LEGAL ADVICE FOR ACTIVISTS

INTRODUCTION

This booklet is intended to provide advice to activists in dealing with some of the more common pieces of law, which you are likely to encounter during the course of protests. It does not deal with every possible law you might encounter but instead focuses mainly on police powers to control public order and how these can be challenged.

This is the fourth edition we have made of this guide and takes in to account the relevant changes to the law under the provisions of the Criminal Justice Act 2003 and the Anti-Social Behaviour Act 2003. These give substantially new powers to the police in relation to public order law and to police powers of arrest, detention and bail as well as new powers to take fingerprints and DNA.

This edition takes account of recent rulings in the High Court on the application of the Protection from Harassment Act 1997 and police powers to detain for breach of the peace. It now includes a briefing on police powers under the Trade Union and Labour Relations Act 1992, as this legislation is still used against activists. Also included are notes on new powers and laws now being used including civil injunctions, anti-social behaviour orders and penalty notices.

The advice contained in this booklet is correct to our knowledge as of August 2004. Nothing is this booklet is intended to encourage you to break the law. Please seek further legal advice before acting on the contents of this booklet. It is not guaranteed in any way, and is not a substitute for proper legal advice

There is an on-line edition downloadable from http://www.freebeagles.org/. This site also contains articles on specific areas of the law, as well as a section on case law containing transcripts of relevant cases. In future this site will include a section containing legal updates to this booklet as and when the law changes. If you have any queries, contact us at info@freebeagles.org/.

GIVING YOUR DETAILS AND SHOWING ID

GIVING YOUR DETAILS

Other than under road traffic and anti-social behaviour legislation, you do not commit an offence in English law by refusing to give your name and address to the police. However there are certain situations where the police may arrest you if they cannot establish your name and address, and if you are arrested and charged with an offence you will be unlikely to be granted bail unless they can establish these details.

PRIOR TO ARREST

The general rule to remember is that you never have to give your name and address to the police prior to arrest, subject to the following 2 exceptions:

- where the police reasonably suspect you of a non-arrestable offence, and require your name and address for the service of a summons (Section 25 Police and Criminal Evidence Act 1984 (PACE)).
- where you are the driver of a vehicle
- where the police say they suspect you of "anti-social behaviour".

Section 25 Police & Criminal Evidence Act (PACE)

The main situation where you have to give your name and address to the police is when they say that they want to issue you with a summons for a non-arrestable offence

Section 25 of the Police and Criminal Evidence Act 1984 (PACE) states that the police can arrest you where they reasonably suspect that you have committed a non-arrestable offence, and serving you with a summons is inappropriate because they cannot establish your name and address or because they reasonably suspect that the details you have given are false.

If the police say they suspect you of an offence, you should ask them to state what the offence is. This will make it easier for you to decide if they "reasonably suspect" you of the offence or not. If you know the law, you will have some idea whether the police do reasonably suspect you or if they are just fishing for information. The police often bluff simply in order to get your details. For example if they pull your vehicle over on the way to a demo and demand that everyone give their names and addresses, then it's unlikely that they will suspect everyone of an offence. On the other hand if you have left the scene of a demo where there was disorderly conduct or aggravated trespass, then the police could use Section 25 if they have evidence that you or your vehicle was involved. If you are arrested under Section 25, the police must release you as soon as they have established your name and address. For more on "non-arrestable offences" see Page 16.

You are only obliged to give the police an address that can be used for the service of a summons, and this need not necessarily be your home address. So, for example, you could give the police the phone number and address of a solicitor who is willing to receive the summons on your behalf. The police would normally phone the solicitor to confirm this, so it is something you would probably need to arrange in advance.

If you do decide to give the police your name and address, they may still arrest you if they reasonably believe that the details you have given are not true. This is where they may ask you for some form of identification. There is no obligation to provide the police with ID, and the police can make various checks to establish this (see "Providing ID, Page 3).

Driving a Vehicle

The police can demand your name, address and date of birth where you are driving a vehicle on a road. They can also demand these details if they have reason to suspect that you have committed a driving offence or been the driver of a vehicle which has been involved in an accident. You commit an offence by refusing to give your details in this situation, and the police can arrest you for this under Section 25 PACE.

Whether or not you are "driving" is a matter of fact and degree. You must have some form of control over the vehicle and this can include sitting at the wheel while the engine is running or steering a vehicle which is being towed. If you are not actually in the vehicle, then the police cannot say you are "driving" it and thereby demand your details.

A road is defined as any highway or road to which the public has access.

Section 50 Police Reform Act 2002

A recent development in police attempts to gain activists' details is the use of Section 50 of the Police Reform Act 2002. This makes it an offence to refuse to give your name and address to a police officer, where the officer reasonably suspects that you have engaged in "anti-social behaviour".

"Anti-social behaviour" is defined as behaviour that has caused harassment, alarm or distress to other people. Section 50 carries no specific power of arrest, but if you refuse to give your name and address, then the police can say that they suspect you of committing a non-arrestable offence and Section 25 PACE applies.

The use by the police of this power will at some stage be challenged in court, as it was not designed to deal with political protest but with anti-social behaviour, for example by youths on housing estates. However, police forces are increasingly using the power, and you should be aware that they could arrest you if you refuse to give details

AFTER ARREST

After arrest you still have the right to remain silent, but failure to give a name and address will mean that you will probably not be given bail if you are charged. If you are not charged with an offence then the police have to let you go, even if they don't have your name and address.

The point to remember is that you do not commit an offence in these circumstances by refusing to give your name and address. This does not amount to the offence, for example, of obstructing the police in their line of duty. If the police try and tell you otherwise they are bluffing. There may well be very good reasons for you to delay giving your details to the police – eg. in order to give someone time to get to your house before it is raided.

If you give false details at any stage you could be liable for obstructing a police officer in his line of duty or even, more seriously, for perverting the course of justice.

GIVING YOUR DATE OF BIRTH

Except where you are the driver of a vehicle or have been involved in a vehicle accident or committed a road traffic offence, *you never have to give your date of birth* and you cannot be arrested or detained for refusal to do so.

PROVIDING ID

Regardless of what the police may say, you are not legally obliged to carry ID but sometimes the police will ask you for this all the same. In certain circumstances they can arrest you either for refusing to supply them with details or where they suspect the details you have given are false. Under Section 25 PACE the police can arrest you if they cannot establish your details or they reasonably believe the details you have given are false. If the police have demanded your details under this section and they have 'reasonable suspicion' that the details you have provided are not correct, then they have the power to arrest you in order to establish your name and address.

This situation could arise for example where you are the driver of a vehicle and are unable to produce your documents to the police. This is technically an offence (although you will not be prosecuted if you produce your documents later at a police station) and so it triggers the power in Section 25 PACE. The police may then demand that you show some proof of name and address or face arrest. The police are often bluffing in these situations, and unless they have genuine reason to believe you are lying it's quite rare for them to arrest you. But if you don't want to take the risk, it's best to either have some ID on you or some other means of confirming your name and address.

Even if you have no ID on you, the police can often establish your details by checking the electoral register or the Police National Computer. Nowadays they can check the Motor Insurance Database, as this gives them the name and address of the keeper of the vehicle. They can also check the DVLA database to see if you actually have a driving license. If your name comes up on one of these checks, then it will be hard for them to say that they reasonably believe the details you have given are false even if you cannot produce any ID.

Another method the police sometimes use is to ask for the phone number of someone who can confirm your name and address. If you have no ID on you and you think you're going to be arrested, you can offer the phone number for example of your solicitor who will confirm your identity. If the police refuse to phone them, it will be hard for them to argue later that they "reasonably suspected" that the details you gave were false, as a reasonable police officer would attempt to phone the solicitor.

AT THE POLICE STATION

YOUR RIGHTS

If you are arrested you should be told by the arresting officer that you are under arrest and the reason why - make a note of this. You should then be taken to the nearest police station, unless the police want to issue you with "street bail" – see page 7. You have the right to remain silent, and you should exercise this at all times, other than to give your name and address. You don't have to say anything, but if the police cannot establish your name and address you won't get bail if you are charged with an offence.

When you arrive you will be booked in by the custody sergeant, who then becomes responsible for your detention at the police station. His job is to ensure that your rights are complied with and to keep a "custody record" of your detention. He should inform you of the following:

- You are entitled to speak to a solicitor free of charge. If you know the name of your chosen firm of solicitors, the police will be able to find the phone number and contact them. If you do not have a solicitor, you can use the duty solicitor – but see below.
- You are entitled to have someone informed of your arrest. At the custody officer's discretion you can usually speak to that person on the phone.
- You are entitled to consult the PACE codes of practice. This manual details the manner in which the police are bound by law to treat detained persons.

The police can NEVER delay your right to have someone informed of your arrest or to speak to a solicitor unless you have been arrested for a "serious arrestable offence". We advise that you speak to a solicitor straight away. This will enable you to have people informed that you are under arrest and let the police know that you know your rights and are not a soft touch.

If you choose not to exercise any of your rights when you are booked in, you may still exercise them at any point in the future. You should work on the assumption that any phone conversation you make will be listened in to by the police. Despite what the police may say, do NOT sign to say that you do not wish to speak to a solicitor or have someone informed of your arrest.

If you are in any doubt as to the reason why you are being detained then ask the custody sergeant, who is under a duty to tell you.

You will be searched and you will have your personal belongings including any watch or belt taken from you and placed in a bag. Under recent legislation, the custody sergeant is no longer obliged to log all your personal property and may do so at his discretion. If your property is logged, you will be asked to sign a form to confirm that this is your property, so – if you choose to sign - make sure the inventory is correct, and sign directly underneath the last item, so the police can't add anything afterwards. You will then be taken to a cell, where you will usually have to wait a few hours before being interviewed or released.

As part of your custody record, the custody sergeant will ask you for your date of birth, occupation, height and other details. You are under no obligation to answer any of these questions and you should not feel pressurized in to doing so.

STAY CALM AND DON'T PANIC

The most important point to remember during your time in police custody is to stay calm and relaxed and NOT to talk to the police. The experience of being arrested for the first time can be quite unnerving. The whole process is designed to scare and intimidate you. Many people find the hardest part is being alone and powerless in a cell, with the added disorientation that you do not know the time, as your watch will have been taken from you.

You may feel that you should just tell them anything in order for them to let you go. If the police sense that you are unfamiliar with the process, they will use all manner of tricks to make you think that it is in your best interests to give an interview, so don't fall in to this trap. Stay calm, stay quiet and you will usually be out within a few hours.

INJURIES

If you have any injuries – for example bruising from handcuffs - make sure these are logged by the custody sergeant/ You can also insist on seeing the police doctor, who should make a note of your injuries. This may not only help you with any criminal charges brought against you, but may also get you more money if you sue the police later.

SOLICITORS

A free duty solicitor is available at the police station. Sometimes the duty solicitor can be very good, but it's usually better to speak to your own one as many duty solicitors are ex-police officers and often will have more in common with the police than they do with you. In any case, you're better off speaking to a solicitor experienced in dealing with protest cases – see the list at page 42. If you know the name or firm of your solicitor, the police should be able to locate them, but it's better if you already have their phone number on you.

INTERVIEWS

Do NOT agree to be interviewed without a solicitor present. Any interview will be tape-recorded and you are entitled to have a solicitor present free of charge, regardless of your income. These safeguards exist to prevent the police from fabricating evidence or being too aggressive.

Before questioning you the police must caution you along the following lines: "You have the right to remain silent, but it may harm your defence if you fail to mention now anything which you later rely on in court. Anything you do say may be used against you."

You have the right to REMAIN SILENT and you should exercise this right during interview and at all other times. If the police sense that you are scared or in any way unsure, they may use any number of tricks to try to get you talking. Eg:

- *The sooner you make a statement the sooner you can go home.*
- *If you don't make a statement then you won't get bail.*
- *If you're innocent then you have nothing to hide.*
- *We just want to hear your side of the story.*

These are all just tricks to get you talking. The only reason you are being interviewed is because the police are seeking more evidence to charge you with an offence. The interview is for their benefit, not yours.

One trick they sometimes use is to say that the main activists – "the ringleaders" – won't risk getting arrested themselves and are using you and letting you take the rap. Don't be taken in by it. This is a classic ploy adopted by the police to turn people against each other in order to gain evidence. They have arrested you, because the arresting officer thinks you are guilty of an offence. The custody sergeant has authorized your detention in order to gain more evidence to secure a conviction by questioning you.

Anything you say outside the taped interview may also be used in evidence against you – for example an informal chat in the police car after you have been arrested. The police often try to engage you in friendly conversation as they are taking your fingerprints or DNA – make no mistake, this is an attempt to gather evidence and you should not be taken in by it. If you are in any doubt about this, have a look at news archives on the internet and you will find any number of cases in which evidence was produced of what a suspect said outside the interview room.

You should also be aware that the police sometimes bug police cells and any evidence obtained in this way is admissible in court.

RIGHT TO SILENCE AND THE "ADVERSE INFERENCE"

Despite what the police or anyone else might tell you, the right to silence has not been abolished. A magistrate or jury may take in to account the fact that you remained silent during interview and draw an "adverse inference" from this (ie this could count towards evidence that you are guilty). Because of this solicitors sometimes advise suspects to make a short statement to the police. Our advice however is to remain silent for the following reasons.

Firstly, the police are only interviewing you because they are looking for evidence in order to charge you. They cannot charge you simply on the basis that you refused to make a statement.

Secondly by talking to the police, you may not only implicate yourself in crime, but also others as well. Your interview could lead to other people being arrested and charged. They may then make statements implicating you. Your solicitor may not care what happens to other activists, but you should.

Thirdly, most people – even experienced activists - find that once they have started talking it is very difficult to stop. If you try to lie you may soon end up tying yourself in knots and making matters worse.

PHOTOGRAPHS, FINGERPRINTS AND DNA

Photographs

The police can take the photograph of anyone under arrest, and use force if necessary. This power was introduced in the Anti-Terrorism, Crime and Security Act 2001 in the wake of the September 11th attacks on America.

Fingerprints / DNA

The police can now take the fingerprints and DNA of anyone who has been arrested for a "recordable offence". The National Police Records Regulations 2000 defines an offence as "recordable" if it is punishable by imprisonment or if it is a "specified offence". This covers just about every public order offence other than "breach of the peace". Unless your arrest was unlawful, the police may keep your fingerprints and DNA on file indefinitely regardless of whether or not you are subsequently charged with or convicted of an offence.

How long will I be held?

The police can hold you for up to 36 hours, if you have been arrested for an "arrestable offence". However, if you have been arrested for an offence that is not strictly speaking "arrestable", then the maximum time they can hold you is still 24 hours as before. The Home Office guidelines indicated that the power to detain for up to 36 hours should be exercised sparingly. See "Police Powers of Arrest" (page 15) for more on "arrestable offences".

The period of detention begins from when you arrive at the police station, and not from the time of your arrest. For most minor public order offences, you are unlikely to be detained for longer than 6 hours. An officer of the rank Inspector or higher has to authorise your continued detention after the first 6 hours, then every 9 hours after that.

In serious cases, the police can apply to magistrates to detain you for longer – up to a maximum of 96 hours without charge.

What happens next?

Once the police have processed you, taken your fingerprints / DNA and interviewed you, they will have to decide whether or not to charge you with an offence.

Release After Charge

If the police charge you, this means that they think they have sufficient evidence to secure a conviction. You will usually then be bailed to appear before magistrates within the next couple of weeks. You are only likely to be refused bail if you have been charged with a serious offence, or the police cannot establish your name and address, or if you are already on bail for other offences. If so, the police have to bring you before the first available magistrates' court where they will apply for you to be remanded in custody. If this happens consult a solicitor straight away.

If you do get bail it may well have conditions attached. These typically include conditions not to enter a certain area, not to approach certain people and to reside at a certain address.

If you feel that the bail conditions are too harsh you can ask the custody sergeant to review them. If he insists on imposing the conditions, then you can either accept them or stay overnight until court the next day and challenge them there. If you do accept the conditions, you can still challenge them at your next court appearance. The prosecution may also apply in court for extra conditions that were not originally imposed by the police.

Release Without Charge

If the police decide they have not got enough evidence with which to charge you, they have to let you go – even if they haven't established your name and address. You may be either released unconditionally or released on "police bail" under a duty to appear at a specified police station at a later date. This will be to enable the Crown Prosecution Service to decide what offence, if any, to charge you with (see page7).

The police cannot presently attach conditions to this kind of bail, other than that you attend a police station at the time and date specified. However under the new law due to come in to force around the end of 2004, the police will sometimes be able to conditions on police bail even when you have not been charged. This will be when they have enough evidence to charge you, but need to refer the case to the CPS (see "Release on Police Bail", page 7)

Cautions

The police may offer you a "caution" – see page 9.

Bail Offences

If you are bailed to appear in court or at a police station and fail to do so, you could commit an offence under Section 6 of the Bail Act 1976. In your defence you can say that you had a "reasonable excuse" – eg you were sick or stuck in traffic. It is not a criminal offence to breach any other bail conditions, but if you are caught the police will probably arrest you and put you before magistrates.

BAIL - THE NEW LAW

Introduction

The Criminal Justice Act 2003 has introduced major changes to the system of granting bail due to perceived inadequacies in the charging procedure. Police now have new powers to grant 'street bail', without having to process the prisoner in the police station.

In many cases, the Crown Prosecution Service (CPS) rather than the police will in future take over decisions on whether to charge offenders. They will then have the power to charge suspects directly by way of the new 'written charge'. Alternatively they may direct the police to offer the suspect a caution or the new "conditional caution".

In future it will be harder for defendants to get bail if they are already on bail for another imprisonable offence, and prosecution powers to appeal against such bail decisions have been increased.

"Street Bail"– powers of police to grant bail elsewhere than at a police station

Up until the passing of the Criminal Justice Act 2003, the police had to take you to a police station as soon as reasonably practicable after arrest. The police did have the power to release you before getting to the police station, but in doing so they could not bail you to attend at a later date. Under the new law, the police now have new powers to release prisoners on bail before reaching the police station, under a duty to appear at a specified police station at a later date.

This new power will significantly affect animal rights, anti-globalisation and other protest groups. In mass demo situations the police are often unwilling to make large numbers of arrests, as this means that police officers will be taken away from the scene for several hours to deal with them. Also as the venues for protests are frequently changed at the last minute, there is often no cell space available in the local police stations for large numbers of prisoners, creating more logistical problems. The new legislation will help the police to deal with these kinds of situations.

The police will now be more willing to arrest larger numbers of protestors, knowing that they can take their details, and re-bail them to a later date. This will enable more police officers to stay at the scene of the protest and enable the CPS to review the evidence before deciding what charges if any to bring. It may well lead to larger numbers of arrests on demos.

The police cannot attach additional conditions to the bail – they can only do this after charge.

Release from Police Station on Police Bail

In recent years we have seen an increase in activists being released from custody without charge on police bail, with a duty to appear at a police station at a later date. This has been to enable the police to liaise with their lawyers and informally with the CPS before deciding which charges, if any, to bring. Nonetheless the police have still been the ones responsible for charging suspects with offences. The law has now been changed, however, so that the CPS will take over responsibility for charging in all but the most routine of cases.

A stated reason for this change is to create more uniformity in charging throughout the country, as there are currently wide discrepancies between police forces with regard to the charging of offences. It is also intended to rectify police incompetence. According to Home Office statistics 55% of cases are inadequately put together by the police and 13 % have to be dropped altogether before trial.

As the law currently stands, when the police do not have enough evidence with which to charge you, they can release you on police bail with a duty to report back to a police station on a specified date. If there is enough evidence with which to charge you, the police may either charge you, offer you a caution (see page 7) or release you on bail. No conditions may be imposed on bail in either case.

Under the new law, if the police have enough evidence to charge you, they will also have the option of referring the your case to the CPS. The CPS will then make the decision as to whether or not you should be charged, or alternatively offered a caution. They may also institute proceedings against you directly by way of the new "written charge" (see below).

The police will be issued with guidelines from the CPS as to which cases should be referred to them.

If you are released on bail under this new procedure, the police must inform you of this fact. They may also impose conditions on your bail, for example a requirement not to enter a certain area.

The procedure outlined above will result in more decisions being made by lawyers rather than police officers on whether to charge suspects with offences.

Activists can expect this procedure to become the norm when they are arrested in the future. An advantage may be that fewer charges will be brought where there is obviously insufficient evidence on which to base them. However, the involvement of the CPS may lead to a more political dimension to prosecutions. Activists will be more likely to be charged for minor offences if they belong to certain campaigns or pressure groups.

As of August 2004, the new procedure is being piloted in Greater Manchester and expected to come in to force nationally by the end of 2004.

The Written Charge

Under current law, it is usually the police who charge you with an offence or "lay an information" at the magistrates' court in order for a summons to be issued requiring you to attend court. The Criminal Justice Act 2003 gives an alternative power to "public prosecutors" to charge you with an offence by way of a "written charge". They must at the same time issue a document known as a "requisition" which requires you to attend court to answer the charge. A set list is provided in the Act of people who may carry out the role of "public prosecutor" and it includes the police, the Crown Prosecution Service, the Attorney General and the Serious Fraud Office.

This new way of charging is designed to make the procedure speedier and less cumbersome than the old method. The police or the Crown Prosecution Service will no longer have to apply to magistrates in order for a summons to be issued. By the issue of the "requisition" they will be able to require you to attend court themselves.

How the New Procedure will Affect Activists

The principal way in which the new procedure affects activists will be as follows. If you have been arrested and the police think they have enough evidence with which to charge you, then the usual procedure in future will be to release you on police bail and refer the case to the CPS, who will automatically take over the decision as to whether or not to prosecute.

On of four things will then happen. Either

i) The police will write to you to say that no further action is being taken, or

ii) The police will write to you to offer you a caution or a conditional caution (see page 9). If you refuse then you will be charged with the offence instead, or

iii) You will be charged with an offence when you answer bail at the police station, or

iv) You will be charged by way of the new "written charge" as outlined above, and you will not have to reappear at the police station – you will probably receive the written charge in the post.

Offences committed on Bail

Prior to the Criminal Justice Bill 2003, there was a general right to bail in criminal proceedings unless the offence being charged was indictable or triable "either way" and the suspect was on bail at the time of the offence. In such a case it was still possible to get bail but it was more difficult, because the suspect no longer had a right to bail and had to give reasons why he should be given it. The new law extends this situation to cases where a suspect has committed an imprisonable offence whilst on bail for another imprisonable offence

The white paper on criminal justice noted that nearly a quarter of defendants commit at least one offence on bail. The proposed changes are aimed at rectifying this, by making it harder to get bail if you commit an offence whilst already on bail for another offence.

Here's an example of how the new law could be used against activists. If you are on bail having been charged with threatening behaviour contrary to Section 4A Public Order Act 1986 (imprisonable) and at a later date you are charged with aggravated trespass (also imprisonable) then you will not be entitled to a "presumption of bail" and the onus will be on you to show why you should be granted it.

Appeals by the prosecution against bail decisions by magistrates

Prior to the passing of the Criminal Justice Act 2003, the prosecution could appeal against a decision by a magistrate to grant bail, where the offence in question was imprisonable by five years or more imprisonment. This power has now been extended by the Act to cover any imprisonable offence.

This means that if you are given bail by magistrates for a very minor but potentially imprisonable public order offences– for example section 4 Public Order Act 1986 – the prosecution can apply to the Crown Court to have you remanded in custody. The power will probably not be routinely used, but it will be abuse against activists for political purposes.

CAUTIONS AND 'CONDITIONAL CAUTIONS'

CAUTIONS

Sometimes the police may offer you a 'caution' as an alternative to being charged with an offence. This is to be distinguished from the 'caution' they have to give to you prior to questioning advising you of the right to remain silent.

A formal 'caution' in this sense is issued by an officer of the rank Inspector or higher if the following conditions are satisfied:

i) The suspect must admit to the offence

ii) There must be enough evidence to prosecute

iii) The suspect must agree to the caution, having been informed that it may be mentioned in court in the case of future offending.

Some police forces have a policy of offering cautions for certain minor offences, where the suspect has no previous convictions. The police keep a record of formal cautions for at least 5 years.

CONDITIONAL CAUTIONS

Under the Criminal Justice Act 2003 the CPS now have the power to instruct the police to offer the suspect a "conditional caution". This will not replace the ordinary caution but is aimed to cover situations where the CPS believe that charges are not necessary but the ordinary caution is inadequate.

There are five requirements that must be satisfied before a conditional caution can be offered as follows:

1. There must be evidence that the suspect has committer an offence.
2. The prosecutor decides that there is enough evidence to charge with the offence and that a conditional caution is appropriate.
3. The suspect admits to the offence.
4. The effect of the caution is explained to the suspect along with the fact that failure to comply with a condition could lead to prosecution for an offence.
5. The offender must sign a document containing the details of the offence, an admission that he committed the offence, consent to the caution being issued and the conditions attached to the caution.

The conditions that may be attached to such a caution must have either or both of the following objectives:

i) ensuring or facilitating the rehabilitation of the offender,

ii) ensuring that he makes reparation for the offence.

If a suspect fails to comply with one of these conditions without reasonable excuse, criminal proceedings may be brought for the offence. The document mentioned in point 5 above is admissible in such proceedings.

The rationale behind the conditional caution seems to be as follows. As things stand the police can either charge you, caution you or let you go. The caution is perceived to be not very effective in preventing further crime, particularly in the case of young offenders. So the new conditional caution will be used when it is deemed that the ordinary caution is insufficient, but that it is not in the public interest for the case to go to court.

The scheme is not yet in force nationally and is currently being piloted in selected areas.

Should I accept a caution or a "conditional caution"?

In our view, the "conditional caution" should be regarded by activists in the same way as the traditional caution. There are no firm guidelines either way as to whether or not to accept them, but activists need to be aware of the reason why one might be offered.

Often the police will offer a caution when there is not enough evidence to go to trial, but it may also be offered where the likely penalty for the offence is so low that it does not justify the court costs. Accepting a caution is a decision activists will have to make based on the case and their own circumstances. Some people will never accept cautions on principle. Others will accept them even if there is a fair chance that they will get off, simply in order to get the case out of the way.

The exact nature of the conditions will be prepared later in a Code of Practice prepared by the secretary of state. They are likely to include such measures as confronting the victims of crime or community service.

A caution does amount to an admission of guilt, and it may be cited in future court proceedings as part of your criminal record.

If you accept either type of caution, the police may take your fingerprints and DNA and keep them indefinitely.

POLICE PERSONAL SEARCH POWERS

SAFEGUARDS APPLICABLE TO ALL PERSONAL SEARCH POWERS

Before **any** of the above search powers listed below are exercised, the constable must inform you of the following:

a) The constable's name and the police station to which he is attached.

b) The object of the proposed search

c) The constable's grounds for proposing to make it.

d) The fact that you are entitled to a copy of the search.

If the police do not provide you with the above information, then the search is illegal. This means that you would be able to sue them for assault and / or battery. Evidence obtained illegally, however, is admissible in criminal proceedings at the discretion of the court.

STOP AND SEARCH OF VEHICLES AND / OR PERSONS

Police have the powers to stop and search you or your vehicle under either Section 1 of PACE, Section 60 of the Criminal Justice and Public Order Act 1994 or Sections 43 and 44 of the Anti-Terrorism Act 2000.

SECTIONS 1 AND 2 PACE 1984

Under Section 1 of PACE the police may search you and / or your vehicle, if they have reasonable grounds to suspect that you have stolen goods, offensive weapons or for articles used for burglary or theft. Under the Criminal Justice Act 2003, they may now also search you for items they suspect are being used for criminal damage.

Unless you are the driver of a vehicle you do not have to give your name and address. You can be searched in public places, or on private land if this is "readily accessible" to the public at the time of the search, but you may not be searched in a dwelling.

Always ask the police what the reasonable suspicion is – it has to be something more than the fact, for example, that you are a known protestor.

In public places they can only search outer clothing, more thorough searches must be made out of sight, in a police van or station.

Reasonable minimum force may be used to search you. You are entitled to get a report of the search from the police station within a year.

SECTION 60CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 (CJA)

Under section 60 of the CJA a police officer of the rank of superintendent or above may authorize all persons and vehicles within a locality to be searched regardless of suspicion, if serious violence is expected in an area. This power may be exercised by an inspector if he believes violence is imminent and no superintendent is available.

The police do not need to have reasonable suspicion that you are carrying an offensive weapon to search you under Section 60.

The "safeguards" (above), which require that the police have to give you certain information prior to the search, apply to Section 60 as they do to any other search. The police have been known to say that they don't need to give this information for a Section 60 search. Section 2 PACE, however, states that the information must be given before the exercise of **any** search, apart from a couple of search powers which are not relevant here.

SECTIONS 43 AND 44 OF THE TERRORISM ACT 2000

Overview

The definition of "terrorism" under the Terrorism Act 2000 is defined so as to include serious damage to property as well as violence to people. The use of such violence must also be designed to influence the government or to intimidate the public or a section of the public, and it must be used for the purpose of advancing a political, religious or ideological cause.

It's clear therefore that certain types of animal rights and other protest actions - eg arson and possibly even serious public order offences such as violent disorder - could fall within this definition of terrorism, and therefore enable the police to use the associated draconian powers against them conferred by the act. Although we're not aware of this happening to animal rights protestors yet, the metropolitan police in London have used the blanket search power conferred by Section 44 of the act against anti-war protestors in London and the power to do this has recently been upheld in the High Court. This is not too surprising in the current political climate.

SECTION 43

This states that a constable may stop and search a person whom he reasonably suspects to be a terrorist to discover whether they have in their possession anything which may constitute evidence that they are a terrorist.

This gives the police wider search powers than they would enjoy under Section 1 of Pace or Section 60 CJA above. Basically they can search you for just about anything.

Unlike Section 44 (below) the police officer must have reason to suspect the person to be a terrorist.

SECTION 44

An authorisation under this subsection authorises any constable in uniform to stop a person or a vehicle in an area or at a place specified in the authorisation, and to search the person or vehicle and its occupants for articles associated with terrorism.

This is a blanket search power - much like Section 60 CJA above - and does not therefore require that the constable reasonably suspects the presence of articles used for terrorism.

The authorisation has to be given by a police officer of the rank assistant chief constable (or 'commander' in London) and may remain in place for up to 28 days.

The police are obliged to provide you with a written statement that you or the vehicle was stopped, if you apply for it within 12 months.

Certain safeguards apply to this and most other searches conducted by the police, according to which the police have to provide certain information during and after the search – see page 10.

Failure to stop when required to do so or obstructing the police during the exercise of these powers is an offence punishable by either a fine or 6 months in prison or both. A constable can arrest anyone he reasonably suspects to be committing or about to commit any offence under this section.

INTIMATE AND STRIP SEARCHES

Definitions of "strip" and "intimate" search

An intimate search means a search which consists of the physical examination of a person's body orifices. A strip search is a search involving the removal of more than outer clothing.

Conditions for intimate and strip searches

Intimate and strip searches can only be carried out on persons in police custody.

An "intimate search" must be authorised by a superintendent who must reasonably believe either:

(i) that a detained person may have concealed on him anything which he could use to cause physical injury to himself or to others, and which he might so use while he is in police detention or in the custody of the court, or

(ii) that a detained person has a Class A drug concealed on him and was in possession of it before his arrest.

An officer may not authorize an intimate search of a person for anything unless he reasonably believes that this is the only way it can be found.

Generally an intimate search can only be carried out by a medical practitioner unless the superintendent does not consider it practicable and the search is to take place under (i) above. A search under (ii) can only be carried out at a hospital, surgery or other medical premises.

A strip search may only take place if the custody officer considers it necessary to remove an article that the detained person would not be allowed to keep.

Where either an intimate or a strip search is carried out by a police officer, the officer must be of the same sex as the person searched. No other non-medical person of the opposite sex must be present and no person should be there whose presence is not necessary.

OTHER POWERS OF SEARCH

There are a few other powers of personal search available to the police under other legislation which does not directly concern activists. These include the power under the Misuse of Drugs Act 1971 to search for controlled substances and the power under the Firearms Act 1968 to search for firearms. The same safeguards listed at the top of page 10 apply to these searches as well.

POLICE POWERS TO SEARCH PREMISES

SECTION 8 PACE

Search with a warrant - general

Under Section 8 of PACE, magistrates may authorize the police to enter and search premises, where the police reasonably suspect that a "serious arrestable offence" has been committed.

They must also have reason to believe that it is not practical to gain entry otherwise and that there is material on the premises likely to be of substantial value to the investigation.

OTHER POWERS TO SEARCH PREMISES WITH A WARRANT

The police can also apply for warrants to search premises under other legislation including the following Acts:

- Immigration Act 1971
- Criminal Damage Act 1971
- Prevention of Terrorism (Temporary Provisions) Act 1989
- Terrorism Act 2000
- Firearms Act 1968
- Misuse of Drugs Act 1971
- Theft Act 1968

It is beyond the remit of this booklet to examine these search powers in detail here, suffice to say that the safeguards for any search of premises as described below apply to these powers as well.

SAFEGUARDS FOR ANY SEARCH WITH A WARRANT

When applying for ANY warrant, the police must specify the reasons they are asking for it, and identify the items or persons sought.

The actual warrant must specify:

1. the name of the person who applied for it,
2. the date on which it was issued
3. the enactment under which it was issued
4. the premises to be searched and
5. the articles or persons sought.

The police are supposed to enter at a reasonable hour, unless this would "frustrate the purpose of the search". They must identify themselves and supply the occupier with a copy of the warrant. If there is no person present on the premises at the time, the police must leave a copy of the warrant in a prominent place. After the search has finished, the police must return it to the magistrates' court where it was issued, where it must be retained for 12 months, during which period the occupier has a right to inspect it.

Points to Note

In practice it is not difficult for police to satisfy the conditions in Section 8 PACE for getting a warrant. The hearing is held "*ex parte*" – ie without your representative present - and the magistrates are usually sympathetic.

A warrant under Section 8 may only be issued where the police reasonably suspect that a "serious arrestable offence" (' SAO') has been committed. This is defined under Section 116 of PACE as an "arrestable offence" which has led or is intended or likely to lead to any of the following consequences:

- serious harm to the security of the State or to public order,
- serious interference with the administration of justice or with the investigation of offences,
- the death of any person,
- substantial financial gain to any person,
- serious financial loss to any person.

The police can use reasonable force to exercise the warrant, often at around 6-7am in the morning. It may or may not involve your door being kicked in, depending on the nature of the search and whether or not the police believe that the search will be prejudiced by alerting you to their presence. If they do damage your door, the police are under a duty to secure the property afterwards.

The police may only search for items covered by the warrant and may seize anything for which they are searching under the warrant. But they may also seize anything else under their general power of seizure, which they reasonably regard is evidence in relation to any other offence.

Case law has established that where a search warrant authorises the search of persons as well as the premises, then the police can restrict the movement of people on the premises, for example by stipulating that they must all wait in one room of the building while the search takes place.

The police can not get a search warrant under Section 8 for an offence which is not "arrestable". So, for example, the police could not search your home under Section 8 PACE where they suspect merely that aggravated trespass has occurred, as this is not an "arrestable offence".

SECTION 18 PACE SEARCH WITHOUT WARRANT AFTER ARREST

This entitles a constable to enter and search premises, which are *occupied or controlled* by someone under arrest for an "arrestable offence", where they reasonably suspect that there is evidence on the premises relating to the offence for which they have been arrested or to some other similar arrestable offence. This power must be authorized in writing by an officer ranked Inspector or higher.

This power is not therefore exercisable where you are under arrest for a non-arrestable offence – eg aggravated trespass. This is why the police sometimes arrest you initially for an "arrestable offence", in order to trigger the Section 18 power of search. For example, they may arrest you for violent disorder (arrestable offence) even though the evidence may only support a charge of threatening behaviour (non-arrestable offence).

The police may only search those parts of the premises occupied or controlled by the suspect. The police would not be able to search a room within the premises occupied or controlled by someone else, but would be able to search communal areas.

Although the police may only search for evidence relating to the offence, they may *seize* anything which they reasonably believe is evidence relating to any offence, under the general power of seizure – Section 19 PACE (see below).

SECTION 32 PACE SEARCH WITHOUT WARRANT UPON ARREST

This section confers the power on a police officer to search an arrested person, who was not arrested at a police station, for anything which might be evidence relating to an offence or which could be used to assist escape from custody

The officer may also enter and search the premises where the suspect was arrested, or immediately before s/he was arrested, for evidence relating to the offence for which they have been arrested.

The constable may only exercise these powers if s/he reasonably suspects that he will find on those premises items relating to the offence for which the suspect was arrested.

This power is not limited to "arrestable offences", unlike Section 18 PACE above. However, you have to be on the premises at the time of the arrest or immediately before. Case law has also established that the police can only exercise this power at or around the time of the arrest. So the police are unlikely to use it very often to search your house.

OTHER POLICE POWERS OF ENTRY

Section 17 PACE

Under this section the police may enter property in order to execute an arrest warrant issued by a magistrate, to arrest you for an arrestable offence or to arrest you for one of the offences specified in the section (including Section 4 Public Order Act 1986). The power can only be exercised by a police officer in uniform.

Common Law

The police can enter and remain on premises (including homes) in order to prevent a breach of the peace at common law.

POLICE POWERS TO SEIZE AND RETAIN PROPERTY

Power to Seize

Section 19 of the Police and Criminal Evidence Act (PACE) states that an officer lawfully on premises may seize any item which he reasonably suspects is evidence of any offence, or which he suspects has been obtained in the consequence of an offence.

The police may seize items from you on demos – eg camcorders – even though you have not been arrested, if they reasonably suspect that they contain evidence in relation to an offence. So make sure to get rid of any video or photographic evidence, which you think the police may use against other activists.

If the police are searching your house, they can seize items even though they were not specifically looking for them.

"Premises" is defined so as to include any place and includes vehicles or movable structures such as tents.

The police must be lawfully on your premises in order to exercise the Section 19 power. If you invited the police in to your house to discuss an issue, they would be lawfully on your property and therefore potentially able to exercise the power to seize property.

Power to Retain

Under Section 22 PACE the police may retain any items seized "for as long as is necessary in all the circumstances".

The section does not further elaborate. As a result this power has been abused by the police to keep hold of peoples' property for lengthy periods, while they say they are investigating other matters.

FACE MASKS

INTRODUCTION

The police power to remove face masks was conferred by Section 60 of the Criminal Justice and Public Order Act 1994 (CJA). This was originally only available where a Section 60 CJA 'stop and search' authorization was in force, whereby a Superintendent had to fear acts of serious violence in a locality. So if there was no Section 60 – as on many demos - then the police could not demand that you remove your facemask. The police complained to the Home Office about this, who announced they would be changing the law as part of the much-vaunted "package of measures" against animal rights extremists.

THE LEGISLATION

Under the Anti-Terrorism, Crime and Security Act 2001, Section 60AA was added to the CJA. This states that where an officer of the rank Inspector or above reasonably believes

(a) that activities in any locality in his area may involve the commission of offences, and

(b) that it is expedient, in order to prevent or control those activities to give an authorization under this section,

then he may make a Section 60AA authorisation.

A Section 60AA authorisation confers power on an officer in uniform:

(a) to remove any item which the officer reasonably believes is used wholly or mainly for the purpose of concealing his identity and

(b) to seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

Failure to comply with a request to move a mask is an offence. It is triable summarily and is punishable by up to 1 month's imprisonment or a fine.

Although this would normally means that it was a non-arrestable offence, it was added to the list of "arrestable offences" under Section 24 of PACE. This means that you could be arrested for failing to comply with a requirement to remove a mask some time after you allegedly committed the offence.

NOTES

It is not in itself an offence to wear a mask or other means of concealing your identity. The offence is committed by refusing to hand such a mask over when required to do so by an officer in uniform.

This power is clearly a far wider power than under the previous law. It can potentially be applied on any protest, given the wide range of minor public order offences that could be committed.

Note that the power can also be used to seize any item of clothing that the officer reasonably believes you intend to wear. So the police could use the section to seize balaclavas or scarves before you have even put them on.

In bad weather, it will be hard for the police to argue that you are wearing a hooded top or hat "wholly or mainly" for the purpose of concealing your identity. Whether or not a hat or a hood conceals your identity will be a question of fact for the magistrates to decide.

The power is still exercisable, as before, whenever a Section 60 is in force as well.

If a disguise has been seized, you can get it back by writing to the Chief Constable of the relevant police force along with evidence of ownership. If further retention is not necessary for criminal proceedings then the item must be returned. The police must retain such items for 2 months before they may dispose of them.

The section cannot be used to prevent you from disguising your identity by other methods, eg face painting.

POLICE POWERS OF ARREST

OVERVIEW

Police arrest powers are governed by the following:

- *Section 24 PACE*
- *Statutory power of arrest within the act itself*
- *Section 25 PACE*
- *Magistrate's warrant*
- *At common law to prevent a breach of the peace*

SECTION 24 PACE –ARRESTABLE OFFENCES

It is important for activists to be able to distinguish between arrestable and non-arrestable offences. If an offence is "arrestable" then you may be arrested for it afterwards if the police have reason to suspect you. And the police enjoy certain powers of search which they cannot use for non-arrestable offences. So whether or not an offence is arrestable will determine not only the power of arrest, but the power to search your house and your ability to sue afterwards for false imprisonment as well.

DEFINITION OF ARRESTABLE OFFENCE

Many minor public order offences only carry a limited power of arrest, and are not strictly speaking "arrestable offences", as defined by Section 24 PACE. This section defines what is meant by the term "arrestable offence". It states that any offence is arrestable if it is punishable by 5 years' imprisonment or more upon first conviction. On top of this it lists a set number of offences that are also arrestable. This list is periodically added to, and it includes some fairly minor offences, eg refusal to remove a face mask. Examples of arrestable offences are:

- *Criminal damage*
- *Theft*
- *Burglary*
- *Violent Disorder*

Examples of non-arrestable offences are:

- *Sections 3, 4, 5, 12,14 of the Public Order Act 1986*
- *Section 68 Criminal Justice and Public Order Act 1994 (aggravated trespass)*
- *Section 42 Criminal Justice and Police Act 2001 (home demos)*

STATUTORY POWERS OF ARREST

Many non-arrestable offences do, however, carry a limited statutory power of arrest, namely where the police officer suspects that you are *actually committing* the offence at the time. This statutory power only exists where it has been actually inserted in to the law itself.

For example, s4 (3) Public Order Act 1986 states: *A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.* Where there is no such power inserted in to the act, police powers of arrest without warrant are limited to the general power under Section 25 PACE or at common law to prevent a breach of the peace.

Here is an illustration of the above point. You shout abuse at a vivisector driving out of an animal testing laboratory, and you are recorded on the security camera. The police arrive half an hour later, view the camera and decide you have breached Section 4A of the Public Order Act 1986. They have no power to arrest you for this offence as it is no longer taking place, and can only ask that you give your name and address, so that they can serve you with a summons for having committed a non-arrestable offence. If you fail to comply, then you could be arrested under Section 25 PACE.

If you are lawfully arrested at the time of the offence for a "non-arrestable offence" eg for Section 4A intentional harassment, the police have no power to carry out a search of your home. They only have the power to search your home if you have been arrested for an "arrestable offence". They cannot delay your right to see a solicitor or to have someone informed of your arrest. They may only do this if you are under arrest on suspicion of having committed a "serious arrestable offence".

The distinction between "arrestable" and "non-arrestable" offences may well seem very confusing and contradictory. However there is a practical reason explaining why the police sometimes have a power of arrest for "non-arrestable" offences, namely in order to maintain public order. It used to be the case that only indictable offences carried a power of arrest and summary offences could only be prosecuted by way of a summons. Then Parliament began to confer statutory powers of arrest on police officers for fairly minor public order offences. The justification for this is that the police would be hindered in their ability to control public order if they could not arrest people as they were actually committing the offence.

SECTION 25 PACE – GENERAL POWER OF ARREST FOR NON-ARRESTABLE OFFENCES

Where the police reasonably suspect you of committing or having committed a non-arrestable offence, then they may only arrest you if they believe that the service of a summons is impractical because any one of the general arrest conditions under Section 25 of PACE is satisfied.

The general arrest conditions are as follows:
(1) The police cannot establish your name or they think you have given a false one, OR
(2) The police cannot establish an address suitable for the service of a summons or they think you have given a false one, OR
(3) The police have reasonable grounds to believe arrest is necessary to prevent you from doing any of the following:

(i) causing physical injury to yourself or any other person, or
(ii) suffering physical injury; or
(iii) causing loss of or damage to property; or
(iv) committing an offence against public decency, or
(v) causing an unlawful obstruction of the highway.

This power is most commonly used on demos where your name and address cannot be established or to prevent an unlawful obstruction of the highway.

NOTES ON SECTION 25 PACE

The main point to note is that this power is only triggered where the police reasonably suspect that you are committing or have committed a *non-arrestable* offence. Where they are seeking to establish your name and address, they will use a number of methods to check it out. First they will check it on the police national computer and the electoral register. If it is not on there then they may use a number of other techniques to establish your details. They might ask you for a friend's phone number who will confirm your identity, and they will normally ask for some means of identification. You do not have to provide any of these but if they cannot establish your name and address then you could be arrested. They will usually ask you for your date of birth - you do not have to give them this.

The police will sometimes cite Section 25 simply in order to get your details. You should be able to tell whether they are blagging or whether they genuinely mean to arrest you if you don't give your details. A situation often encountered is when the police pull your car as you arrive for a demo. They will get the driver's details and ask for all the passengers' details as well – in this situation a passenger would definitely not have to give their name and address.

The police will sometimes use Section 25 to get your details even when they could arrest you. There are obvious practical reasons for this – eg on demos when arresting you would mean at least two officers having to leave the scene leaving the police short on numbers.

As noted earlier (page 2), you only have to give the police an address suitable for the service of a summons, which need not necessarily be your residential address. If you give the police the phone number of a solicitor, for example, who is prepared to confirm that his address can be used, then this ought to be acceptable to the police.

As part of the "zero-tolerance" strategy being operated against certain animal rights campaigns, the police will sometimes demand your details in order to summons you for breach of Section 5 of the Public Order Act 1986 (disorderly conduct). Normally you can only be arrested for this if you are warned and then commit an offence again a short time later. But the police can actually begin a prosecution against you for just one such offence, and may demand your name and address in order to do so.

ARREST UNDER WARRANT

Under Section 1 (1) of the Magistrates' Courts Act 1980 the police may apply to a magistrate for an arrest warrant. The offence alleged must be punishable by imprisonment or the accused's address must be insufficiently established for the service of a summons.

In the case of minor offences, the police would usually apply for a summons rather than an arrest warrant. They do occasionally use this power to arrest activists, however, as a vindictive measure, where they have no other grounds to make an arrest.

COMMON LAW ARREST FOR BREACH OF THE PEACE

INTRODUCTION

The police may threaten you with arrest for breach of the peace when their other powers of arrest are inadequate. This is an ancient "common law" power that pre-dates Parliament. The police can exercise it if they reasonably believe that you are using or about to use violence against persons or, in their presence, against their property.

The police can also arrest you for breach of the peace, if they reasonably believe that by your actions you are provoking or will provoke the use of violence by others. This boils down to property rights according to the courts. If you take part in a hunt sab, or are occupying office premises, then according to current case law your arrest for breach of the peace could be lawful. This is because you will be deemed to be interfering with the legitimate property rights of others and thus by your actions provoking the use of violence by others. If, by contrast, you are engaged in peaceful leafleting outside a shop, an arrest for breach of the peace would probably be unlawful - even if people find your leaflets offensive - so long as the leaflets do not provoke violence.

The police have often threatened activists with arrest in the past for occupying private property – eg banks, offices - during the course of a protest. They are more likely to use the new power of arrest for "aggravated trespass" which has now been amended to include activity occurring inside as well as outside premises – see page 34.

Where no violence has previously occurred then the police MUST suspect that violence is about to take place or imminent before making an arrest.

Don't forget that the police will usually warn you first before they arrest for breach of the peace. For example, if you're occupying private premises, the police will usually ask you to leave and tell you that you will be arrested for breach of the peace if you go back in. The police are entitled to act as agents of the landowner and use reasonable force to eject you from the premises. If you resist you could then be arrested for causing a breach of the peace and you could also be charged with wilful obstruction of a police officer. Nowadays you would be more likely to be arrested for "aggravated trespass" in this situation.

BREACH OF THE PEACE AND HUMAN RIGHTS

In recent years judges have considered the importance of the ECHR in determining the various police powers of arrest. Now that the convention has been incorporated in to UK law by the Human Rights Act 1998 this is even more likely to be the case in the future. The police will no longer be able to abuse their common law powers of arrest to stifle fundamental human rights. Many police forces are no longer keen on using this power of arrest, because of the difficulty in establishing reasonable suspicion that violence was imminent. One force in particular – we do not know which – has a policy not to arrest for breach of the peace. This comes as no surprise - the police have been sued on countless occasions for false arrest for breach of the peace.

ARREST PROCEDURE

If you are arrested for breach of the peace, the police will either let you go after a "cool-down" period, usually of up to 6 hours, or you will be kept overnight and brought before a court the next day to be charged. If the police decide to charge you with causing a breach of the peace, normal practice is to hold you overnight to appear in court the next day. However, a recent High Court decision ruled that this is unlawful unless there is a genuine suspicion that you will cause a breach of the peace shortly after release.

BINDOVERS

If you do appear in court, you will be offered a "bindover" which you can either accept or refuse. If you refuse, a date will be set for a hearing where the prosecution would have to establish that by your actions you caused or provoked the likelihood of imminent violence. 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 that period, you are liable to pay part or all of a fixed sum to the court – anything up to £100 usually. If you refuse to agree to the bind over following a hearing you can be sent to prison for a few weeks. A bindover is not a criminal conviction and the police cannot take your fingerprints and DNA if you were arrested merely for breach of the peace, as it is not a "recordable offence". The prosecution may sometimes offer a bindover in court as an alternative to charges for a minor public order offence

SECTIONS 1-5 PUBLIC ORDER ACT 1986

SECTIONS 1-3, PUBLIC ORDER ACT 1986

INTRODUCTION

Sections 1-3 of the Public Order Act 1986 are the most serious and carry the most serious penalties. Riot carries up to 10 years, Violent Disorder 5 yeas and Affray 3 years. The underlying thread for each is that violence must be used or threatened and that this would cause a hypothetical person of reasonable firmness to fear for their personal safety.

Thus the test for whether or not an offence has been committed is an objective one, and the prosecution do not have to rely on witnesses who were actually in fear. In practice there will usually be witnesses, however, as it would otherwise be very difficult to prove the offence. But the witnesses themselves do not necessarily have to attest that they feared for their personal safety.

Riot is indictable only. Violent disorder and affray are "either way" offences, triable in magistrates or the Crown Court. Charges of violent disorder and affray may often be used as an alternative to assault causing actual or grievous bodily harm if there is insufficient evidence in such a case.

SECTION 1 - RIOT

This is the most serious offence under the Public Order Act 1986 and is very rarely used. Although you are unlikely ever to get charged with riot, it is useful to have an understanding of it, in order to put the other offences in to context.

In order to be liable for the offence the accused person must use violence and:

a) 12 or more persons (including the accused) who are present together use or threaten violence for a common purpose, *and*

b) their conduct taken together is such as would cause a person of reasonable firmness to fear for their personal safety *and*

c) the accused's use of violence was for the common purpose.

Notes on Riot

There are several possible reasons why this offence is not often used. Unlike the offence of violent disorder it must be proved that the accused himself actually used rather than merely threatened violence, and the violence of the group must be used or threatened for a common purpose. This can be quite difficult to prove and the prosecutor will not usually deem an offence so serious as to incur these added complications, when one of the lesser public order offences will suffice.

The prosecution has to show that you intended violence or were aware that your conduct might be violent.

Arrest and Punishment

Riot carries a maximum sentence of 10 years in prison, and is thus an "arrestable offence".

SECTION 2 – VIOLENT DISORDER

This is the more likely charge in the case of serious public disorder. In order to be liable the accused must use or threaten violence in the following circumstances:

a) where three or more people (including the accused) use or threaten unlawful violence *and*

b) the conduct of them taken together is such as would cause a person of reasonable firmness to fear for their personal safety.

Notes on Violent Disorder

The difference from riot is as follows:

a) Only 3 persons who are present together are required to use or threaten violence (unlike 'affray'- see below)

b) The accused person may be guilty if he merely threatens violence.

c) There is no requirement that the violence be used or threatened for a common purpose.

The prosecution must show that you intended to use or threaten violence or were aware that your conduct might amount to violence or the threat of violence.

Charges of violent disorder are usually only brought where there has been serious disorder. In animal rights cases it is usually only used where missiles have been thrown at persons or property.

The police will sometimes arrest you initially on suspicion of violent disorder simply because it is an "arrestable offence" and therefore carries with it far greater powers of arrest and search. For example, you can be arrested after the incident has taken place. And if you are arrested on a demonstration for violent disorder, your house can be searched while you are in detention, whereas if you are arrested for Section 4A intentional harassment (non-arrestable) it cannot.

Research suggests that charges of violent disorder rather than affray will be brought where the police believe the violence is planned or premeditated.

Arrest and Punishment

'Violent disorder' is triable either way although it will usually be tried on indictment. It carries a maximum sentence of 5 years on indictment or 6 months before magistrates and is therefore an "arrestable offence". At a trial on indictment, a jury will usually have the alternative option of convicting the defendant of the lesser offence of threatening behaviour (Section 4).

SECTION 3 – AFFRAY

The offence of "affray" looks very similar to violent disorder. It is supposed to be reserved for serious cases involving the use or threat of violence.

Under Section 3, a person is guilty of affray if

a) he uses or threatens unlawful violence towards another, and

b) his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

Notes on Affray

Unlike riot and violent disorder the use or threat of violence by one person alone will suffice and no one else need take part other than the accused. Legal commentators, however, have contended that the offence should not be extended to cover every case of common assault as this was not intended by Parliament when the act was passed. Affray is a public order offence designed for the protection of the bystander and there are other offences – eg "assault causing actual bodily harm" - for the protection of persons at whom the violence is aimed.

Another significant difference from the other sections is that the threat of violence cannot be made by the use of words alone – either orally or in writing. There must be some act or gesture amounting to a threat of unlawful violence.

The prosecution must show – as with violent disorder - that you intended to use or threaten violence or were aware that your conduct might amount to violence or the threat of violence.

Arrest and Punishment

Affray is an "either way" offence and is punishable by up to 3 years imprisonment on indictment or up to 6 months imprisonment on summary conviction. It is therefore not an "arrestable offence". But as with Sections 4, 4A and 5 it does carry a limited power of arrest: a constable may arrest anyone whom he reasonably suspects is *committing* an affray.

SECTIONS 4, 4A AND 5

INTRODUCTION

These offences are much less serious than Sections 1-3. Sections 4 and 4A carry a maximum sentence of 6 months imprisonment, whilst Section 5 carries a maximum of a fine. Sections 4A and 5 are the ones you will most often encounter on demos.

SECTION 4 – FEAR OR PROVOCATION OF VIOLENCE

A person is guilty if he either

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

b) distributes to another person any writing or sign which is threatening, abusive or insulting

and either

i) he *intends* to cause that person to believe that immediate unlawful violence will be used against him or another by any person or to provoke such immediate violence, or

ii) it is l*ikely* that the person will believe that such violence will be used against him, or it is likely that such violence will be provoked.

Notes on Threatening Behaviour

There is no legal definition as to what is meant by "threatening, abusive or insulting" and it will be up to the magistrates to decide in each particular case. However, words or behaviour have to be directed towards an actual human target who is affected by them. And they cannot be held to be threatening etc. simply because someone finds them offensive or rude.

As with Sections 1-3, the offence can be committed in public and private places, except where both the accused and the victim are in a dwelling.

No-one need actually believe that immediate violence will be used against them or actually be provoked. It is enough that the accused intends to cause such a belief or to provoke violence, or that this is the likely outcome.

The violence must be immediate - ie likely to occur within a relatively short time span.

As intent is usually difficult to prove, the prosecution will be more likely to rely on the second limb namely that the provocation of violence or fear of violence is "likely" – that is, probable. This test is therefore objective and you can be convicted even if you did not intend to provoke or cause fear of violence, so long as the

court decides that this was in fact the likely consequence of your behaviour.

The prosecution must prove that you intended the words etc. to be threatening, abusive or insulting or were aware that they might be.

Arrest and Punishment

Section 4 is triable summarily only, and the maximum penalty is 6 months imprisonment. As with Sections 3, 4, 4A and 5 it is not an "arrestable offence". A constable may only arrest someone whom he reasonably suspects to be *committing* the offence.

SECTION 4A – INTENTIONALLY CAUSING HARASSMENT, ALARM, OR DISTRESS

A person is guilty if, with intent to cause a person harassment, alarm or distress, he

a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

thereby causing that or another person harassment, alarm or distress.

Notes on Intentional Harassment

Although Section 4A was originally introduced as an amendment to the act in order to address the problem of racial harassment, it is not limited to such conduct and is frequently used against protestors.

There are three basic ingredients to the offence. Firstly, your behaviour must be threatening, abusive, insulting or disorderly. Secondly you must intend to cause someone harassment alarm or distress by that behaviour. Thirdly, in contrast to Sections 4 and 5, someone must be actually caused harassment, alarm or distress by your behaviour.

There must be an actual "victim", although it does not have to be the intended victim. And you must not only intend your behaviour or words to be insulting, but also intend that they cause harassment, alarm or distress.

Unlike Section 4, the words or behaviour need not actually be addressed to another directly.

Defences

Under this section and Section 5 there is a statutory defence that your conduct was reasonable. If you are charged with an offence under this section on a protest, then the court will usually have to rule on whether the charge was compatible with your European Convention right to freedom of expression under Article 10. It has been ruled in court that in this kind of case, there is a presumption in favour of your right to freedom of speech. The onus is on the prosecution to show that interference with this right by way of criminal proceedings is proportionate in all the circumstances.

Arrest and Punishment

Section 4A is triable summarily only and carries a maximum sentence of 6 months imprisonment. It is therefore not an "arrestable offence". However, a constable may arrest anyone whom he reasonably suspects to be *committing* an offence.

There is no need for a warning prior to arrest unlike under Section 5. This is why the police will often arrest under Section 4A and then drop the charges to Section 5. It is often difficult to prove the necessary intent or to produce a witness who is prepared to say that they were caused distress. Section 5 is generally much easier to prove.

SECTION 5 – CONDUCT LIKELY TO CAUSE HARASSMENT, ALARM OR DISTRESS

This is by far the most commonly used piece of legislation on demos, and the one with which activists will be most familiar.

A person is guilty of this offence if he

a) uses threatening, abusive words or behaviour, or disorderly behaviour, or

b) 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.

Notes on Section 5

The police will often warn you under Section 5 simply as a preventive power to control behaviour on a demo and they often have no intention of following it through with an arrest, especially where no threatening behaviour has been used.

Unlike Section 4A there is no requirement that anyone actually be caused harassment, alarm or distress and therefore no need for a witness to that effect. The police need only say that your conduct took place within the sight or hearing of a potential victim, although it will obviously help to prove their case if they can produce a witness.

Section 5 differs from Section 4A in that there is no need to show that you intended to cause the harassment, only that it was likely to be caused. This means that to a certain extent your behaviour will be judged objectively on the effect it was likely to have, rather than on the effect it actually had on any victim.

Section 5 and the Police

It is often said that the police cannot be caused harassment, alarm distress under Section 5, but this is not strictly true. The current law is stated in the case of *DPP v Orum*, where the court was asked to decide on whether or not a constable can in law be caused harassment, alarm or distress. It was decided that although police officers can be caused harassment, they were far less likely than ordinary members of the public to be caused distress by insulting words and behaviour. Whether or not the police were actually caused harassment is a question of fact for the magistrates to decide having regard to all the circumstances: the time, the place, who the police officers were etc.

Displays of Upsetting Pictures

The police sometimes threaten protestors with prosecution under Section 5 for displaying upsetting pictures eg of dead animals. It has been held in court that an upsetting picture can be "insulting" within the ordinary meaning of the word, in a case where pictures of aborted fetuses were displayed to persons attending an abortion clinic. However, in our opinion most animal rights placards could not similarly be held to be insulting in the ordinary meaning of the word. This is especially so as the prosecution must also show that you intended or were aware that your conduct might be insulting (see below).

Megaphones

The police occasionally tell activists that it is an offence under Section 5 to use a megaphone or other instrument to amplify sound. This is clearly not the case. Use of a megaphone does not, in itself, amount 'threatening, insulting, abusive or disorderly behaviour". However, if you were to shout insulting and abusive comments through a megaphone or point it deliberately in someone's face, this could amount to an offence. Also bear in mind that there are sometimes local bye-laws prohibiting amplified sound in public areas.

Defences

It is a defence to show that you had no reason to believe that there was any person within sight or hearing likely to be caused harassment etc. This is an objective test and you will be judged on what you ought to have believed rather than what you actually believed.

The prosecution also has to show that you intended your words or behaviour to be threatening, insulting or abusive or were aware that they might have this effect. So if you are charged with displaying an upsetting picture or placard under Section 5, you will have a defence under this section – ie that you had no idea that the picture was threatening insulting or abusive"

You have a statutory defence that your conduct was "reasonable" – see notes on Section 4A above.

Arrest and Punishment

Section 5 is triable summarily only, the maximum penalty is a fine, and it is not an "arrestable offence".

A constable may only arrest if:

a) a person engages in offensive conduct which a constable warns him to stop, and

b) that person engages in further offensive conduct immediately or shortly after the warning.

The constable need not be in uniform, and the arresting constable need not be the same one who issued the warning. He must warn you regarding the offensive conduct while it is actually happening and not afterwards.

You can only be arrested if the further offensive conduct takes place within a short time span. This is not defined, but conduct taking place over an hour later could not, in our view, be defined as taking place shortly afterwards and an arrest here would be unlawful.

You might receive several arrest warnings under Section 5 during the course of a demo and still not be arrested. This is because the warning is usually used to control public order, although the police may well arrest you if the disorderly conduct continues. You can often tell whether the police genuinely mean to arrest you or not. There is also the power of arrest for breach of the peace and under Section 25 PACE .

Many activists assume that if they are warned under Section 5 and commit no further offence, then they will not be prosecuted. Although this is usually the case, you can actually be prosecuted – by way of a summons – for just one breach of Section 5. Recent overzealous policing tactics at animal rights protests has consisted of police demanding peoples' names and addresses under Section 25 of PACE in order to serve them with a summons for a single offence under Section 5. As Section 5 is a non-arrestable offence, the police do have the power to do this, and can arrest you if you refuse to give your detail

POLICE POWERS TO REGULATE PROCESSIONS AND ASSEMBLIES

SECTIONS 12 AND 14 PUBLIC ORDER ACT 1986

If you engage in regular protest you will inevitably encounter the police's use of Sections 12 and 14 of the Public Order Act 1986.

SECTION 12 PUBLIC PROCESSIONS

This confers power on the senior officer to impose conditions on processions, which he reasonably believes are necessary to prevent serious public disorder, serious criminal damage or serious disruption to the life of the community. He may also impose such conditions if he believes that the purpose of the persons organising it is the intimidation of others with the view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

If he reasonably believes any of the above, then he may impose conditions on persons taking part in the procession as are reasonably necessary to prevent the above, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

Anyone who knowingly fails to comply with a condition is guilty of an offence.

SECTION 14 – PUBLIC ASSEMBLIES

As with Section 12, the senior officer may impose conditions on public assemblies, which he considers are reasonably necessary to prevent serious public disorder etc. But unlike Section 12, the conditions he may reasonably impose are in this case limited to specifying:

a) the numbers of people who may take part,
b) the location of the assembly, and
c) its maximum duration.

On most big animal rights demos these days there is a Section 14 notice in place, which gives the location where the assembly may and may not take place, and the time at which it must finish.

An assembly is defined by Section 16 of the Act as consisting of two people or more.

Anyone who *knowingly* fails to comply with a condition is guilty of an offence.

FREQUENTLY ASKED QUESTIONS

Doesn't there need to be more than two people to form an assembly?

Not any more. Section 57 of the Anti-Social Behaviour Bill 2003 amended Section 16 of the Act to reduce the numbers of people necessary to form an assembly from twenty to two. This amendment was introduced after intensive lobbying by the police and the pharmaceutical industry for more powers to be available to deal with animal rights protests where less than twenty people were present. They finally got what they wanted, so activists can expect even more widespread use of Section 14 in the future.

What is a "public place"?

Section 16 of the Act states that a public procession or assembly is one which takes place in a public place. It defines what is meant by "public place" as follows: 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 therefore includes supermarket car parks and garage forecourts for example, to which the public has "implied permission" to enter.

Do I have to apply for permission from the police if I am organising a procession or an assembly?

If you are organising a public assembly, then you do not have to inform the police in advance. But if you are organising a procession then you have to give the police written notice in advance. This notice must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it. It must be given to the relevant police station for the area of the procession at least 6 days beforehand or as soon as practicable.

It is an offence – punishable by a fine - to organise a demo if the notice provisions are not complied with, or if the date, the time or route of the actual procession differs from the date, time or route specified in the notice. It is a defence to show that you had no reason to know of these differences.

Can I be arrested for a Section12 or 14 offence, and what is the maximum punishment?

Offences under sections 12 and 14 are only punishable by a fine. Breach of Section 12/14 is not, therefore, an "arrestable offence". There is only a very limited statutory power of arrest namely where a *constable in uniform* reasonably suspects you of *committing* the offence. As the offences are not "arrestable", you cannot be arrested after the offence has been committed (for example, the next day) and if you are arrested your house cannot be searched.

Does a Section 14 or 12 notice have to be in writing?

A Section 12 or 14 notice only has to be in writing where it is issued in advance by the chief constable of police.

Who is the "senior officer"?

The powers conferred can only be exercised by the "senior officer". The identity of the senior officer depends on the nature of the procession. If it is an advertised march or assembly and a Section 12 or 14 notice is issued in advance, then it can only be exercised by the chief constable of police and it has to be in writing. But in the case of impromptu marches or processions, where there is no advance notice, then the power must be exercised by the senior officer present at the scene and does not have to be in writing.

A notice is invalid if issued by the wrong officer. For example, in 2002 police officers arrested some animal rights activists for assembling in Derby town centre, contrary to a Section 14 notice. On the day in question the activists had taken the police by surprise, as the advertised assembly was elsewhere in the neighbouring county. This meant that no advance Section 14 notice had been issued to control the assembly in Derby on that day. A section 14 direction was then issued to deal with the protestors in Derby. However this was not issued by the senior officer at the scene, but by a more senior officer based at the police headquarters. This meant that the Section 14 notice was issued illegally and all of the activists were subsequently acquitted

Can I be arrested if I have not been told about the conditions?

It is an offence *knowingly* to fail to comply with one of the Section 12 or 14 conditions. So it would be a defence to say that you had no actual knowledge of the conditions – for example because you had not been told or, in the case of a notice issued by the chief constable, you had not received or been shown a written notice.

The police sometimes use a megaphone to issue a Section 14 notice at the scene of an assembly, Activists arrested for breach of Section 14 are often subsequently acquitted because they simply could not hear what the police were saying and therefore had no knowledge that a Section 14 notice was in existence.

If I am marching, can the police still use Section 14?

No they can't, they would have to use Section 12, which governs 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. In April 2003, the police in Cambridgeshire attempted to use Section 14 to control a march - and failed. On the day in question, there had been an advertised demonstration at Huntingdon Life Sciences in Huntingdon. A Section 14 was issued here, and this stated amongst other things that no other assemblies could take place anywhere in the county. Some activists marched that day through Cambridge town centre (in the same county). They were stopped by the police from marching, and then arrested for assembling contrary to the Section 14 notice, which had been issued at Huntingdon. The case was eventually dismissed when it was shown that the only reason why they were assembling was because they had been forced to do so when stopped by the police. They had been attempting to march and this was not a failure to comply with the Section 14 direction.

Were the conditions legal?

The police can only impose conditions, which are authorized by the statute. The police cannot, for example, impose a condition on an assembly stating that you cannot blow whistles or bang drums. Such a condition would be unlawful, and you could not be convicted for failing to comply with it. However, the presence of one such unlawful condition does not in itself invalidate the entire Section 14 notice.

According to a High Court case, the police cannot impose conditions under Section 14 as to the route protestors take to and from an assembly, nor can they restrict the numbers of people who may leave the assembly at any one time. The police often include a condition in a Section 14 notice nowadays that you cannot assemble anywhere in the entire county other than the area they have designated. Although this point has yet to be decided in court, we believe that such conditions

are unlawful, as the power only exists to regulate a particular assembly.

Are Sections 12 and 14 compatible with my human rights?

As with all legislation, the police must not issue conditions, which are incompatible with your fundamental right to protest. Any condition imposed must be "proportionate" to the harm – for example, serious disorder etc – that the police are seeking to prevent.

If, for example, the police sought under section 12 to divert a procession planned to go through a city centre to the outskirts of the city, you could argue in court that this amounted to a denial of your right to freedom of expression as it was not necessary to divert the march to prevent disorder. If the judge agreed, this would render the Section 12 direction unlawful and any failure to comply with such an unlawful direction would not be a criminal offence.

Can the Police Ban a Procession or Assembly?

The police can ban public processions if they fear that they will result in serious public disorder. And they can ban "trespassory assemblies" for similar reasons. But these powers are rarely used, especially now that assembly on the verge of a public highway can amount to "reasonable use" of the highway.

The police have no power to ban public assemblies under Section 14, and if they impose conditions which effectively amount to a ban – for example a condition that an assembly may only last for 5 minutes – these can be challenged in court.

POLICE POWERS AT COMMON LAW TO CONTROL ASSEMBLIES

The police do not always use Section 14 to control assemblies. The police's duties at common law include preventing a breach of the peace, and protecting public safety. They are empowered to take all reasonable steps to prevent a breach of the peace and to protect the safety of the public where they reasonably suspect that it is necessary to do so.

This common law power is most likely to be used by the police where they reasonably suspect that a breach of the peace will occur. They then have the power not only to arrest those whom they believe are causing the peace, but also to take any other steps necessary to prevent one from occurring. These include ordering a crowd of protestors to disperse and stipulating where a demonstration may take place.

The common law power to prevent a breach of the peace is used extensively by the Metropolitan police officers in London. The police often use (or abuse) this power to contain protestors for hours on end, not allowing them to move at all. This has happened on numerous demonstrations by Stop Huntingdon Animal Cruelty (SHAC) and also on a couple of the 'May Day' protests in London where thousands of protestors were penned in for several hours. These tactics are currently the subject of claims by several of the protestors for unlawful imprisonment and for denial of their rights to freedom of assembly.

This power can also be used by the police to enter and remain in public meetings, and even to enter domestic dwellings, where they reasonably believe that a breach of the peace is likely.

Now that the Public Order Act 1986 defines assemblies as consisting of only two people or more, we anticipate that the police will be more likely to use Section 14 to control assemblies in future rather than using their powers at common law. This is because it is often difficult for the police to prove that a breach of the peace is about to occur, and they have been sued extensively in the past for wrongful arrests and assaults as a result. It will be much easier for the police to use Section 14, because they do not have to reasonably apprehend an immediate breach of the peace.

POLICE POWERS TO DISPERSE – SECTION 30 ANTI-SOCIAL BEHAVIOUR ACT

Section 30 Anti-Social Behaviour Act 2003 empowers a police officer in uniform to disperse groups consisting of 2 persons or more where he reasonably believes that their behaviour or presence has resulted or is likely to result in members of the public being alarmed or distressed.

Failing to comply is an offence publishable by up to 3 months' imprisonment. An officer in uniform can arrest anyone whom he reasonably suspects to have committed an offence. The maximum penalty is 3 months' imprisonment or a fine.

There must be an authorisation in force covering the relevant locality. This must be issued by an officer of at least the rank superintendent and must be in writing. There is no requirement that the officer directing the group to disperse has to produce a written copy of the authorisation. But you could always check at the local police station to make sure there is an authorisation in force.

Although this legislation is relatively new, there are already reports of it being used against protestors. It is open potentially to widespread abuse by the police as it is in the nature of protest that someone is likely to be alarmed or distressed by it.

OFFENCES AGAINST THE PERSON

COMMON ASSAULT AND BATTERY

Assault and battery are "common law" offences. Although the term assault is often used to cover situations involving both assault and battery, they are in fact two separate offences.

ASSAULT

Assault is defined at common law as "any act which puts a person in fear of immediate and unlawful violence". So if you go to throw a punch at somebody and they fear that you will carry it out, this is enough to constitute the offence. The victim does not have to be actually afraid – he will be deemed to "fear" violence, if he anticipates that the punch will be carried out.

BATTERY

Battery is defined at common law as "the application of unlawful violence" by the accused on the victim. The slightest touching is enough to constitute a battery, but the courts have recognized that everyday life involves many incidents of contact between persons which should not be treated as criminal.

Points to Note on battery and assault

For both assault and battery, the prosecution must show that the violence was unlawful. If on a demo you see the police attacking someone using unreasonable force – eg punching or kicking someone on the ground - then you would be entitled to use reasonable force to defend them. If you were then arrested for assault and / or battery, it would be a possible defence to say that you were using reasonable and therefore lawful force in preventing crime or in self-defence. It would be for the magistrates to decide whose force was reasonable in the circumstances, and of course video or independent evidence is vital in these circumstances.

It would not be a battery for a police officer to tap you on the shoulder to get your attention or for you to do likewise.

The police cannot use force to detain you against your will and this could amount to assault or battery unless you have been arrested or are being searched.

Assault can be committed by words as well as actions, so long as the threat of violence is immediate.

Assault and / or battery are punishable summarily by up to 6 months imprisonment or a fine.

Neither assault nor battery are "arrestable offences" but the police do have several powers of arrest where they reasonably suspect you of these offences. They may arrest you

i) at common law to prevent a breach of the peace, or

ii) using a statutory power of arrest – eg for assaulting a police officer in the execution of his duty or

iii) under any of the general arrest conditions apply under Section 25 of PACE, or

iv) for an "arrestable" offence – eg assault causing actual bodily harm, or violent disorder.

The police may then charge you after arrest with common assault or battery.

ASSAULT CAUSING ACTUAL BODILY HARM

Assault causing actual bodily harm (ABH) is an offence under Section 47 of the Offences Against the Person Act 1847. Such an assault is a defined as an assault or battery, which in addition causes actual bodily harm. This need not be permanent or serious, but more than just a push or shove on a demo. There does not necessarily need to be a bruise or swelling if the victim is caused sufficient pain or discomfort.

Arrest and Punishment

ABH is an "either way" offence, which carries a maximum sentence of 5 years on indictment or 6 months summarily. It is therefore arrestable under Section 24 of PACE.

The police may often arrest you on suspicion of ABH or GBH (see below) where their arrest powers are otherwise insufficient – for example, after an assault has taken place – and then later drop the charge to common assault or battery.

WOUNDING AND ASSAULT CAUSING GRIEVOUS BODILY HARM (GBH)

The Offences Against the Persons Act 1847 contains two offences of wounding or causing GBH under Section 18 and 20. Section 18 is by far the most serious as it carries a maximum sentence of life imprisonment, whereas the maximum for Section 20 is 5 years. The difference is that the prosecution must prove that you *intended* to cause serious bodily harm under Section 18, whereas they need only show that you acted *recklessly* under Section 20.

Under both sections, an assault causing grievous bodily harm or wounding is defined as follows.

To constitute a wound the whole skin must be broken. It must be more than a scratch, but one drop of blood would be sufficient.

Grievous bodily harm must be "really serious harm", an obvious example of which would be a broken bone. There is no legal definition however, and it is a question of fact for the jury to decide.

Arrest and Punishment

Both offences under sections 18 and 20 are arrestable under Section 24 PACE and triable on indictment only.

Alternative Charges

For all of the above assault charges, the prosecution will need to prove that some harm has been inflicted. For this they will need a victim to give evidence to that effect. Where they are unable to do this, alternative charges may be brought under the Public Order Act 1986. Under several sections of this act, a conviction may be secured if it can be shown that a person was likely to fear violence etc, and no "victim" need actually testify to this effect. This is why public order offences are often charged as an alternative to more serious assault charges.

ASSAULTING OR OBSTRUCTING A CONSTABLE IN THE EXERCISE OF HIS DUTY

This is defined by Section 89 of the Police Act 1996.

- Section 89(1) makes it an offence to assault a constable in the execution of his duty.
- Section 89(2) makes it an offence to resist or wilfully obstruct a constable in the execution of his duty.

The key point in either case will be whether or not the constable was acting in the execution of his duty – and therefore lawfully - at the time of the offence. There is no statutory definition of a police officer's duty, but it has been said by the courts to include taking all steps necessary to protect life and limb, to keep the peace, to prevent crime and to detect crime.

The charge of wilful obstruction is most likely to be brought where a police officer was exercising his common law powers to prevent a breach of the peace. At common law, a police officer is empowered to take all steps reasonably necessary to prevent a breach of the peace. This includes not only the power of arrest, but any other step he considers necessary.

Say, for example, you are doing a demo outside an office premises and the police instruct you to stand on the opposite side of the road. You refuse and are arrested, and you're later charged with wilful obstruction of the police. If the case gets to court, the magistrates would have to decide whether or not the police were acting in the execution of their duty at the time. The police officer would have to show that moving you across the road was necessary to perform his duty as a police officer – for example to prevent crime, to protect the safety of the public or to prevent a breach of the peace.

The threat of arrest for obstruction is widely used and abused by the police to make protestors do as they are told. This should be challenged wherever possible. Assaulting a police officer under this section is an arrestable offence, but obstruction is not. If the police tell you what to do on a demo, ask what power they are exercising. If there is no Section 14 or 12 in force, then they can only rely on their powers at common law.

The High Court has ruled that the police are acting in the course of their duty when they remove trespassers from premises. It follows from this that if, during the course of a protest, you resist the use of reasonable force by the police in making you leave, you could be charged with obstruction.

You cannot be guilty of assaulting a police officer under Section 89(1) if it can be shown that he was not acting *in the course of his duty*. However, this does not mean that you would not be liable for one of the other assault or public order offences – for example common assault - and you are more likely to be charged with one of these offences if the prosecution foresees problems in proving that the constable was acting in the execution of his duty.

Arrest and Punishment

Both offences under Section 89 are summary only. Assault of a police officer is punishable by up to 6 months imprisonment, and obstruction by up to 1 month.

Assaulting a constable in the execution of his duty is an "arrestable offence" as it is contained within the schedule of arrestable offences in Section 24 of PACE. Wilful obstruction of a constable is not an arrestable offence, but the police have alternative powers of arrest for breach of the peace and under Section 25 PACE.

HOME DEMOS

SECTION 42, CRIMINAL JUSTICE AND POLICE ACT 2001

Section 42 of the Criminal Justice and Police Act 2001 enables the police to impose conditions on demonstrations taking place outside someone's home. Much was made of this new law at the time, as it was supposed to be one of the government's "package of measures" designed to stop animal rights extremism. But it has quickly become apparent that this law has had very little impact on home demos, and after intensive lobbying by the pharmaceutical industry and the police, the government have announced plans to make these kinds of demos illegal.

Section 42 confers power on a police officer to impose directions verbally on persons demonstrating in the 'vicinity' of someone's dwelling, if he reasonably believes that they are there to protest against the actions of the resident of the dwelling or anyone else, and that their presence amounts to or is likely to cause harassment, alarm or distress to the resident. This includes the power to direct you to leave the vicinity immediately. An officer can ask you to leave even if your behaviour is entirely peaceful, so long as you're in the vicinity of a dwelling. He can also impose conditions on the demonstration stating where it may take place and how many people may take part.

Frequently Asked Questions on Section 42

Can the police still use Section 42 if the dwelling is also used as a business?

Yes they can. So for example if you are protesting outside an animal breeding facility and you are also in the vicinity of someone's dwelling then the police could issue you with a Section 42 direction.

Are home demos now illegal under Section 42?

No they are not. The Section 42 offence is committed when you fail to comply with the police officer's direction. This could be a direction to leave the area or to demonstrate in a certain location. Activists frequently avoid Section 42 directions, by doing a series of home demos and leaving before the police arrive.

What is the "vicinity"?

The law is drafted so that you may be required to leave the vicinity, even if the "victim" is not at home, if the police reasonably believe you are causing harassment etc to his neighbours. The section does not define 'vicinity', so this will be for the constable and ultimately the courts to determine. You are usually required at least to leave the street on which the person lives. We believe that once you're at least a mile away, then you cannot be said to be in the vicinity. Police at the site of one animal rights protest however are currently telling protestors that they have to go several miles in each direction. This is almost certainly illegal.

Do the "residents" have to be at home during the demonstration?

Section 42 states that the police must reasonably suspect that your presence amounts to or is likely to cause harassment or distress to the "resident", in order to issue you with a direction. The "resident" is defined as anyone who uses the premises as their dwelling. We believe that the police must therefore take some steps to establish whether someone is actually at home before they can lawfully issue a direction. If they fail to do so, this could make a Section 42 direction to leave unlawful.

Human Rights

When exercising their discretion in imposing directions on a home demo, the police must not act in a way, which is incompatible with your European convention rights. Any restrictions the police impose on your freedom of expression and assembly must be proportionate and no more than necessary to protect the rights of others. This means in practice, that they cannot impose conditions which are not necessary to prevent harassment of the resident – for example, a condition to leave the entire county.

What are the powers of arrest and punishment?

An offence is committed by anyone who knowingly fails to comply with a Section 42 direction. Section 42 is not an "arrestable offence" and you can only be arrested by a police officer in uniform who reasonably suspects you of *committing* an offence. This means you cannot be arrested without warrant for it afterwards and in the event that you are arrested your house cannot be searched. The offence is punishable summarily by up to 3 months imprisonment or a fine.

HARASSMENT

PROTECTION FROM HARASSMENT ACT 1997

Section 2 of the Protection from Harassment Act 1997 ('the Act') makes it an offence for a person to pursue a course of conduct which amounts to harassment of another, and which he knows, or ought to know, amounts to harassment of the other. Such a course of conduct need only amount to two separate acts, and, unlike under Section 5 of the Public Order Act 1986, there is no need to prove disorderly conduct or threatening behaviour.

Section 4 of the Act creates the more serious offence of pursuing a course of conduct causing a person to fear that violence will be used against them on at least two occasions.

Section 3 of the Act provides for a civil remedy, whereby an injunction can be obtained in the High Court prohibiting a course of conduct that causes harassment or distress.

Frequently Asked Questions

Wasn't the Act introduced to prevent "stalking"?

Yes it was - the Act was introduced in the wake of well publicised "stalking" cases, and yet as soon as it was passed it was used extensively against animal rights activists and other protest groups.

Can the Act be used to protect companies from harassment?

Strictly speaking no, but the Act can be used to protect company employees under civil injunctions (see "Injunctions" p30) and is currently being used to protect Huntingdon Life Sciences' employees from animal rights activists. Several of their customers have also succeeded in obtaining injunctions under the Act, and these are currently amongst the main tools being used by the police against anti-vivisection activists.

The courts have ruled that the Act can be used in criminal prosecutions to protect individuals who constitute a sufficiently close-knit group – for example a husband and wife – but not large groups of company employees. It follows that a criminal charge under the Act alleging harassment of employees of a company could not be successful unless a "course of conduct" was proved against at least one named employee.

The government has proposed to amend the law, to make it an offence to harass a group of employees – see page 41 "New Legislation".

What is a "course of conduct"?

This will depend on all the circumstances. In one case, three threatening phone calls within the space of five minutes were held to be a course of conduct. In another, two instances of harassment separated by a four month period were also deemed to constitute a course of conduct. The courts have ruled that the more time that has elapsed between the two acts, the less likely it is that a course of conduct will be established.

Can there be more than one victim?

Yes there can, so long as there is a sufficient nexus or bond between the victims – for example where they are husband and wife – so that a course of conduct harassing the one would also harass the other. The High Court has ruled that sections 2 and 4 could generally not be used where the victims were defined as "company employees", and that their common employment was not sufficient to establish a "nexus" between them. However where a civil injunction is brought under Section 3 of the Act, the courts have ruled that it can be brought by one company employee on behalf of all the others. Breach of a civil injunction is a criminal offence.

Does there have to be an actual "victim"?

Yes there does. Unlike many offences under the Public Order Act 1986, there does need to be an actual victim to testify and this victim has to be named. This causes problems for the prosecution where the victim does not wish to testify for fear of being identified. In such a case, the Act cannot be used, and the prosecution may use other legislation such as the Public Order Act 1986.

What are "harassment warnings"?

Difficult question. During the course of several animal rights campaigns the police have issued many "harassment warnings", which warn protestors with regard to their future conduct. Similar warnings have been issued by the police during the course of other protests around the country as well. There is no mention, however, of these warnings in the legislation itself.

We believe that the police issue these warnings, where there is insufficient evidence to bring charges under the Act, for example where a victim is unwilling to testify. They are relying on the warnings instead as a form of intimidation, in the hope that they will prevent activists from protesting in the future.

Another reason for these warnings is to aid any future prosecution. If you are charged, the prosecution will have to show that you knew or ought to have known that your conduct was causing harassment (s2) or fear of violence (s4). It will help their case if they can produce evidence – such as the issue of a police warning - showing that you must have known that your conduct was having this effect

The warnings have been used in particular where the suspect is thought to be engaging in home demos. Legislation designed to deal with home demos has been singularly ineffective, hence the use of the "harassment warning" in a rather desperate attempt to stop such demos from taking place.

What defences are available?

As with Sections 4A and 5 of the Public Order Act 1986, it is a defence to show that your conduct was reasonable, and the same arguments apply here as they do to those sections. In the context of a campaign, the police as well as the courts must counterbalance the human rights of the individual to protest against the rights of citizens to be free from harassment

Powers of Arrest and Punishment

Section 2 of the act is punishable by up to 6 months imprisonment or a fine and / or a restraining order preventing you from continuing the course of conduct. This is included in the schedule of "arrestable offence" in Section 24 PACE

Section 4 of the Act is punishable summarily by up to six months imprisonment or by up to five years imprisonment on indictment. It is therefore an arrestable offence.

In addition the courts may order as part of sentence a restraining order against you preventing you from committing further acts of harassment. These typically consist of an order restraining you from approaching the victim (who has to be named). Breach of such a restraining order is punishable either way by up to six months imprisonment summarily or by up to five years' imprisonment and is therefore an "arrestable offences'.

ANTI-SOCIAL BEHAVIOUR ORDERS

Section 1 Crime and Disorder Act 2001

This section allows magistrates to issue an anti-social behaviour order ('ASBO') against anyone who has acted in an anti-social manner. Anti-social behaviour is defined as behaviour which has caused or is likely to cause harassment, alarm or distress to one or more persons not of the same household as oneself.

The power to issue ASBOs is being exercised more widely by magistrates now, as the procedure for the issue of an ASBO has been made much simpler. An ASBO can now be ordered after conviction for a criminal offence without the need for the prosecution to make a specific application.

Magistrates may issue you with an ASBO if it is proved that you have acted in an anti-social manner and an order is necessary to protect persons in the area in which your anti-social behaviour took place. It is not a criminal conviction and in order for one to be issued against you, it only needs to be proved "on a balance of probabilities" to have engaged in anti-social behaviour.

There is no need for a witness to testify that they have actually been harassed and an ASBO can be based on the evidence of a police officer that you have acted in a way that was likely to cause harassment, alarm or distress. You may say in your defence that your conduct was reasonable, and here your argument might be that you were exercising the legitimate right to protest.

If the case against you is proved, you will be issued with an ASBO prohibiting you from doing anything considered necessary to prevent further anti-social behaviour. Such an order is likely to include prohibiting you from entering certain areas or approaching individuals. It must be proportionate, which means it must not restrict your behaviour more than is necessary to prevent you from engaging in further anti-social acts.

It is an offence to breach an ASBO without reasonable excuse, punishable either way by 6 months imprisonment or a fine summarily or by up to 5 years imprisonment on indictment. It is therefore an arrestable offence. As of August 2004 ASBOs have already been used against two animal rights protestors. In one case, a protestor has been ordered not to enter Cambridgeshire (other than to pass through) and not to protest against certain customers of HLS for 3 years. Animal rights protestors can expect to see more widespread use of ASBOs against them in the future as they form part of the government's recently stated offensive against "extremists".

CIVIL INJUNCTIONS

GENERAL

Injunctions can be obtained against activists, when an individual or company brings a civil claim against them for a specified "tort" – ie a civil wrong. Examples of torts are private nuisance, trespass and libel.

The complainant company may specify the remedy that they seek in relation to the "tortious" conduct they claim to have suffered. In most civil cases, the remedy will be damages in the form of financial compensation, but in claims against protestors the claimant will usually also apply for an injunction restraining protestors from engaging in future unlawful conduct.

These injunctions typically prohibit protestors from assaulting, molesting, or otherwise harassing the employees of the claimant's company. They often stipulate that protestors must not enter "exclusion zones" surrounding the premises or home addresses of the claimant's employees. In these cases, the injunctions usually allow for protestors to enter the exclusion zone one day a week.

Frequently Asked Questions on Injunctions

What is the penalty for breaching an injunction?

In most civil claims, a claimant must apply to the High Court for "committal proceedings" to be brought against anyone suspected of acting in breach of an injunction. If successful the defendant can be imprisoned ("committed") for up to 2 years. This is a complex and drawn out procedure and the High Court will generally not imprison defendants unless the breach has clearly been proved and the terms of the injunction are clear and unambiguous.

However, where a claim is brought under the Protection from Harassment Act 1997 (PHA), breach of any injunction is also an arrestable offence punishable "either way" by up to 6 months summarily and 5 years on indictment. It is therefore an "arrestable offence" and the police can arrest anyone whom they reasonably suspect to have breached the injunction.

Can an injunction be used against me if I am not named as a defendant?

Yes, it can. In any civil claim, a court may order that one party represent a group of individuals. For example an injunction could be ordered against the director of Greenpeace on behalf of the director and all the members of Greenpeace. All the members of Greenpeace would be bound by the terms of such an injunction, once they had been served with it.

Am I bound by the terms of an injunction if I have not been served with notice of it?

No, you must be served with notice of an injunction in order to be bound by its terms. As a general rule a court order is not deemed to be served unless it has been served on you personally. However a judge may rule otherwise and will often order that "service" may take any of the following forms:

- By the display of copies of the injunction outside the company's premises
- By displaying it on a campaign website
- By hand delivery to specified addresses
- By handing it to protestors personally

If there is evidence that you have been made aware of an injunction in any of these ways, then you could be deemed to have been served with it.

Can Injunctions be used to protect companies?

Generally speaking, yes they can. However it has been ruled that companies cannot make a claim under Section 3 of the PHA. Companies such as Huntingdon Life Sciences are currently getting round this ruling by bringing the claim in the name of one employee on behalf of all the others. This tactic, which protects the company in all but name, is legally questionable. The government is now proposing to amend the PHA by enabling it to be used to protect groups of employees.

How can the prosecution prove that I have acted in breach of a civil injunction?

In order to convict you for breaching an injunction it is not enough for the prosecution to show that you are a part of an organization named on the injunction. They must have evidence that you are specifically aware of its terms.

This evidence could consist of any of the following:

- A company employee's testimony that he had served you with a copy of the injunction. The injunction would be deemed to be served if the employee threw it at you, even if you did not pick it up.
- An admission during police interview that you knew the terms of the injunction
- Evidence found on your computer hard drive

Even where the police have such evidence, you can say in your defence that you had a "reasonable excuse" eg because you had not actually read it.

PENALTY NOTICES

Section 2 Criminal Justice and Police Act 2001

Under Section 2 of the Criminal Justice and Police Act 2001, the police can issue fixed penalty notices where they suspect that a "penalty offence" has been committed. The relevant "penalty offences" are listed in Section 1 of the Act, and are mostly aimed at dealing with minor drunk / disorderly behaviour. But they also include Section 5 Public Order Act 1986 and this is the offence which is most likely to be used against activists.

Section 2 (1) of the Act states that a constable who has reason to believe that a person aged 16 or over has committed a penalty offence may give him a penalty notice in respect of the offence The procedure is then very similar to many road traffic offences. The person who has received the notice has 21 days in which either to pay the penalty or to request to be tried for the offence.

If you pay the penalty, then no further proceedings may be brought for the offence, and the penalty will not form part of your criminal record. If you request to be tried, then the case may go to trial. If the penalty is not paid and no request is made to be tried within 21 days, then normally the penalty goes up by half and is dealt with just like any other fine. But the police may then charge you with an offence in exceptional circumstances eg if the offence turns out to be more serious than originally thought, or they discover you have convictions for similar offences.

There is no requirement to give a warning before issuing a penalty notice (although for Section 5 offences the police are encouraged to do so, see below). There appears to be no time limit for the issue of fixed penalties. They will probably usually be issued around the time of the offence, but could be issued at a police station after arrest and in theory any time up to 6 months after the date of the offence.

The penalties are divided in to "upper" and "lower tiers". "Upper tier" offences attract a penalty charge of £80, "lower tier" offences £40. Section 5 is an "upper tier offence".

The use of penalty notices was trialed by five police forces between August 2002 and July 2003. The Home Office issued guidance notes to the police for when and how they should use the notices and how they should exercise their discretion. These are worth reading and can be downloaded on the internet from here: http://www.homeoffice.gov.uk/crimpol/police/penalty/index.html

The Home Office notes state that with regard to Section 5 offences, the police should consider giving a warning first and that also they should bear in mind the statutory defences to Section 5. These include the defence that your conduct was reasonable and that you were not aware that your conduct was "threatening, insulting or abusive". Reading between the lines, it seems that the Home Office are not keen on the police issuing fixed penalties for each and every instance of minor disorderly conduct. But the guidance notes are not legally binding and ultimately it is a matter of discretion for the individual officer.

The police have already started to use this power against activists. It remains to be seen whether use of these penalties is part of the government's new offensive against animal rights "extremists". In our opinion this could well be the case.

Whether activists should pay them or not will depend on the circumstances. Often protestors will want to fight them in court for example where they have been issued with a penalty notice for banging a drum or blowing a whistle. In situations where there is no basis for a Section 5 charge, the CPS may well decide not to prosecute you anyway.

On the other hand there will be times when someone might want to pay the penalty for example if he has been involved in serious disorder. Once the penalty is paid the police cannot take any further action for the offence.

SECTION 241 TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

Introduction
Section 241 of the Trade Union and Labour Relations Act 1992 re-enacted Section 7 of the Conspiracy and Protection of Property Act 1875. Parliament did not take the opportunity to amend the archaic wording of the provision and as a result it is fraught with difficulty for prosecution purposes. As its name suggests, the law was designed to deal with pickets and demonstrations in connection with industrial disputes. However it has often been used against animal rights and road protestors, so activists should be familiar with its provisions. It actually creates five different offences and is stated as follows:

The Offence
A person commits an offence who, 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, wrongfully and without legal authority -
(a) uses violence to or intimidates that person or his wife or children, or injures his property,
(b) persistently follows that person about from place to place,
(c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
(d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or
(e) follows that person with two or more other persons in a disorderly manner in or through any street or road.

Using violence to or intimidating the other person or his wife or children or injuring his property
This can include the use or threat of violence to persons or property. However it has been held that 'abuse, swearing or shouting' does not in itself amount to intimidation for the purposes of this section.

There are conflicting case authorities on whether or not the intimidation must succeed in putting someone in fear of violence or whether it is enough that it is likely to do so.

It is likely that a mass picket outside someone's home could implicitly amount to intimidation and the police do sometimes warn or arrest people for 'home demos' under this section.

Persistently following the other person from place to place
This type of conduct does not require any violence or threat of violence. The mere act of following is enough.

There is no general definition of what amounts to "persistently following". In one case, a conviction was upheld where the accused followed a worker who had emerged from a factory being picketed by the accused through three streets. The accused had not tried to speak to the worker and had on one occasion overtaken him.

The following need not be on foot – it could, for example, be one car following another car.

Hiding Any Tools or other property owned or used by that person or depriving him of or hindering him in the use thereof
This charge has been used recently against activists suspected of interfering with badger traps. Case law suggests however that some level of violence needs to be used either against persons or property, so it is arguable that simply interfering with the mechanism of a trap so as to make it inoperable does not amount to violence.

Watching or besetting the house or other place where the other person resides, works or carries on business or happens to be, or the approach to any such house or place
'Watching' is a question of fact and has no special legal meaning. 'Besetting' is defined in the dictionary as follows: "to attack from all sides; to trouble persistently; to harass; to hem in'.

There is no requirement for "watching or besetting" to be for more than a short time. In practice this is only usually charged in respect of watching or besetting private residences and the police have used it against animal rights protestors on 'home demos'.

Following the other person with two or more persons in a disorderly manner through a street or road
Unlike the provision under (b) above, persistence is not required. On the other hand, as you can see there are the extra requirements that the accused's following must be with two people or more, it must be in a disorderly manner and must be in a street or road. Whether the following is "disorderly" is a question of fact which will depend on all the circumstances of the case.

In practice, this section is hardly ever used against protestors, as the police tend to rely on other legislation, for example the provisions of the Public Order Act 1986 and the Protection from Harassment Act 1997.

GENERAL REQUIREMENTS FOR EACH OFFENCE

Mental Element
In each case, the accused must have acted with a view to compelling someone to abstain from doing something which he had a right to do, or to do something which he had a right to abstain from doing.

The words "with a view to" mean the same as "with the aim or intention of" in this context. Intention must be distinguished from motive. For example if a person acts in one of the specified ways with the aim of compelling workers not to build a motorway, it is irrelevant that his motive is to conserve the environment.

The prosecution has to show that the aim was "compulsion". So for example an anti-vivisection protestor who watches and besets a person's home or workplace with a view to persuading (rather than compelling) persons not to engage in animal testing, should not be convicted of an offence. Of course, this will depend on the circumstances and an activist who takes part in a vociferous home demo may well have a difficult task in persuading the court that his intention was to persuade rather than compel the occupant not to experiment on animals.

Wrongfully
Each of the types of conduct must be done wrongfully. This means that it must be unlawful in the civil sense (ie tortious) independently of Section 241 of the Act. Examples of civil wrongs - that is, torts – which may be relevant are those of public nuisance, trespass to land, intimidation, assault and battery.

Without Legal Authority
This section will probably only be considered in a prosecution if the accused raises it as a defence. This defence might be used where a defendant has some sort of license or authority to carry out the conduct of which he is accused. We don't know of any cases where activists have used this defence and it is more likely to avail a defendant in a trade union dispute.

Arrest and Punishment
Offences under Section 241 are not "arrestable offences" under 24 PACE. However it does carry a limited statutory power of arrest. A police officer can arrest anyone whom he reasonably suspects to be *committing* an offence.

Offences under this section are punishable summarily by a maximum of 6 months' imprisonment or a fine.

GENERAL NOTES ON SECTION 241
Contrary to belief amongst some activists, this Section cannot be challenged on the basis that it was not intended to be used against protestors, as the High Court has already ruled that it can be.

However, prosecutors are not generally keen on using Section 241, primarily because it is generally difficult to prove that the accused person intended to compel someone to carry out or not to carry out an activity.
Neither intention nor compulsion is necessary in Sections 4, 4A or 5 of the Public Order Act 1986 and consequently these sections are generally preferred.

The provisions of Section 241 have been used against road protestors and against people carrying out home demos, where the conduct is not in itself threatening or disorderly but people have been prevented from going about their lawful activity.

In the case of home demos, the government has announced plans to make them illegal. But as the law stands the police are likely to rely on this section to prevent this kind of protest.

TRESPASS

INTRODUCTION

If you enter a building – say a laboratory premises - without the consent of the occupier, then you will probably be trespassing. Until the offence of "aggravated trespass" was created in 1994, trespass in the UK was a civil matter only. But even then the police could arrest you for breach of the peace for refusing to leave private premises, or on suspicion of burglary, as trespass is one of its essential components.

AGGRAVATED TRESPASS

Section 68 of the Criminal Justice and Public Order Act 1994 (CJA) defines the offence as follows:
A person commits aggravated trespass if he trespasses on land with the intention of disrupting, or intimidating those taking part in, lawful activity taking place on that or adjacent land.

Notes on Aggravated Trespass

Aggravated trespass can now take place inside as well as outside buildings.

The offence was introduced in 1994 to deal with the problem caused to bloodsports enthusiasts by hunt saboteurs. However it has been widely used against other animal rights activists and road protestors as well.
Section 59 of the Anti-Social Behaviour Bill has amended Section 68 of the CJA, so that now aggravated trespass can occur inside as well as outside buildings.

This amendment was introduced after intensive lobbying of the government by the police and the pharmaceutical industry to give them new powers to deal with office occupations by animal rights activists and others. Previously the police only had the power to remove such protestors from the building or to arrest them for breach of the peace. They now have a specific power of arrest to deal with the trespass itself.

The law states that you cannot commit the offence from a public highway, but you may commit the offence from a public footpath or bridleway. This is because the right to use such footpaths and bridleways generally extends only to the right of passage along them. Any other act can amount to trespass.

Intending something to happen is not the same as wanting it to happen. If the prosecution can show, for example, that you knew that an office occupation would disrupt activity, then this will be enough to show that you intended it, regardless of whether you in fact wanted or desired the disruption.

You cannot be prosecuted for aggravated trespass where no actual activity is taking place to disrupt. The High Court has ruled that Section 68 CJA created a public order offence designed to deal with people disrupting persons actually engaged in lawful activity. It cannot, therefore, be used against activists, for example, who set off unattended badger traps, thus preventing the badger from entering the trap.

Arrest and Punishment

Aggravated trespass carries a maximum sentence of three months imprisonment or a fine. It is not an "arrestable offence", but the act confers a statutory power of arrest on an officer in uniform who suspects you of *committing* the offence.

The CPS is not been keen on the offence, as they have to show that the accused *intended* the offence, which is often difficult to prove in court. The police used it extensively during one animal rights campaign and failed to secure a single conviction! However now that the power can be used to deal with office occupations, protestors can expect it to be used more widely.

CIVIL TRESPASS

If the premises are open to the public – eg a shop or a bank – then you have an implied license i.e. permission to enter, and you are not trespassing. Similarly in the case of somebody's home, you have an implied permission to walk up their driveway and to knock on the front door.

However if you are asked to leave by the occupier of the house or shop and you refuse, then you become a trespasser. And if you enter a building or part of a building which is clearly marked "Staff Only" or you jump over a security gate in order to gain entry to premises, then there is no implied license to enter and you are trespassing immediately.

The police have been known to demand peoples' details while they are trespassing, so that they can hand them over to the occupier. They have no right to demand them for this purpose and you do not have to comply with such a request. A landowner may use reasonable force to move you from his premises, and anyone–the police included-may assist him with this.

BURGLARY

Section 9(1)(a) of the Theft Act 1968 states:
A person is guilty of burglary if he enters a building as a trespasser with intent to either:
i) steal
ii) inflict GBH on someone
iii) rape someone or
iv) inflict criminal damage

This is therefore a much wider offence than many people realise. To justify an arrest, all the police need to say is that they reasonably suspected that you entered as trespasser with intent to inflict criminal damage. They do not have to suspect "breaking and entry" which would be a separate offence of criminal damage.

The police now have far greater powers to deal with aggravated trespass than they did before as this can now be used to deal with activity disrupted inside as well as outside buildings. However there will be occasions where no-one is actually present when the trespass occurs, and in these cases the police might use burglary when they have little or nothing else to justify an arrest.

Burglary is an "arrestable offence" under Section 24 PACE and therefore carries all the additional powers conferred by that. Of course you are unlikely to get charged with burglary unless you actually do steal, or cause criminal damage etc. You may well be able to sue the police for wrongful arrest and unlawful imprisonment afterwards, if the police cannot give adequate reasons for believing that you intended to inflict criminal damage etc.

OBSTRUCTION OF THE HIGHWAY

SECTION 137 HIGHWAYS ACT 1980

Section 137 of the Highways Act 1980 makes it an offence to cause a wilful obstruction of the highway without lawful authority or excuse.

Many animal rights stalls and assemblies may cause an obstruction, but the key legal point is whether or not there is a "lawful excuse" for the obstruction.

Once it was the case that there could only be a lawful excuse for obstructing the highway where you were using it for passage or re-passage and for ancillary matters, for example stopping to read a map. But more recent case decisions have interpreted the right to use the highway much more liberally, so as to include, for example, the handing out of leaflets, assembling and collecting for charity. Nowadays the courts are much more mindful of the exercise of European convention rights when deciding whether or not an obstruction has been caused.

It follows that it is not necessarily the case that an animal rights stall or a picket outside a shop on the highway is causing an unlawful obstruction, even though the police and council officials often maintain that it is. Leading cases state that all the circumstances must be considered in determining whether the obstruction was unlawful, including the duration, the purpose of the obstruction and its extent on to the highway.

One of the key purposes which the courts must consider in deciding whether or not there is a reasonable excuse for causing an obstruction is whether or not it involves the exercise of one or more ECHR convention rights, for example the right to freedom of expression under Article 10. Now that the police are legally bound to respect your rights under the European Convention on Human Rights, they have to interpret their powers so as to be consistent with those rights. And the courts must, wherever possible, interpret all legislation so as to be consistent.

In a case that went to the High Court in 2003, an anti-war protestor had erected a number of placards in Parliament Square in London. These placards protruded by one and a half feet on to a highway eleven feet wide. The council sought an injunction against him in the High Court prohibiting him from obstructing the highway. The court ruled that he had wilfully obstructed the highway, but that the obstruction was reasonable in all the circumstances. The injunction was refused.

You cannot be arrested for obstruction where you are simply walking along the highway, unless you are blocking a main road.

The courts have ruled that unlawful activity could never be regarded as "reasonable" for the purpose of the act.

Although breach of Section 137 is not strictly speaking an "arrestable offence", the police can arrest you to prevent an obstruction of the highway using their general power of arrest under Section 25 of PACE.

COMPLAINTS AGAINST THE POLICE

WHY COMPLAIN?

Many people are perhaps justifiably cynical about the police's methods of dealing with complaints. After all, the investigation is usually conducted by the police themselves, rather than an independent body. But there are many good reasons for complaining. It's a simple procedure and will only take at most a few hours of your time. By contrast it will cost the police force being investigated a relatively large amount of time and money. If formal complaint proceedings are continually brought against the same police officers these will become a major headache to the police forces in question. All complaints have to be recorded by the police force, and any complaints that are upheld will adversely affect the police force's statistics.

Complaints may directly affect the way in which police behave on demos. If the police act unlawfully or discriminately towards you and you take no action, then they will think they can get away with it and continue to abuse the rights of other activists in the future. But if they regularly receive complaints about their behaviour and find themselves under constant investigation then they may have to reconsider their actions.

Even if your complaint is not upheld, it could lead to a complete change in policy by the police in their attitude to activists.

THE NEW INDEPENDENT POLICE COMPLAINTS COMMISSION

On 1st April 2004, the new Independent Police Complaints Commission (IPCC) replaced the Police Complaints Authority (PCA) as the body responsible for overseeing complaints against the police. The change came about as a result of calls for greater openness and an independent element in the investigation of police complaints. The main differences in the new procedure are that the IPCC can actively initiate and manage police investigations and can carry out the most serious investigations itself.

There is a duty of disclosure on the police, whereby they have to keep the complainant informed about an investigation. It is uncertain at this stage whether this will include details of witness statements or other primary evidence, but it will certainly an improvement on the previous situation.

Also a number of appeals are now available to the complainant. These are appeals:

- Against a decision not to record a complaint
- About the procedure adopted during the local resolution of a complaint
- About the disclosure of information by the police
- About the outcome of an investigation

All these reforms are designed to instill greater public confidence in the complaints procedure. Only time will tell if the reforms do in fact lead to greater accountability. Contact details for the IPCC are:

Independent Police Complaints Commission
90 High Holborn
London, WC1V 6BH
Tel: 08453 002 002 (local rate)
Email: enquiries@ipcc.gsi.gov.uk
http://www.ipcc.gov.uk/

THE COMPLAINTS PROCEDURE

If you wish to make a complaint to the police you can write either directly to the IPCC or to the Chief Constable of the relevant police force. In all but the most serious cases, complaints will be handled by the police themselves, and if you write to the IPCC they will forward the complaint to the police with your consent. The complaint will then be investigated by the actual police force in question. When the investigation is complete the investigating officer (IO) will decide what action if any to take. This could include disciplinary action against the police officer concerned or even referring the case to the Crown Prosecution Service if there is enough evidence for a criminal prosecution.

LOCAL RESOLUTION OR FORMAL INVESTIGATION?

Local resolution is the new name for what used to be called "informal resolution". Under the old rules, you could ask for an informal investigation and if were still not happy you could insist on a formal one as well. Under the new law you can still insist on a formal investigation, but if you consent to local resolution you cannot then insist on a formal investigation if you are unhappy with the outcome. You cannot appeal against a local resolution decision unless the police have failed to follow the correct procedure.

If it seems to the Chief Constable that your complaint is suitable for informal resolution then he is under a duty to try to resolve the matter in this way and will appoint an officer within his force to do so. This would apply to relatively trivial

complaints such as rudeness where the police officer's conduct is not alleged to be of a criminal nature. The police are likely to want to resolve complaints informally wherever possible, as this is the most cost effective way to deal with it and reduces the burden on police resources. An example of an local resolution would be where the chief constable verbally apologises or offers reassurance that there will be no repeat of the behaviour.

However, it is your right by law to insist on a formal investigation whatever the nature of the complaint. Therefore if you state in your initial letter to the IPCC that you do not wish to have the matter resolved by local resolution then no attempt should be made to resolve it informally.

We would normally advise that you opt for a formal investigation. This will ensure that your complaint is investigated as thoroughly as the law allows. And you will have the right of appeal if you are unhappy with the outcome. There will be times however where local resolution may be preferable, for example where you wish to negotiate with the police about harassment of activists on demos. Here local resolution might provide a speedy solution whereas a formal investigation could take several months to resolve.

WHAT TO WRITE IN YOUR LETTER

It's best to keep the original letter of complaint fairly brief, as you will usually have to make another statement to the police for purposes of the investigation. State the name of the officer or officers against whom you are complaining, and the particular police force to which they belong. If you do not have their names, identify them by their number if possible. If you cannot do this, you should provide the police with any other identifying evidence, for example a photo, or description stating the time and location of the incident, the officer's vehicle registration or anything else that may assist in the identification. Give brief details of the nature of your complaint and details of any witnesses who have agreed to make statements on your behalf. State that you do not wish to use local resolution unless you are happy for this procedure to be used.

LOCATION OF THE INTERVIEW

A tactic commonly employed by the police is to send the investigating officer to your home, who then attempts to persuade you not to bring formal complaint proceedings and use local resolution instead. If you do not wish this to happen, you should state in your initial letter that you wish to arrange to make a formal statement at your local police station and that you do not wish the police to visit you at home.

THE INTERVIEW

Once the chief constable determines that the complaint is to be resolved formally an investigating officer ('IO') will be appointed to investigate your complaint, and you will receive a letter to inform you of this. IO will usually be from the 'professional standards' department of the same police force, unless the complaint is very serious. He will not be a colleague of the officer who is the subject of your complaint.

You should contact the IO and arrange to make a formal statement at a location of your choice - either at your home or at the nearest police station. The statement is usually taken in a fairly relaxed and informal manner. Remember you are the one making the complaint and the officer is there solely in order to facilitate this. If you wish, you may have a friend or solicitor with you. You will dictate the statement to the officer who will make a handwritten record. You can say exactly what you want to say in the statement, and the officer may not add his own comments.

When you have finished you will be invited to read the statement and to sign at the bottom of each page. You are free to alter anything you're not happy with, so make sure the statement is exactly right, as this will form the substance of your complaint. If you have any independent evidence – for example, video evidence or names and addresses of witnesses – you should supply a copy of these to the IO. Once he has taken your statement the officer will then make further enquiries. These will include taking statements from the officer being investigated and from any other relevant parties.

WHAT HAPPENS NEXT

The IO is under a duty to keep you regularly informed of the status of the investigation. It is not known at present what details this information will consist of, but hopefully it will include police witness statements and any other evidence they are relying on in their defence. When the investigation is concluded, the IO will decide what action if any to bring and inform you of this in writing. You have the right to appeal against his decision and have 28 days in which to do so. The appeal will be dealt with by the IPCC, not the police. You cannot appeal against complaints conducted or managed by the IPCC itself.

HUMAN RIGHTS

HUMAN RIGHTS ACT 1998

The Act has effectively incorporated the convention in to UK law. Whereas in the past you had to go to the European court in Strasbourg to seek a remedy under the convention, the Human Rights Act 1998 was designed to "bring home" the convention, enabling people to use it directly within UK courts. This could potentially have an enormous effect on the development of case law in the UK.

From now on, wherever possible, courts must interpret both existing and future legislation so as to be compatible with articles of the convention. If the courts are unable to do this, then they must enforce the legislation anyway and issue a "declaration of incompatibility" that the legislation is inconsistent. But many commentators believe that judges will be reluctant to do this, and more inclined to interpret the law – and alter its literal meaning if necessary - so as to be consistent with the convention.

The police are also now under a duty not to act in breach of your human rights.

Relevant Sections

Section 3(1) of the Act states that, so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

Section 6(1) of the Human Rights Act 1998 states that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Police officers' functions are of a public nature and they can therefore be sued under the Act. Section 6 can therefore be used against the police in all manner of ways where they abuse their power. If for example they make you stop handing out leaflets outside a business premises, you could sue them for acting inconsistently with your rights under Article 10 of the convention – the right to freedom of expression.

Section 4(2) states that if the court is satisfied that a legislative provision is incompatible with a Convention right, it may make a declaration of incompatibility.

Effect of the Act

The Act could have a big influence on future judicial interpretation of public order law. Articles 10 and 11 of the convention assert the rights of everyone to freedom of expression and freedom of assembly respectively. These are not unlimited rights, of course, and Parliament may impose legislative restrictions on them for the prevention of crime, public disorder etc. But these restrictions imposed have to be proportionate to the objective being sought i.e. public disorder, crime. And if the police interpret the legislation in a way that is disproportionate to that objective, then they are acting illegally and can be sued.

Anyone who goes on animal rights demos these days will be familiar with the Section 12 and 14 orders which the police routinely use to control marches and assemblies. This legislation in itself is not incompatible with the convention. It is supposedly designed to balance the rights of protestors to demonstrate with the rights of others to go about their normal business and to be protected from crime. But nowadays the police often abuse their powers under Section 14, so as to negate entirely the effect of a demonstration. If you can show this to be the case then you can use it as a defence when charged with failing to comply with a Section 12 or 14 direction.

Similarly in the case of Section 42 of the Criminal Justice and Police Act 2001 (the legislation on home demos) the police are currently abusing the discretion granted by them in the legislation. As a result, a number of protestors have sued the police under Section 6 of the Act.

Other police powers have also already been affected by the incorporation of the convention in to UK legislation. For example, the High Court has ruled that it is illegal for the police to detain prisoners held in custody for breach of the peace, where there are no grounds for suspecting that they will cause a further breach when they are released. It has also been ruled that the Protection from Harassment Act 1997 should not be used to stifle legitimate protest, as this would be incompatible with Article 10 of the convention.

SUING THE POLICE

GENERAL

If you have been arrested and released without charge you may be able to sue the police for assault, battery, and false imprisonment. When the police arrest you they must have reasonable grounds to suspect you of an offence. Even if you're released without charge the police may still have had good reason to suspect you – it will depend on the circumstances. Conversely you may be convicted of an offence and still be able to sue for wrongful arrest. For example you may be convicted of affray but the arrest was unlawful, because affray is not an arrestable offence.

If you have been prosecuted and had the charges dropped, you may be able to sue for malicious prosecution if you can show that the police lacked an honest belief that you were guilty of the offence.

You can sometimes sue the police even if you haven't been arrested. If the police shove or punch you on a demo then they will be liable for assault or battery, if they did so without lawful authority or excuse – for example where a Section 14 notice was unlawful.

When suing the police, you would normally sue the chief constable of the police force in question – he is "vicariously liable" for the actions of his officers whilst in the course of duty.

HOW MUCH CAN YOU CLAIM?

The amounts awarded against the police can be considerable. If, for example, you are unlawfully detained for as little as six hours you can claim for damages of around £2,000. But if you have been unlawfully handcuffed, strip-searched or treated to any unwarranted force during the course of the arrest, you may well receive much more. The courts may additionally award "exemplary" damages against the police if it can be proved that they have abused their power or acted oppressively. If the police think you have a good chance of winning your case, they may award you out of court damages by way of a settlement.

LEGAL AID

If you think you may have grounds to sue the police, contact a solicitor who specializes in actions against the police. If you are on Job Seekers Allowance, Income Support or a low wage, you may be entitled to Legal Aid. The Legal Aid system enables claimants on a low income to sue, where they can show that they have a reasonable chance of success. You may still be able to get legal aid if you are working, but you could be asked to part fund the action yourself.

The Legal Aid board will review the case as it goes along as more evidence comes to light. If as a result of evidence presented by the defendant it appears that your case has little chance of success, legal aid will be withdrawn. Legal aid may also be refused if the costs of bringing the case exceed the amount of money you are likely to win if you are successful. So long as you have legal aid, not only will your solicitors and barrister's fees be paid for you, but usually the defendant's costs as well if you go to trial and lose.

HUMAN RIGHTS

You can now sue the police for breach of Section 6 of the Human Rights Act 1998, for acting in a way, which is incompatible with your European convention rights. You could do this, for example, if they moved you for obstructing the highway when leafleting outside a fur shop, as they would be disregarding your right to freedom of expression under Article 10 of the European Convention on Human Rights.

The problem with suing in situations for such relatively minor breaches however is that you will be unlikely to be granted legal aid. Without legal aid you will be liable for the defendant's costs if you lose – thousands of pounds if the case goes to trial – even if you can afford your own legal fees or are representing yourself. There is a process known as the small claims procedure where costs are not awarded against you if you lose. But although this is generally the procedure used for claims below £5,000 it is not normally deemed to be suitable for actions against the police.

The following firm of solicitors specialise in legal actions against the police:

Irwin Mitchell Solicitors,
St Peter's House,
Hartshead,
Sheffield. S1 2EL
Tel: 0870 1500 100
Fax: 0114 275 3306,
Website: http://www.imonline.co.uk

NEW AND FUTURE LEGISLATION

CUSTODY PLUS

The Criminal Justice Act 2003 contains wholesale and sweeping changes to the criminal justice system, many of which are beyond the scope of this booklet not least because several of the provisions have yet to come in to force. These changes will be contained in future editions of this booklet when they have come in to force.

One of the new provisions is the system of punishing offenders known as "Custody Plus". All offences currently punishable with a maximum of six months' imprisonment become punishable with a maximum of 51 weeks. All offences triable either way which are punishable on summary conviction with imprisonment will be punishable in the magistrates' court with a maximum of 12 months. Magistrates' powers of sentence will correspondingly be increased to 12 months for a single offence.

For any of the above offences the term of any custodial sentence must be at least 28 weeks. When passing a sentence of imprisonment the court must specify a period (the "custodial period") at the end of which the offender is to be released on license ("the license period"). The custodial period must be at least 2 weeks and not more than 13 weeks in respect of any one offence. The license period must be at least 26 weeks in length.

License conditions will include requirements to do community service, curfews by electronic tagging, supervision orders and exclusion orders.

Alteration of Penalties for Specified Summary Offences

In conjunction with the above new powers, certain summary offences punishable by 4 months imprisonment or less will in future be punishable for up to 51 weeks. These include inciting people to breach public order conditions on assemblies and processions and refusing to comply with a Section 42 direction to leave the vicinity of a dwelling (all currently 3 months). They also include refusing to remove a face mask and obstructing a police officer (both currently 1 month).

Other specified offences will no longer be imprisonable, but only one of these which is ever likely to affect activists, is the offence of "vagrancy", which will no longer be an imprisonable offence.

INTERMITTENT CUSTODY

Under this provision a court may on sentencing specify periods during which an offender may be released temporarily on license. Similar conditions to those described above may be attached to the license period.

SUSPENDED SENTENCES OF IMPRISONMENT

Under this provision, as an alternative to prison offenders may receive a community service or be released subject to some other license condition eg a supervision or exclusion order.

NOTES

The new laws described above are truly draconian in their extent. Under the current law, for example, if you obstruct a constable in the execution of his duty, you face a maximum sentence of 1 month in prison, of which you will only serve a maximum of two weeks. Under the new system a custodial sentence for the same offence could be for up to 13 weeks, followed by a license period of a minimum of 26 weeks. If you breach any of the conditions attached to the license period you could be recalled to prison.

The idea supposedly behind this radical change in sentencing powers is to allow magistrates to tailor a sentence to the specific offence. In practice we envisage that the new powers will be abused to impose even harsher penalties on activists engaging in minor public order offences.

As of August 2004, none of the provisions have come in to force and no date has been announced.

IDENTITY CARDS

The government has introduced draft legislation for a national identity card. The card system will cost at least £3 billion and is likely to become a part of every day life for everyone living in the UK. While the government's current proposal is for a voluntary scheme, if you choose not to apply for an ID card you may not be able to leave the country, drive, get a job and get basic health care. So the ID card will be compulsory in all but name.

For more info on the campaign against ID cards check the following websites:
www.no2id.net/
www.defy-id.org.uk/

NEW LAWS TO DEAL WITH ANIMAL RIGHTS PROTESTORS

In the wake of the media hysteria over supposed "animal rights extremism" in July 2004, the government announced that there would be several changes to the law designed to deal specifically with animal rights protests.

Home Demos

The first of these proposals is to amend Section 42 of the Criminal Justice and Police Act 2001 so as to make demonstrations outside homes illegal, where the purpose of the protestors is to persuade the resident not do something which he is entitled to do. This will effectively make all home demos illegal. It is proposed to make this an "arrestable offence", enabling the police to arrest you after the offence was committed.

Requirement to Leave Vicinity of Dwelling

The second law directed at animal rights protestors is again aimed at preventing home demos. As the law currently stands, where someone has been required to leave the vicinity of someone's home, they may return again the next day. Under the proposed law it is proposed to make it an offence to return to the vicinity of a dwelling within 3 months of being required to leave. Given that the police sometimes interpret the term "vicinity" as comprising an area of 50 square miles surrounding someone's home, this power is certainly open to abuse by the police.

Harassment of Employees

Under current law it is not possible to harass a large group of employees under the Protection from Harassment Act 1997, as the Act was only designed to protect individuals and not companies. So someone could, for example, send 200 emails to 200 different employees and they would not engage in a "course of conduct" as each employee would only receive one email. The government is proposing to amend this legislation so as to make it possible to "harass" groups of employees within the meaning of the Act, so that an act of harassment against the one can amount to an act of harassment against any of the others. This would mean that you could, to use the above example, send as few as two emails to two separate employees and commit an offence under the Act.

The real reason for changing the law on harassment is that the current law is causing major problems for Huntingdon Life Sciences in their case against SHAC. In the most recent High Court ruling a judge identified grave difficulties with the use of the Act to prohibit lawful protest. The government is, therefore, proposing to change the law to make it easier for companies to stifle protest against them. The new laws will probably go through Parliament in autumn 2004 and become law in early 2005.

ARRESTABLE OFFENCES

The Home Secretary, in his infinite wisdom, wishes to abolish the distinction between "arrestable" and "non-arrestable" offences (as outlined in pages 15-16 of this booklet). In a consultation document issued by the Home Office it is proposed to make all offences arrestable! It is argued that the current distinction is too confusing and bureaucratic and that it would be much more simple and straightforward to have the same arrest powers available for every offence.

In practice such a new power would clearly be yet another tool of oppression for the police to use against activists. Fortunately the government is not proposing to enact these proposals at the moment and it is to be hoped that they will be received with the widespread opposition they deserve.

SEARCH POWERS

In the same consultation document, the Home Office is also suggesting that the powers to search property become "more flexible" and more easily available to the police. As the law currently stands, the police can only get a search warrant under a limited number of enactments or where a "serious arrestable offence" has occurred. They can only search after charge if you have been arrested for an "arrestable offence".

It is being proposed that the power of search be extended to anyone who has been arrested for an indictable or either way offence. The paper considers that the power could be extended to persons under arrest for any imprisonable offence, but considers this to be a step too far at present.

Again what is being proposed is a breathtaking assault on peoples' civil liberties. The safeguards currently in place with regard to searches of dwellings are there for a good reason – to prevent the arbitrary use of power by the police.

RECOMMENDED CRIMINAL LAW SOLICITORS

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LS7 3DX
Tel: 0113 200 7400
Fax: 0113 237 4685
(Cover Leeds & surroundings only)
Web: www.isonharrison.co.uk/htm/bundey.htm

DEFINITIONS

On Indictment	In the Crown court, before a judge and jury
Summarily	In the magistrates court
Either way offence	An offence triable either on indictment or summarily. The accused has an absolute right to opt for trial by jury if he so wishes. The magistrates may refer such a case to the Crown Court if they deem it serious enough.
Common Law	Judge made law
Statutory Law	Legislation created in Parliament
Precedent	Ruling on the law by a higher court, which binds any court below. Only the High Court or above has the power to make a precedent.

ABBREVIATIONS

CPS	**Crown Prosecution Service**
IPCC	**Independent Police Complaints Commission**
IO	**Investigating Officer**
PACE	**Police and Criminal Evidence Act 1984**
ECHR	**European Convention on Human Rights**
CJA	**Criminal Justice and Public Order Act 1994**
PHA	**Protection from Harassment Act 1997**