

Faslane 365

Legal Briefing for Blockading

In writing this briefing we are building on many years of experience of blockading Faslane. Many hundreds of people have been arrested and many more have taken part without being arrested and for most it has been a positive, even liberating, experience.

While the charges and police behaviour over the years have been relatively predictable, this project is, we hope, an escalation of the effectiveness of these blockades. Faslane 365 grew out of a realisation that the state could cope with - and work around - one-day blockades, however large and effective, and a desire to be un-ignorable. Thus, the state may also change tactic in response, and may use laws or powers that they have not used at Faslane before. We believe that, together, we are strong enough to overcome these issues if they do arise. The Legal Support Working Group will provide information and advice and help facilitate a collective response should anything like this arise.

Legal Support

While direct legal support is, in keeping with the decentralised nature of the project, the responsibility of each Blockading Group, there will also be a Legal Support Working Group who will provide help and advice. We will also help co-ordinate among the people doing legal support from the different blockading groups and provide information as to how the courts are responding to different issues (as much as we can!). If any new legal tactics are tried, we'll keep you informed and provide advice and a communication channel so that we can all deal with it together. The people within your blockading group providing legal support won't need any legal knowledge - it's about making sure they know where you are when arrested, can tell friends/family/work if you want them to, can tell a solicitor if you want one, make sure someone picks you up when you're released, that people come to court with you (if you even get taken to court). We'll provide advice and training as required.

Possible Charges

Remember when reading this that some of what we cover here is worst-case scenarios. It is quite possible that no-one will face anything more serious than Breach of the Peace or Obstructing an Officer in the Course of Their Duty.

Blockading

If you go onto the road at the entrance to the base it is likely that at some stage the police will tell you to move. If you refuse then you may be arrested. Ironically, given the reason why we're doing it, the usual charge is Breach of the Peace! Sometimes the police issue a warning to a whole group of people before moving in to arrest individuals. Our experience from previous blockades at Faslane is that if you stay on the pavement or move there when told to it is unlikely that you will be arrested. This may change if the police or the base get interdicts or similar (see below). The Legal Support Working Group will help keep your legal support team up to date on this.

Breach of the Peace is a common-law offence (which means it's defined by previous court judgments rather than by Act of Parliament). While the offence goes back centuries the leading judgments (High Court rulings which define what BoP means) are fairly recent and tend to involve anti-nuclear protesters who blockaded Faslane! In theory, BoP requires conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. It should be conduct that is genuinely alarming and disturbing, in its

context, to any reasonable person ... it is clear that something substantially greater than mere irritation is involved. In practice the courts do usually reckon that this includes peacefully sitting in the road at Faslane and you are likely to be convicted.

However, they may well not prosecute everyone - the courts have a finite capacity. Some people may be offered Fixed Penalty Notices, which are a bit like a speeding fine in that if you pay (they're usually £50) you don't get a criminal record. Some will hear nothing at all. Some will be prosecuted. This can be either in the District Court or in the Sheriff Court (the Procurator Fiscal gets to choose) and usually results in a fine of £50-£100 if you plead guilty or £100-£200 if you plead not guilty. One of the avenues they might take to try and discourage us is to increase the levels of these fines. This could well be challenged, depending on how it is done (we have had fines reduced on appeal before).

There are other offences they could charge us with for blockading - under the Roads (Scotland) Act for example - but they're of a similar level and certainly no harder to defend.

Resisting Arrest / Obstructing an Officer in the Course of Their Duty

If you are locked-on, fail to move when told to, or after arrest, then they may add one of these charges. This may (especially the resisting arrest) be dropped before the case gets to court but it may be prosecuted. Like BoP, these charges cover a huge range of situations and so the theoretical maximum is high but, given the non-violent and accountable nature of these actions, this would be very much towards the trivial end of the spectrum and would usually result in a small fine.

Conspiracy

It is always a possibility that they may decide to act pre-emptively and arrest people they see as organisers on a conspiracy charge. This is potentially a more serious charge but political conspiracy charges are rare for a reason - they usually backfire on the government! The people most at risk of this are the Steering Group. We will make sure that all the Blockading Groups have each others contact details just in case.

Other Offences

Faslane is a Designated Area under section 129 of the Serious Organised Crime and Police Act 2005 (as amended by the Terrorism Act 2006). This means that it's an offence to be inside the fenceline without lawful authority (and potentially a serious one - the maximum penalty is a year in prison). However, **this only applies if you go inside the fenceline**. As long as you stay outside the fence, even if you are on MoD land and/or blockading the gates, then you cannot be charged with this. For a more information on this power see the Trident Ploughshares briefing on this new power.

It is also possible that they may decide to use *section 14 of the Public Order Act* (which allows them to put conditions on assemblies in certain situations). Depending on how it's done there are a number of ways to challenge this. The likely sentence, if convicted, would again be a smallish fine. It could make life more difficult for supporters who wish to be present but not to risk arrest - but if they do impose an s14 they should provide a space in which we are allowed to be. If there were a total ban on assembly imposed then supporters would become potentially arrestable. We will be able to help advise what is likely to be do-able without risking arrest once the terms of the exact order are known. Remember also that the rights to Freedom of Assembly and Freedom of Expression are enshrined in the European Convention on Human Rights and into Scots law via the Scotland Act and Human Rights Act. We may well be able to challenge these orders if they become too restrictive.

It is also possible that either the MoD, the local authority or the police may try and obtain *ASBOs* or even *interdicts*. This would be a sign that we were getting somewhere. *ASBOs* probably wouldn't make a huge difference although it may inconvenience supporters - many of the comments above on s14, etc. apply here as well. An interdict would be a sign of desperation on their part but one, which could require a collective response from all the Blockading Groups but which could be overcome or worked around.

Finally, if there is any "disorder", whether it came from us or not, there is the possibility that they would take the opportunity to try and use more serious public order charges such as *Mobbing*. This is, essentially, a collective Breach of the Peace but is considered a more serious charge and could result in a jury trial. That said, it is often easier, in this sort of case, to convince a jury of the rightness of your actions than it is a judge.

On the Day

Bust Cards

Make sure you have the phone number of your legal support team and of a solicitor. This may be provided in the form of a Bust Card. It is a good idea to write the numbers on your hand/arm as well.

What do I do when I get released?

If the police can confirm your details and they are satisfied that the action is over you should be given all your property back and released. This can take a long time if there are a lot of people in custody so be prepared for a long wait. Hopefully, there will be someone waiting to meet you outside the police station who will arrange a lift. Please inform your Legal Support team that you are out.

What Happens if I am Held for Court?

If you are charged with a serious offence or your details don't check out or you are already on bail or there is a warrant for your arrest or they've got a new policy to try and put us off you may be held and taken to court the next morning. You can ask a solicitor to represent you or just to give you advice. You will probably be released on standard bail conditions - this means that if you are arrested again whilst on bail they can add an extra charge. Bail does not usually require the payment of money sureties in Scotland. They may want to add extra conditions - such as not to go within a certain distance of Faslane - but should give you the opportunity to argue against them if you want to. Unless you have a history of breaking bail you should get bail for these sorts of charges.

If I am Released from the Police Station will I Hear Any More About It?

The police sometimes release people on an undertaking to come back to court on a specified day within the next few days or weeks. If you are released without signing an undertaking then you may receive a citation (to come to court) or a fixed penalty fine in the post up to a year later.