



The Anti-Frackers Guide to understanding laws affecting protesters



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Introduction

This publication is intended as a reference guide – it is not necessary for campaigners to know every aspect of the law before taking part in protests.

However, campaign groups can help to ensure the safety of protesters when planning actions that might potentially lead to arrests or legal action by:

- Ensuring **trained legal observers are present** to monitor the conduct of the police and that ‘bust cards’ with reliable criminal solicitors’ contact numbers are distributed.
- Offering ‘**Know Your Rights’ workshops** for campaigners in your group
- Talking to an experienced civil lawyer if you are planning to occupy land, to **ensure legal representation is ready and in place** well before the arrival of a possession order or the threat of an injunction.

Contact Green & Black Cross Legal at gbclegal@riseup.net for support with legal observers and rights training.

Visit netpol.org/civil-solicitors for details of civil solicitors firms and netpol.org/criminal-solicitors for criminal law firms



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Occupying Land

Decisions about where to occupy land and set up a protest camp depend on a number of factors:

- Whether it is temporary or as permanent as you can make it
- How much effort you want to put into defending it whilst still campaigning and taking action against fracking
- Whether your camp's aims are
 - Communication: to build public support and give out information
 - Acting as a base camp: to build activism and carry out actions
 - Antagonistic: physically on or next to a contested site, highlighting and exposing the fracking industry
 - Providing solidarity: providing support and possible secure space for activists away from action

Your legal situation and the powers available to the authorities can vary depending on the type of land your camping is on: highway (verges); common land; Crown Land; public land; or private land.

Where to camp?

Private land owned by a friendly and supportive landowner – unlikely, but possible – is the best option if you want a long-term camp.

Although it might not be in the best location for attracting support or visitors, it is often a good location for a camp focusing on direct action and provides a safe space for activists to meet and rest.

Private land owned by hostile landowner or fracking company is not always the best option for a long term camp, as you are likely to spend a lot of energy defending your space and it might result in a long-drawn out court process if the landowner decides to get a possession order. However, although this can sap energy and activism, it can also generate local support and attract publicity for the campaign.

If the land is on or next to the proposed fracking site, then it is also a good option for a high profile, short term pop-up camp, which you can dismantle before the landowner starts any legal action against activists.

Highway verges are useful for getting visibility for your campaign and for attracting public support, especially if the camp is near a lay-by or pull-in for parking. Generally grass verges next to a public highway are owned by the local council and designated as part of the public highway, but some verges are privately owned land.

In 2014 Peel Holdings claimed that two of their subsidiary companies owned parts of the verge where Barton Moss camp was located, and applied for a possession order. East Riding of Yorkshire council used its powers under the Highways Act to clear the roadside camp at Crawberry Hill (see **Injunctions**)

It is useful to check with the local council's highways department about the legal definition of a particular "highway". At Barton Moss, the court found in February 2014 that Barton Moss Road was not a highway but a public footpath, so charges of obstruction of the highway were invalid.

Common land is regulated by byelaws, which generally prohibit civil trespass (see **Civil Trespass and Possession Orders**), camping and fires. Some common land is privately owned or administered.

In the short to long-term, the successful occupation of common land dependent on the location and whether byelaws are strictly enforced.

In 2012, South West Against Nuclear (SWAN) set up an action camp, including a massive tin barn, on common land near the site of the proposed site of a new nuclear reactor at Hinkley. Four days later, before the police and commoners could work out what to do, they left.

Who owns the land?

In England and Wales, you can find out about land ownership through the Land Registry.

For links on the Land Registry's 'Find A Property' and 'Aerial Land Locator' search facilities, see:

<http://eservices.landregistry.gov.uk/www/wps/portal/>

If you want to later contest or challenge the ownership of land in court, you can get copies of Land Registry documents at:

<https://www.gov.uk/search-property-information-land-registry>

You can find common land in your area at:

<https://www.gov.uk/common-land-village-greens>

Local byelaws are usually published on individual council websites. For England and Wales, you can find out more by searching at

<https://www.gov.uk/find-your-local-park>

Is it a highway, or a public footpath?

It is worth looking at a "definitive map" to identify legal rights of way across land. If a landowner has blocked a footpath, did they do it legally? Is there a 'stopping up' order in place under section 247 of the Town & Country Planning Act, 1990, which allows the closing or diversion of highways, footpaths or bridleways to allow development to be carried out in accordance with planning permission?

Local authorities are obliged to keep definitive maps up to date under Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12). For a list of definite maps in England and Wales, see: **<http://www.geograph.org.uk/article/Definitive-maps-online>**



Private Security

Security guards generally do not have any more legal powers than any member of the public (but see **Community Safety Accreditation Schemes** below). This means they can only make a “citizens' arrest” (covered by section 24A of the Police And Criminal Evidence Act 1984) using 'reasonable force' to prevent a crime from occurring or if they have a reasonable suspicion that an offence has been committed.

However, they must also call the police and can only detain someone if there is a risk of injury, damage to property or that the person is likely to escape before the police can take over responsibility. Any suspected offence must be indictable (serious enough for trial at a Crown Court) but this does include criminal damage and aggravated trespass. As most security guards are inadequately trained and unlikely to know the limits of their powers, they run the risk of acting unlawfully if they attempt to make a “citizens' arrest”,

Again, like other members of the public, security guards can also use 'reasonable force' to remove civil trespassers from private property, acting as agents for the property owner.

What constitutes 'reasonable' force and 'reasonable' suspicion is subjective. However, the courts have often been more willing to allow security guards to act more forcefully than the average member of the public. Crown Prosecution Service guidelines on self-defence also recommend “special care when reviewing cases involving those, other than police officers, who may have a duty to preserve order and prevent crime”, which includes private security guards.

In practice, the police often step in to arrest protesters to ‘prevent a breach of the peace’ for refusing to leave private property when there is a confrontation with security guards, even if no other criminal offence has been committed.

In most cases, security guards that anti-fracking campaigners are likely to encounter will be licensed by the Security Industry Authority (SIA), because they provide “manned guarding” roles covered by the Private Security Industry Act 2001. This includes both security personnel at a drilling site and also staff employed, for example, at shopping centres that your campaign might have a stall outside of.

Front-line staff (those on the ground who guard property or premises) must wear a credit-card-sized licence where it can be seen. Failure to do so is a breach of the licence conditions and may be reported to the SIA.

Community Safety Accreditation Schemes

The Police Reform Act 2002 allows Chief Constables to accredit people working in security roles to receive limited powers under an approved ‘Community Safety Accreditation Scheme’ (CSAS) for “combatting crime and disorder, public nuisance and other forms of anti-social behaviour”.

Overwhelmingly local councils employ these Accredited Persons as enforcement officers or parks wardens, although there are accredited schemes that also cover shopping centre and industrial estate security staff. Their powers include the ability to:

- issue a penalty notice for disorder for behaviour likely to cause harassment, alarm or distress
- issue a fixed penalty notice for graffiti and fly posting
- require the name and address of a person who has committed a criminal offence that causes injury, alarm and distress to another person or damage or loss of another's property, or to whom a penalty notice has been issued
- require the name and address of a person acting in an anti-social manner

Accredited Persons must wear a uniform approved by the police when exercising their powers and carry an ID card that also shows the powers they are authorised to use. The logo on the right indicates a security guard is CSAS accredited.



Currently we are unaware of any specific incidence of CSAS accredited staff at fracking sites but we know that security companies working with the industry are training staff for CSAS accreditation.

If you come across security guards using these powers, please contact Netpol at info@netpol.org.

Complaining about private security personnel

The SIA is concerned primarily with security staff working without a licence, not with complaints about the conduct of individual guards. If you want to complain about the behaviour of a private security company employee, you need to write to the company asking for a copy of their complaints procedure.

If you believe a security guard has acted unlawfully, including the use of excessive force without reasonable grounds, you can complain about a potential assault to the police.

If you think a member of security staff is unlicensed or failing to display their license, you can complaint to the SIA. For details about making an online complaint, see <http://www.sia.homeoffice.gov.uk/Pages/enforcement-reporting.aspx>

Security guards and body cameras

Private security companies who gather and process footage recorded by staff wearing headcams or body cameras are covered by the same SIA licensing that applies to CCTV operators, known as 'public space surveillance'.

As public space surveillance captures information about individuals and is held by organisations, it is covered by the Data Protection Act 1998. Organisations that gather, use and retain personal data must register as a data controller with the Information Commissioner's Office.

If you think you have been under surveillance, you can apply to the security company to obtain a copy of data held about you.

This is known as a 'data protection subject access request'. If you wish to pursue one against a private security company, contact Netpol for advice.



Civil Trespass and Possession Orders

What is civil trespass?

Trespass means encroachment onto or occupation of land without a legal right to be there: either because you do not own or lease the land, do not have permission or 'licence' to use it or there is no existing right of way.

When protesters occupy a building or land, landowners can lawfully use reasonable force to remove trespassers in an emergency (for example, to prevent damage to the property or land, or protect people's safety).

If, however, they use violence, landowners risk committing an assault or breaching **Section 6 of the Criminal Law Act 1977**, which prohibits the use of violence to secure entry onto 'premises' (which includes buildings, land around it or a site with a number of buildings).

The fact that people are trespassing does not give an automatic right for landowners to use force. Section 6 explicitly says "the fact that a person has any interest in or right to possession or occupation of any premises shall not... constitute lawful authority for the use or threat of violence."

What are possession orders?

Rather than use reasonable force, landowners, leaseholders or holders of a licence to use land or property are more likely to therefore apply to the civil courts for a 'possession order'. This ensures the claimant is granted possession (exclusive physical control). Claimants can include local authorities, which

may claim for possession of public spaces if this right is implicit in its statutory management powers.

A possession order may cover land occupied by trespassing protesters or a larger area that includes it – for example, it may cover not only a small area of woodland where protesters are camped, but the whole forest. In one case, a possession order was granted for the entire University of Essex campus, although students had occupied only some buildings.

‘Serving a claim’ means delivering the possession order to other parties named within it. When a claim is brought against ‘persons unknown’, it must be served by attaching a copy to the main door of the building or to a fence post or stake on an area of land. Documents must be ‘clearly visible’ and so are usually placed in a transparent envelope addressed to ‘the occupiers’.

To regain possession more quickly, landowners may also seek an **interim possession order (IPO)**, which they must file at the same time as a standard possession order. Courts may grant an IPO in limited circumstances: for example, if a landowner is claiming possession only but not damages or an injunction (see **Injunctions**), or only possession of a building solely occupied by trespassers but not a wider surrounding area.

An IPO imposes criminal sanctions, under Section 10 of the Criminal Law Act 1977, on trespassers if they refuse to end an occupation of land or buildings. If an IPO is granted against protesters, it is a criminal offence to remain for more than 24 hours after an IPO is served and anyone who remains is considered a trespasser, even if they were not part of the initial occupation.

Although in theory an IPO is granted for a limited period only, until a main court hearing, in practice it usually means the end of a protest occupation. A landowner must file an IPO at the same time as a standard possession order.

Is it necessary to attend the hearing and do we need a lawyer?

An initial possession hearing is most often held at a county court and is very short – if no-one contests the claim, the possession order is granted immediately. If someone does intend to contest the claim, they are expected to file a defence that includes any evidence that they wish to rely on. A defence against a possession order involving protesters may include procedural failings,

such as failing to serve documents correctly, or providing insufficient time before a hearing for protesters to obtain legal representation. It may also involve a public law or human rights grounds, such as whether the order is proportionate when balanced against the rights of freedom of expression and assembly.

If the court assesses that the claim is genuinely disputed on grounds that appear to be substantial, it is likely to set out procedural instructions that both parties must follow, called case management directions, and then a new hearing date.

The court might also grant an adjournment if there are procedural failures or if defendants need more time to prepare. In September 2013, West Sussex County Council went to the High Court to evict protesters from land beside the road through Balcombe but the application was adjourned because it was “flawed”. It took another month before the possession order was finally granted.

It is therefore essential that activists planning an occupation of private land consider in advance how they intend to deal with an application for possession and arrange for legal representation.

Are you likely to face huge costs?

Possession orders may name individual defendants who are known participants in an occupation, or ‘persons unknown’, or often both. Often, a defendant has no choice about whether they are named. One advantage of having at least one named defendant is that it allows someone to present a defence in court, which can significantly delay the eventual eviction. However, with little prospect of protesters obtaining civil legal aid, there is a risk that an individual who is named faces thousands of pounds in costs if, as is likely, the case is lost.

Often, one named individual can present a defence on behalf of a group of people who have ‘the same interest in the claim’. Courts have discretion over costs and are more likely to treat a losing party more sympathetically if proceedings are not disrupted, the court’s time is not wasted, a defendant is unable to pay or if a judge accepts an argument that occupation of land was for moral or ethical reasons rather than personal benefit. However, this is dependent completely on how understanding – or otherwise – the judge is.

Whilst a losing party is liable for costs, the inability of a defendant to pay may sway a sympathetic court to reduce the costs, or order that each party is responsible for their own costs.

When can the landowner seek an eviction?

Once a possession order is granted, a landowner has three months to apply for a warrant of possession, which is usually granted automatically. A landowner may also decide to apply to the High Court to seek a writ enforcing the order, which is usually quicker than a county court.

A warrant gives authority to **county court bailiffs** to attend the property and execute it, whilst a writ is executed by **High Court Enforcement Officers**.

Powers of Bailiffs

Bailiffs can use reasonable force to gain possession and remove all those in occupation of a building or land. They will attend a protest site with police who can arrest any trespasser who resists bailiffs, often for breach of the peace.

However, legally bailiffs are expected to act reasonably and are not allowed to use violence against you or threaten you.

If you want to make a complaint about a bailiff's actions or behaviour, or if you are asking for the return of your belongings after an occupation, you should complain to the bailiff firm in the first instance. You should do this in writing.

If this is unsuccessful, you can complain to the courts, or bring legal action against the bailiffs firm. You should seek advice from a solicitor before starting any court action.



Injunctions

What is an injunction?

Protesters may also face the threat of an injunction – a court order that instructs them to stop an existing activity or refrain from undertaking a particular future action. Breach of the terms of an injunction is contempt of court and can result in a fine or imprisonment. Like possession orders, injunctions may name particular individuals or ‘persons unknown’.

The grounds for an injunction include preventing:

- A breach of criminal law
- A current or planned trespass
- Harassment, through an injunction under the Protection from Harassment Act 1997
- The obstruction of a highway

Harassment injunctions under the 1997 Act have been criticised because it provides corporations with the same legal protection as individuals who face intimidation by stalkers and has been used widely against anti-war, climate and animal rights protesters (in 2013, for example, in Gloucestershire against opponents of the badger cull). These injunctions typically ban demonstrations against companies’ premises but have also been granted preventing protesters from raising their voices or, in a case involving energy company npower in Oxfordshire, from taking photographs of security staff.

Court orders have been granted based on claims that protesters are “alarming or distressing” employees, often at emergency hearings and using police statements of support or hearsay evidence that is impossible to challenge because protesters were not invited or were unrepresented.

However it is possible for protesters to challenge injunctions. In 2007, the British Airports Authority (BAA) sought an injunction to try to prevent the Heathrow Camp for Climate Action, which named 15 environmental groups including Friends of the Earth, RSPB and the National Trust. It was drafted so widely that it could potentially have banned millions of people from much of the Piccadilly Line and part of the M25 motorway. The High Court instead granted an injunction banning three named protesters and members of the anti-aviation protest group Plane Stupid from Heathrow, but its scope was limited and did not include the Climate Camp organisers or prevent the camp from going ahead.

Similarly in 2012, EDF Energy failed in their bid to impose an injunction to stop an alliance of anti-nuclear groups from protesting on land for a nuclear power station near Hinkley Point in Somerset. The High Court granted a possession order for a squatted farmhouse and an injunction against three named individuals, preventing them from entering the site, but not a blanket ban on all protest groups.

Local authority powers

In March 2015, the government published revised guidance to councils and the police on dealing with “illegal and unauthorised encampments”, including traveller sites, protest camps and squatters on both public and private land.

Restrictions on caravans and tents

Councils’ main power to direct unauthorised campers to leave land is under section 77 of the Criminal Justice and Public Order Act 1994 (see **Other Offences**)

Use of the Highways Act 1980

In December 2014, East Riding of Yorkshire Council used sections 143 and 149 of the Highways Act 1980 to issue notices at the anti-fracking camp at Crawberry Hill near Beverley. The notices requested protesters remove all caravans, tents and wooden structures within 35 days in order to comply. Two weeks after this notice period, bailiffs and police moved in to demolish structures built by the campaigners.

Section 130 enables councils to seek an injunction to “assert and protect the rights of the public to the use and enjoyment of any highway”.

Section 143 gives councils powers to remove structures from highways by serving a notice requiring “the person having control or possession of the structure to remove it within such time as may be specified in the notice.” If this notice is not complied with, a council can “remove the structure and recover the expenses reasonably incurred by them in so doing”.

Section 149 provides councils with powers to remove any item deposited on a highway that may constitute a nuisance. Once again, the council can issue a notice requiring removal and if this is not complied with, it can seek a removal and disposal order from a magistrates’ court.

Temporary Stop Notices

In 2013, the government removed restrictions on the ability of local councils to use ‘Temporary Stop Notices’ under **Section 171E of the Town and Country Planning Act 1990**, in order to stop any activity that breaches planning control for a period of 28 days. This was aimed primarily at Gypsy and Traveller sites like Dale Farm and gave councils powers to take immediate action against the establishment of any ‘illegal encampment’ without first seeking an enforcement order.

The penalty for non-compliance is a fine of up to £20,000 on conviction.

Powers of entry onto land

Councils also have powers (under Sections 196A, 196B and 196C of the Town and Country Planning Act 1990) enabling authorised officers of the local planning authority to enter onto land to obtain information required for enforcement purposes. They are likely to try and do so without obtaining a warrant, unless they expect a refusal to allow them access.

Wilful obstruction of an authorised person is an offence.



Common Criminal Offences

- The most common offences listed here (except in some instances for criminal damage) are tried at a magistrate's court. Section 127 of the Magistrates Court Act 1980 places a time limit on bringing charges of "6 months from the time when the offence was committed"
- If you are found guilty of a crime involving civil disobedience through peaceful direct action, the likely penalty is a conditional discharge – see 'Sentencing on Conviction'
- If you are arrested during an anti-fracking protest, please contact Green and Black Cross at gbclegal@riseup.net and let them know.
- If you need a criminal solicitor recommended by other activists, see netpol.org/criminal-solicitors

Obstruction of the Highway

Section 137 of the Highways Act 1980 says that "if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence". The penalty for this offence is a fine and not imprisonment.

Any occupation of a road is potentially an obstruction and a series of court cases have established a highway can include the grass verge at the side of a road, a footpath, an industrial estate, the pavement outside Parliament and, since the Occupy protests of 2012, parts of the churchyard at St Paul's Cathedral.

In examining 'lawful excuse', courts need to decide if an activity causing an obstruction is itself lawful and whether it is reasonable: in the case of a protest, taking into consideration Article 10 (freedom of expression) and Article 11

(freedom of assembly) of the ECHR. For example, the peace campaigner Brian Haw's long-term protest in Parliament Square in London was found not to constitute an obstruction of the highway as it was deemed reasonable, bearing in mind his right to protest.

At Balcombe, most anti-fracking protesters arrested for obstructing the highway were acquitted, because the police had already closed the road through the village. In January 2015, another Balcombe protester had a conviction for this offence overturned because other activists who had slowed the progress of a vehicle by walking in front of it had either not been arrested, or had had their cases dropped before reaching court.

At Barton Moss, protesters had their convictions quashed on appeal because the "highway" they were allegedly obstructing was in fact a private road.

However, a number of protesters at Crawberry Hill in East Yorkshire were convicted of blocking the road outside the site. All received conditional discharges

Aggravated Trespass

The criminal offence of 'aggravated trespass' is the one that protesters on private land or property are most likely to face arrest for.

In November 2011, anti-fracking activists were arrested for aggravated trespass at Cuadrilla's Hesketh Bank test drilling site and found guilty in July 2012. All received conditional discharges and a fine. In March 2015, one of the protesters who occupied Cuadrilla's offices in Blackpool during the Reclaim the Power weekend of protests the previous August was found guilty of this offence and fined £250, but also order to pay over £500 compensation to the local Chamber of Commerce that shares the same building.

Section 68 of the Criminal Justice and Public Order Act 1994 says that anyone who trespasses on land and does anything to intimidate someone engaged in a lawful activity or to disrupt or obstruct a lawful activity on land is committing a criminal offence.

The Supreme Court has ruled that an activity protesters are disrupting is only "unlawful" for the purposes of section 68 if it involves a criminal offence integral to the "core activity" carried on, not when it is only incidental.

For example, a protester obstructing the clearance of land to set up a test drilling site cannot claim this is unlawful simply because workmen were not wearing adequate protective clothing and were therefore in breach health and safety regulations. The “core activity” disrupted is the establishment of the site, which if it had been properly authorised is therefore lawful.

Section 69 of the Act makes it an offence to ignore the directions of a uniformed police officer to leave the land, when a senior officer present reasonably believes that the person is committing or is about to commit aggravated trespass. It is also an offence to return to the land as a trespasser within 3 months.

Even if someone who is arrested can subsequently show that they were not committing an offence (for example, because the activity that protesters were challenging was unlawful or those engaging in it were themselves trespassers), an arrest under Section 69 remains lawful provided the officer’s belief was a reasonable one.

Originally section 68 referred to ‘land in the open air’ – the aim of the 1994 Act was to tackle outdoor ‘raves’, hunt saboteurs and mass trespass by protesters occupying a site to disrupt new road construction plans. However, it was amended in 2003 in the Anti-social Behaviour Act, which extended provisions relating to the offence of aggravated trespass to cover trespass in buildings (like Cuadrilla’s office in Blackpool, for example), as well as in the open air. After these amendments came into force, it became possible to commit the offence inside a building such as a retail outlet, shopping centre or office.

What about on public footpaths?

You cannot commit aggravated trespass on a public road or on the pavement by the side of a road. However, this does not include a footpath that is not beside a road, a path through private land where the public has a right of way on foot or on a horse (a bridleway), or a cycle track.

In what circumstances might aggravated trespass apply to a building?

People are allowed to enter a building (as customers of a shop, for example) with the permission of the owner, who can refuse entry or ask them to leave. A

person refusing to leave is a trespasser, but aggravated trespass is aimed at individuals to deliberately intend to interfere with lawful activity in the building by some 'additional act' of intimidation, obstruction or disruption.

Can you commit 'aggravated trespass' simply by trespassing?

In order to convict a person of aggravated trespass, prosecutors must prove not only the trespass, but also an additional act intended to intimidate, obstruct or disrupt. In 1999, the High Court quashed convictions where the prosecution had failed to establish that protestors who trespassed on the site of an opencast mine had engaged in any 'additional act' other than the trespass.

However, convictions of protestors arrested at the UK Uncut action at Fortnum & Mason in March 2011 were upheld, even though there was no direct evidence that they had directly participated in any acts of intimidation. The High Court held that participation in the demonstration was itself an act distinct from mere trespass because it was an occupation "in force".

This means protestors trespassing only to participate in a protest may commit the offence of aggravated trespass, although this depends very much on the nature of the protest.

It would be no defence to argue that the intention to interfere with a lawful activity, if it existed, was ultimately unsuccessful.

What might the police and courts call 'intimidation'?

The police and the courts may try to classify any 'additional' conduct whilst trespassing as intention to intimidate (or indeed to obstruct or disrupt). There is no requirement that it should itself involve a crime and it could include activities such as playing a musical instrument, taking photographs or chanting slogans.

What about if the landowner is not on the land or in the building?

A person must be physically present on the land or in a building and conducting lawful activity before a prosecution can prove they were

intimidated. In 2000 a protest against an Aventis Cropscience UK GM crop trial in Dorset led to protesters trespassing into the field where the trial was taking place and destroying part of the crop. Convictions for aggravated trespass were appealed and in 2001, the High Court ruled that as neither the farmer who owned the land nor anyone connected with the Aventis were present when the trespass took place, no offence was committed.

Obstructing police and assaulting a police officer

Section 89 of the Police Act 1996 is one of the more common offences used against activists when they are accused of obstructing a police officer while that officer is attempting to do their job. It can include refusing to move or refusing to cooperate while officers are attempting to drag you away. Legal observers are also often threatened with this charge.

There are more rare incidents when someone is accused of assaulting an officer. Both are considered at magistrate's courts only.

'Obstruction of an officer' includes physically obstructing them when they are doing something, but it also includes doing an act that forces the officer away from their duties. It can also include things like giving fake details to the police. Note that simply refusing to give your details is not obstruction.

'Assault' means intentionally or recklessly causing a police officer to sustain immediate unlawful violence. It is not necessary that there is any injury to the officer.

Breach of the peace

Breach of the peace is an old common law concept that is difficult to define but European Court of Human Rights has said that it can only be applied when using or threatening to use violence either against a person or, in their presence, their property.

However, you do not have to commit or threaten violence yourself to face arrest for breach of the peace: if the consequence of your actions provoke others to use violence and the police reasonably believe a breach of the peace is about to happen, they can arrest you to prevent it.

You should not be arrested to prevent a breach of the peace for merely making a noise or being slightly annoying, offensive or upsetting someone – your actions must make a violent response likely and imminent.

Police powers

If the police reasonably believe that a breach of the peace is being committed, or is about to be committed, on private property, they may use their common law power to enter the property without a warrant in order to stop or prevent the breach. During anti-fracking protests, this is the reason the police usually give for their presence when accompanying bailiffs to clear protest camps.

It is also possible for the police to take action to prevent a breach of the peace without making immediate arrests. For example, officers can direct people to leave an area, but the circumstances where they can make these directions as when they arrest someone. If you fail to comply with a direction, you may face arrest for **obstructing a police officer** (see above).

The police can lawfully use the public order tactic of ‘kettling’ (in police jargon, ‘containment’) for as long as it is necessary to prevent a breach of the peace. If there is no longer an imminent threat of a breach of the peace, the police do not have the power to detain further, but the police decide when such a threat has past.

Breach of the peace is not an offence. You do not have to give your details (or fingerprints, photo or DNA) to the police. This is different in Scotland, however, where a breach of the peace is a chargeable offence.

Bindovers

Most people arrested for breach of the peace are held only until the threat of a breach of the peace is over. In rare cases police can take a detainee to a magistrate’s court to seek a ‘bind-over’. If you do appear in court, you will have the opportunity to argue that your actions did not constitute a breach of the peace.

If you are “bound over” to keep the peace, you have to agree not to cause a further breach within a specified period. If you cause a further breach within this period, you are liable to pay part or all of a fixed sum to the court. A bind-

over is not a conviction. If you refuse to accept a bind-over, the court may imprison you for a period up to six months or until you comply with the order.

Criminal damage

Section 1 of the Criminal Damage Act 1971 covers damage or destruction of property belonging to another person without lawful excuse, as well as the intention to destroy or damage property or 'recklessness' with it.

Section 2 covers threats to destroy or damage property and **Section 3** covers possessing anything (for example, a hacksaw) with intent to destroy or damage property.

It is a defence, under **Section 5**, to show that you had a 'lawful excuse' to undertake property damage or destruction and that it is immaterial whether a defendant's belief in this is justified, as long as it is an honest belief (something that a jury can then decide upon if you cause enough damage).

This is the "crime to prevent a greater crime" defence. You have to show that the threat you are taking action against is imminent and that your actions are proportionate and necessary. In 2008, six Greenpeace activists who occupied a chimney at Kingsnorth power station in Kent were cleared of charges of criminal damage after successfully arguing that they were legally justified because they were trying to prevent climate change causing greater damage to property around the world.

Failure to comply with conditions placed on protests

Section 12 and **Section 14** of the Public Order Act 1986 allow police to impose conditions on protests.

Section 12 allows a senior officer to impose conditions on processions if the officer reasonably believes that they are necessary to prevent serious public disorder, serious criminal damage or serious disruption to the life of the community, or if the police believe the purpose of the organisers is the intimidation of others. Conditions can include the route the procession can take or areas it cannot enter.

Section 14 applies to static public assemblies of two or more people. As with Section 12, the senior officer may impose conditions to prevent serious public disorder, serious criminal damage and so on, but unlike Section 12, these conditions are limited to specifying the numbers of people who may take part, the location of the assembly and its maximum duration.

If the police know about a procession or assembly in advance, as is usually the case for advertised protests, a senior officer can impose conditions, in writing, in advance.

It is an offence to fail to comply with conditions imposed on an assembly or protest only if the conditions are **known**. Someone who is unaware that conditions have been imposed, or what those conditions are, does not commit an offence.

Where a protest has an identified organiser, that person (or persons) may commit an offence if they fail to comply with an imposed condition.

How many people count as “an assembly”?

It used to be that there needed to be more than twenty people in order to count as “an assembly”. The Anti-Social Behaviour Act 2003 amended the act to reduce the numbers of people to two.

What is a “public place”?

The Public Order Act 1986 defines a “public place” as any highway, or any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission. This would therefore include, for example, a supermarket car park and garage forecourt that the public has “implied permission” to enter.

Are the police required to provide a Section 12 or Section 14 notice in writing?

If a Section 12 or Section 14 notice is issued in advance of an advertised march or assembly, the chief constable of police must provide it in writing. However, the senior officer present at impromptu protest where there is no advance warning can exercise these powers without putting them in writing.

Can the police arrest me if I have not been told about the conditions?

The police can arrest you for failing to comply with Section 12 or 14 conditions but it is a defence to say that you had no actual knowledge of the conditions – because you had not been told or given a notice, if one existed

The police sometimes use a megaphone to issue a notice at the scene of an assembly and it is a defence if you can show you were unable to hear their announcements. For example, when section 14 was used as a mass arrest tactic at Balcombe in August 2013, a number of protesters arrested for breaching the conditions of the notice were acquitted because paper copies of the notice were not properly distributed and instructions given by police over loud hailers were drowned out by the noise of the protest.

What if a static assembly becomes a march, can the police still use Section 14?

No, they would need to use Section 12 conditions that govern marches. The police sometimes wrongly seem to think that Section 14 gives them the power to outlaw any form of protest other than the assembly on the day in question.

What conditions can the police legally impose?

The police cannot impose a condition preventing you from blowing whistles or banging drums. Nor should they impose conditions under Section 14 on the route protestors take to and from an assembly, or restrict the numbers of people who may leave the assembly at any one time.



Other Offences

Failure to comply with powers to remove trespassers on land

Section 61 of the Criminal Justice and Public Order Act 1994 gives the police powers to remove trespassers from public or private land who look as though they plan to set up a camp, or the police suspect that is the intention. It was used to evict one of the camps at Balcombe.

The police must reasonably believe that individuals are trespassing with the “intention to reside” or have damaged the land, used “threatening, abusive or insulting words or behaviour” or have more than six vehicles. They can then direct you to leave the land and to remove any vehicles or other property.

In making a decision to evict, a police officer of the rank of inspector or above must assesses whether doing so is legal (are all conditions present?); necessary (could other methods be used, such as regular patrols or arrests if anyone commits a criminal offence?) and proportionate (are your rights to protest balanced against the rights of the landowner or local community and is it right to evict everyone?)

It is an offence not to leave or to return within three months, but there are often opportunities to prolong your occupation, because the law does not define “as soon as reasonably practical” or set a deadline by which you have to leave.

The maximum penalty for this offence is three months imprisonment or a fine of £2500, or both.

Trespassory Assembly

A trespassory assembly is a static gathering involving more than 20 people in the open air on land to which the public has no right, or a limited right, of access.

Section 14A of the Public Order Act 1986 provides a chief police officer with powers to apply for an order to prohibit all trespassory assemblies in a district, as long as he has a reasonable belief that assemblies are planned on land where:

- The public has no right or limited right of access.
- The occupier has not granted permission of the occupier, or an assembly might exceed the occupier's permission or the public's right of access.
- There is a risk of serious disruption to the "life of the community".
- There is a risk of damage to land or any building of historical, architectural, archaeological, or scientific importance.

In such circumstances, the chief officer can apply to the council of the district where trespassory assemblies make take place, asking it to make an order, with the consent (in England and Wales) of the Home Secretary. In Scotland, a council can make an order without seeking consent.

Section 14B says that anyone who organises, takes part in or incites others to participate in an assembly prohibited by an order is guilty of an offence.

Under Section 14C, a police constable in uniform who reasonably believes someone is on the way to a prohibited assembly may stop and direct the person not to proceed in the direction of the assembly. Officers can only exercise this power within the area where the order applies. It is an offence to fail to comply with the constable's direction.

In 1999, the House of Lords ruled that the first two protesters arrested for trespassory assembly were wrongly convicted. Dr Margaret Jones and Richard Lloyd had taken part in a peaceful roadside demonstration in June 1995, marking the 10th anniversary of the infamous "Battle of the Beanfield", when demonstrators had sought to gain access to Stonehenge. Salisbury District Council had made an order prohibiting the holding of all anniversary

“trespassory assemblies” within a radius of four miles from the ancient monument.

Jones and Lloyd were arrested and convicted by magistrates, but cleared on appeal by Salisbury Crown Court. In January 1997 two High Court judges ruled that the Crown Court had misinterpreted the law but in March 1999, the Lords ruled, on a 3-2 majority verdict, that the defendants had not committed the offence. Their ruling established that the use of a public highway did not amount to trespass and the rights of the public extend to peaceful assembly, so long as the assembly does not obstruct the highway.

Failure to comply with powers to direct unauthorised campers

Section 77 of the Criminal Justice and Public Order Act 1994 provides local authorities with the power to “direct unauthorised campers (in vehicles) to leave land”.

After a notice is served, an individual commits an offence by failing to leave the land or remove any vehicle “as soon as practicable”, or by returning within three months.

Section 77 has mainly been used against Roma and Travellers. However, local authorities might use it against a fracking camp that includes caravans, trailers or live in-trucks.

“Besetting” under section 241 of the Trades Union and Labour Relations (Consolidation) Act 1992

Section 241 is part of trades union legislation but the offence of “besetting” (“intimidation or annoyance by violence or otherwise”), dating back to late nineteenth century law, has most commonly been used against secondary picketing but it is not restricted to labour disputes.

The Act says a person commits an offence if they watch or beset “the house or other place where that person resides, works, carries on business or happens to be” with a “view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing.”

Two activists at Balcombe were arrested and convicted of “besetting” after they were alleged to have compelled Cuadrilla’s staff, contractors and suppliers to not go about their lawful business, by locking onto the gates of the site. The company said the delay prevented deliveries and cost it £5000. Others were acquitted because they were not physically in proximity to the workforce and “besetting” must be successful to constitute an offence.

Conviction under section 41 can lead to a maximum sentence of six months imprisonment or a fine of up to £5000, or both. The convictions at Balcombe, however, resulted in one 12-month conditional discharge and one £200 fine.



Sentencing on Conviction

Civil disobedience

If you are found guilty of a crime, judges or magistrates will consider mitigating circumstances and are generally prepared to accept that for most offences committed in the context of peaceful direct action, the appropriate penalty is a conditional discharge, whether a protester has pleaded guilty or has been convicted following a trial.

This is based on remarks made about civil disobedience by Lord Hoffman in a Court of Appeal judgment in 2006, involving convictions resulting from protests at RAF Fairford on the eve of the Iraq War. Hoffman said:

My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions.

This can apply even if a defendant has a prior conviction in similar circumstances involving acts of conscience, although convictions for other

offences can also become an aggravating factor. Thus, the few anti-fracking protesters arrested at Barton Moss in Salford and later convicted all received conditional discharges and small fines. Similarly, most defendants convicted over protests at Ellesmere Port have been conditionally discharged and fined but in April 2015, one received a prison sentence because of an extensive criminal record for robbery and violence.

District Judges are usually aware of Lord Hoffman's remarks, but lay justices (and their clerks) are often not. It is important that advocates – and especially defendants representing themselves – draw the court's attention to this passage on acting on grounds of conscience, which is in paragraph 89, R v Jones [2006] UKHL16.