangers life or creates a risk to the health and safety of the public, and is designed to influence the government, and is for the purpose of advancing a political or ideological cause. Activists pulling up GM crops or dismantling Trident submarines could arguably fall within this category. As yet no environmental, peace and animal rights groups have been proscribed nor

have activists been detained without charge under the Terrorism Act.

The Act has however been used to stop and search activists. Section 44 of the act widens police stop and search powers giving a blanket search power, with no requirement for the police to suspect that you are a terrorist for the power to be exercised. It has been used extensively to intimidate and delay protestors, including at the anti war protests at Fairford in 2003 (almost 1000 people stopped and searched), the DSEi Arms Fair 2003, and at the Labour Party Conference 2005 (600 people stopped and searched). See Legal Briefing 5: Police Search and Seizure Powers for more information.

## 14. Carrying weapons/knives

It is an offence under the Prevention of Crime Act 1953 to have an offensive weapon in a public place without lawful authority or reasonable excuse. The definition of 'weapon' is wide-ranging and could include a flick knife, a broken bottle or an ordinary pair of scissors, a spanner or an umbrella. Although if it is not an article which has been made or adapted for causing injury then the prosecution must show that you intended to cause injury with say the spanner or umbrella. Self defence can be a reasonable excuse.

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

So it's a good idea to check your pockets before you go on an action and leave your knife at home.

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

## 15. Conspiracy

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

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

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