

Legal Advice

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Despite what the police and politicians think, and despite the passing of reactionary laws such as the Criminal Justice Act and the Terrorism Act, our right to protest remains. Indeed, the Human Rights Act, which incorporated the European Convention on Human Rights into UK law, strengthens this.

What follows is some advice, mostly from questions we have been asked in the past. It was updated in April 2002. It applies in England and Wales, but not necessarily in Scotland or Northern Ireland.

- * [Identification](#)
- * ["Human Rights"](#)
- * [Searches](#)
- * [Section 60 Orders](#)
- * [Dealing with the cops](#)
- * [Laws often used against us](#)
- * [Dealing with arrest](#)
- * [Deportation](#)
- * [Bust card](#)
- * [At The Police Station](#)

Identification

In the UK there is no requirement to carry any form of identity. This applies equally to those from overseas so that, unlike in many other countries, you do not have to carry your passport.

Any picture or video image can be used in evidence against you. Even right-on photographers can have their films seized & the cops regularly get court orders after protests. Be aware of all cameras (CCTV, police, plainclothes, media and even other protestors).

Wearing masks is not illegal. However a senior cop may order that masks be removed (this may be communicated by a junior cop). Refusal to do so becomes an offence.

"Human Rights"

The European Convention on Human Rights is incorporated in British law. It provides certain minimum safeguards.

Everyone has the right to freedom of expression – Article 10

This means that there is freedom of speech (e.g. banners, leaflets, slogans etc.)

Everyone has the right to freedom of assembly – Article 11

This creates the right to protest, picket, hold a sit-in, demonstrate and march, in both public and private areas (in *Steel and Others v UK* the European Court ruled that it was a breach of Article 11 to remove 3 protestors from outside an arms fair in London). The purpose of the assembly is irrelevant; the only limitation is that there must be peaceful intent (even if disorder results). Article 11 also confers the right to hold meetings, marches and demonstrations on the public highway. This was confirmed in *Anderson and Others v UK*, which distinguished protesting from hanging out just for social purposes.

Searches

The police must have reasonable suspicion that you are carrying drugs, weapons, stolen items etc. before they search you. The cops must identify themselves and the reason for the search. You can only have a "pat down" search unless you are arrested, and you are only required to remove outer clothing (e.g. a coat) in public. You have the right to be searched by a cop of the same gender. You are not required to give a name or address. If you are stopped and search ask why you are being searched and ask for a written record afterwards.

Section 60 Orders

These were used at Euston on N30 and again on Mayday's 2000 and 2001. In short it can be defined as the power of the police to stop and search in anticipation of violence (our emphasis). The first thing to note is that actual violence is not required. If a superintendent (or an inspector if a superintendent is not available) believes that incidents involving violence are likely to occur and it is expedient to do so to prevent their occurrence, he may give authorisation to stop and search people and vehicles within a specified area for up to 24 hours.

Therefore the uniformed cops of any rank can stop people and vehicles and search them for weapons or dangerous instruments. No suspicion that the person or vehicle has weapons is required. Any weapons or dangerous instruments may be seized. The general advice concerning searches above applies (i.e. pat down only, cop of same gender etc.).

The (uniformed) cops can also require that any item be removed which the cop thinks is wholly or mainly for concealing identity (e.g. masks). The cops can also seize any item which they reasonably believe any person intends to wear wholly or mainly for that purpose. Failing to remove an item when required to do so by a constable in the exercise of his power under this section is an arrestable offence with maximum imprisonment of one month or a fine or both.

However, items 'wholly or mainly for concealing identity' must be distinguished from everyday wear. In *R v Gray* wearing a baseball hat and sunglasses was everyday wear and therefore not an item wholly or mainly for concealing identity.

In practice s60 has been used to keep people confined (even tourists in Trafalgar Square and Oxford Street) and gather evidence. There is no power in s60 that allows this. Reasonable force could therefore be used to leave a cordon.

s60 does not give the cops the power to take your name and address (despite what they may say about the need to give you a record of the search - this can be done noting that you refused to give your name and address). Nor may they take your photograph (although the cops will argue that they can do this in any public place); conduct intimate searches; or search things like wallets and purses, which are too small to contain a weapon.

Dealing with the cops

This is largely a matter of common sense and depends on the exact circumstances. However, here are a few tips:

- * Be calm and assertive.
- * Ask to speak to the senior cop (PC's know nothing anyway).
- * Try not to lose it or swear (this may also be used as an excuse to arrest you).
- * Lay off the drink (this may be used as an excuse to arrest you).
- * Keep a watchful eye out for other cops and other protestors.
- * Look after each other.

Laws often used against us:

Don't be scared by the list of offences, most of them are minor matters. Knowledge of them is useful.

Breach of the Peace (a common law power)

Breach of the peace has a specific meaning. It applies where harm is done, or threatened to be done or likely to be done to a person or in his presence to his property. The cops don't usually know this. It does not mean just making noise etc. If the cops say there is a breach of the peace, try to find out who they think is being harmed, threatened, likely to be etc.

Obstruction

There are two forms of obstruction:

1. Obstruction of a public highway (section 137 Highways Act 1980)
Public highways are roads, pavements and dedicated rights of way. This does not include private property. Remember land in front of buildings is often private, even if sometimes it looks like the pavement.
2. Obstruction of a police officer in the course of his duty (section 89(2) Police Act 1996).
The crucial thing here is that the cop must be acting in the course of his duty. This does not mean everything a cop does. For example if you are told to move and you refuse, you cannot then be obstructing a police officer in the course of his duty if there was no law requiring you to move in the first place.

Trespass

Trespass means going onto land or entering a building without permission. It is not a criminal offence, but a civil matter. Therefore it is nothing to do with the police. A person (e.g. a security guard) may use reasonable force to remove you, but only if they are on the land or in the building at the time. If you enter empty land or an empty building and lock them out it is their bad luck and they will have to get an injunction (a civil court order). However it may be a criminal offence to commit criminal damage getting onto land or into a building.

* Aggravated trespass (section 68 Criminal Justice and Public Order Act 1994)

This applies to land which is not a highway (e.g. private land), but it must be in the open air (i.e. not under a porch and not indoors). The cops must show that you are acting with the intention of intimidating any person on the land or neighbouring land into stopping their lawful activity or obstructing them so that they cannot carry out their lawful activity.

* Public order offences (Criminal Justice and Public Order Act 1994)

These are a range of offences from "causing harassment, alarm or distress" (section 5), "using threatening words and behaviour" (s4), affray (s3), violent disorder (s2) to riot (s1). The distinctions between these definitions are minor and it is largely arbitrary what you are charged with. Apart from s5, they are all considered to be serious, and if you are accused of any you will be arrested, so there is little point in trying to debate the finer points. If the cops claim that you are causing harassment, alarm or distress, try to find out who you are supposed to be causing it too.

Criminal damage (section 1 Criminal Damage Act 1971)

Without lawful excuse destroying or damaging property belonging to another. This can even mean grass (but not wild plants!) and chalking the pavement!

Theft (section 1 Theft Act 1968)

Dishonestly appropriating (i.e. assuming rights of ownership) of property belonging to another with the intent of permanently depriving the other person of it. The important thing is that all elements of the offence must be proved, so that if you are not acting dishonestly or if you intend to return the property (e.g. after photocopying an important document) it is not theft.

Terrorism Act 2000

The main effect of this legislation so far has been to proscribe a number of organisations, none of which are based in the UK although some may have supporters here. Anyone connected with the proscribed organisations should have got legal advice about this and the risk of arrest. The Act also provides stop and search powers, which are similar to s60. Anyone arrested under the Act may be detained for 36 hours but has the same right to a solicitor as anyone else (see below).

Anti-Terrorism Crime and Security Act 2001

This is the second piece of "anti-terrorism" legislation which was rushed through in the aftermath of September 11. In the main it amends other Acts (e.g. s60) and these amendments have been incorporated in this advice.

Although both sections of the British state and the EU have tried to brand anti-capitalists terrorists, it is our assessment that the cops will not use the specific terrorist charges both for political reasons and because they have enough powers already. Further information on this subject can be found at <http://www.statewatch.org/>

Dealing with arrest

The important thing to remember is that not all arrests lead to people being charged and not all charges lead to convictions. If you exercise your right to silence and get good legal advice, you will increase your chance of not being charged or convicted (on the other hand there are many people in prison who did nothing, so innocence is no guarantee and the same advice applies).

If you are arrested you will be handcuffed, put in a police van and taken to the police station. At the station you will be booked in by the custody sergeant. You are only required to give a name and address, unless you are under 21 when you must give a date of birth (but refusing to give a date of birth may delay your release as they use this to check the computer). You will be searched and have your property removed. You will be asked to sign for your property. You do not have to and you definitely should not if they have included anything incriminating. If you do sign do not leave any space where things can be added later. You will also be asked to sign to say you do not want a copy of PACE (Police & Criminal Evidence Act), don't - ask for a copy. It means the cops have to find one and it will give you something to read in the cell.

Your fingerprints will be taken, you will be photographed and a swab of your saliva will be taken. Throughout all this the cops will try to engage you in conversation. Just say "no comment" or keep asking to phone a solicitor. If you give a statement you will find it very difficult to retract it later and you may live to regret it. You have a right to have a solicitor of your choice and to speak to them in private, including over the phone. Only use a solicitor you have used before or one from the bust card.

You will then be put in a cell, probably alone. If you have not experienced this before you may find it depressing and frightening. Don't panic as you will be out at worst after 24 hours (if you panic and talk you may be in a cell for much longer). You may be kept in the cell for some time. You may be told this is due to waiting for the solicitor. Do not be tempted to agree to an interview before your solicitor arrives. You will need to speak to them to work out what to say, if anything. You cannot normally be held beyond 24 hours without being presented in court.

If you are under 16 the police also have to get an "appropriate adult". If you do not want your parents contacted, suggest an older brother or sister, aunt or uncle etc. You can try an older friend, but the cops are unlikely to accept this.

If you are charged then contact the Legal Defence & Monitoring Group when you are released.

Above all else, exercise your right to silence – say "no comment".

Deportation

Unlike in some countries, the cops do not have the power to deport people. A person without a British passport can only be deported as part of a court sentence, but this is relatively rare and only happens in serious cases (no one was deported after J18, N30, Mayday 2000 or 2001). It is even harder to deport citizens of another European Union state. Therefore the only people at risk of deportation are those who are here in breach of immigration rules (e.g. overstayers) as the police may contact immigration if they arrest someone and suspect this. If you are such a person then it is essential that you get a solicitor.

Bust card

This is the text-only version of the bust card:

IF YOU ARE ARRESTED ask why and note the numbers of the arresting officers.

At the police station you have the right:

TO A SOLICITOR of your choice (free of charge) and to let somebody know you have been arrested.

TO REMAIN SILENT – There is NO requirement to talk to the police. We strongly advise that you say you are making "NO COMMENT" to police questions until you have spoken to a solicitor. Don't write a statement, don't sign a statement written by the police & don't sign any police notebook.

THE CRIMINAL JUSTICE ACT DID NOT GET RID OF THE RIGHT TO SILENCE

It is in your interest to give the police a name & address. You don't have to give a date of birth but it may delay your release.

At the police station you may be searched. You can be held for up to 24 hours without being charged. Once charged they can use "reasonable force" to take finger prints and a saliva sample. If the police assault you go to Casualty and get your injuries recorded.

Legal Observers are wearing bright orange bibs. Their role is to monitor police (mis)behaviour and to assist anyone arrested or injured, by gathering information. Please co-operate with them, your assistance may help save someone from imprisonment. On the demo look out for each other.

If you witness an arrest then write down the name of the arrested person, the exact location and time of the arrest and the number(s) of the arresting officer(s). Give the information to a Legal Observer or send it to LDMG.

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