



# 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](mailto:gbclegal@riseup.net) and let them know.
- If you need a criminal solicitor recommended by other activists, see [netpol.org/criminal-solicitors](http://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.