

Scottish Activist Legal Project



LEGAL GUIDE

Correct as of Dec 2010

Remember to pick up a Bust Card and
keep it safe

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Giving Your Name and Address

In general you do not have to give your details to the police or answer their questions but giving a false name or address can be an offence. We advise you not to give your name and address, as this will be added to their intelligence database, and to say “no comment” to any other questions.

There are three circumstances when you are required to give your name, address, date and place of birth and nationality:

1. If the police reasonably suspect that you have committed an offence, or have potentially witnessed an offence. This applies to any offence whatsoever [Criminal Procedure (Scotland) Act 1995, s. 13]. If they demand this they must tell you the general nature of the offence involved. Failure to give your name, address, date and place of birth and nationality, or giving false details, is an offence (punishable by a fine) and an officer can arrest you if he suspects you of an offence. If you are a suspect you can be made to stay a “reasonable time” so that your details can be checked, but this would probably be no more than

the few minutes necessary to do a check by radio, or by referring to any ID you volunteer (although there is no legal obligation to carry or show ID). If you are a suspect you may be invited to comment as to why the officer is suspicious of you, but you do not have to make any comment. You are under no obligation whatsoever to give any further details and we advise you not to.

2. When you are detained or arrested (see Detention and Arrest below).
3. If you are stopped when driving a motor vehicle, when you may also be required to produce a driving licence, insurance certificate and MoT certificate within 7 days at a police station. Passengers need not give their details unless they fall in the above categories (of being a suspect, potential witness, etc.). If you are a driver and would like to know more there is a specific legal briefing for drivers from ScALP.

Masks

It is not illegal to wear masks or disguises in Scotland and the police have no general power to remove them. However where a Section 60 Order (s60) is in force (see Stop and Search below) the police can require you to remove anything that they reasonably consider to be a mask or disguise. If you refuse you can be arrested and prosecuted. The actual wording of the law is items wholly or mainly for concealing identity and these must be distinguished from items worn only as everyday wear, for example sunglasses and a hat. It is unclear whether face paint constitutes a mask.

Drugs

Possession of cannabis is illegal in Scotland. If you are found in possession of cannabis or any illegal drug then you can be arrested, but more than likely cautioned. This has happened at protests when people have been searched for other reasons. Bringing drugs across an international (ie, not Scotland to England) border is considered smuggling.

In most places in Scotland it is illegal (under local byelaws) to drink on public streets/parks/etc. Edinburgh is included in this.

Knives, Bladed Instruments and Weapons

Carrying a knife or other bladed or pointed instrument in a public place is illegal. This is taken seriously and applies to camping knives, scissors, needles, etc.

The main exception to this ban is if it is carried for a “good reason”, but this is interpreted very strictly. So if you have the item any longer than absolutely necessary or for any illegal purpose (even if non-violent) that is unlikely to be seen as a good reason. The police will in any case almost certainly arrest you, leaving you to establish that you had “good reason” for having the knife (e.g. for camping) later at trial.

If a s60 order is in place the police have the power to take any knife or bladed instrument from you, whatever the purpose.

It is not unlawful to carry a folding penknife of up to three inches (76 mm) long (although it could still be construed as an offensive weapon depending on circumstances). Knives that flick into position or that lock are not penknives. It is best not to carry any knife or bladed item at all.

It is illegal to carry an offensive weapon. An offensive weapon is an item designed to cause injury or something carried for the purpose of causing injury. So someone carrying a baseball bat to a baseball game is acting lawfully, but carrying one for any other reason is unlikely to be considered lawful.

Stop & Search

There is no general right for the police to search you. There are exceptions to this, for example under the Misuse of Drugs legislation, if they have reasonable grounds to suspect you of possession of illegal drugs. The police may search you upon detention or arrest, provided the conditions for detention or arrest are satisfied (see Detention and Arrest below).

The police will often try to get people to co-operate where they have no legal power to compel them to do so. If you allow them to search through your bag, for example, anything they find may be used as evidence against you in any trial, even if they had no legal power to compel you to submit to a search. Whenever the police want to search you, be sure to find out whether they are just trying to get you to co-operate or they have actual legal authority to do so. Therefore you should ask them to identify the power they are using and remember what is said. If they have no legal authority then we advise you not to co-operate.

The police can only carry out a “pat down” search unless you have been

arrested, and you are only required to remove outer clothing (e.g. a coat) in public. You have the right to be searched by an officer of the same gender. You are not required to give a name or address.

Section 60 Orders

In short this can be defined as the power of the police to stop and search in anticipation of violence. The first thing to note is that actual violence is not required. If an Inspector believes that incidents involving violence are likely to occur and it is necessary 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.

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

The search should not be used to discover identity or for any other purpose, so items too small to conceal a weapon or dangerous instrument should not be searched (e.g. wallets). It does not entitle them to read any papers etc. they may find. Anybody can take anyone's photograph in the UK. Therefore the police can take a photograph of you and they may do this whilst performing a s60 search. You do not need to co-operate with this, unless you have been detained or arrested. You do not have to give your name and address, explain why you are there or answer any questions.

The (uniformed) police can also require that any item be removed which the police think is wholly or mainly for concealing identity (e.g. masks). The police can also seize any item which they reasonably believe any person intends to wear wholly or mainly for that purpose, e.g. if a mask is found in a bag during a search. Failing to remove an item when required to do so by a police officer is an offence.

Section 44 Terrorism Act

Although supposedly a law passed to prevent terrorism, this provision has been used against anti-war and anti-arms fair protesters in England. In many ways it is the same as Section 60, i.e. there need be no specific suspicion for the search, but here the purpose of the search is wider, for items of a kind

which could be used in connection with terrorism (and “terrorism” is defined very broadly). The general advice concerning searches above applies (i.e. pat down only, officer of same gender etc.). They can read any papers etc. you have with you in order to determine if they could be connected with terrorism.

You do not have to give your name and address, explain why you are there or answer any questions. You do not have to comply with any attempt to photograph or record you. You have a right to be given a written record of the search, even without giving your name or address.

Restrictions on Movement

General

It is an offence for someone on foot as part of a group of two or more people to obstruct another person passing through a public place, if they fail to desist on being warned by a uniformed police officer. It is also an offence for an individual on foot to “wilfully” obstruct someone’s passage. The maximum penalty is a £500 fine [Civic Government (Scotland) Act 1982, s. 53].

Assemblies and Parades

Where a public procession is planned, the local council should be given at least seven days advance notice. The council may prohibit a procession, or may impose conditions, for example the date, time and duration. It may prohibit the procession from entering specified public places [Civic Government (Scotland) Act 1982, ss. 62-62].

The most senior police officer present at the procession can also impose various conditions on that procession if he believes the procession may cause serious public disorder, damage or disruption to the life of the community, or if it is intended to intimidate. They can impose conditions on an assembly that relate to its place, maximum number and duration. It is an offence to breach these conditions unless you can prove that matters were beyond your control [Public Order Act 1986, ss. 12 and 14]. Assemblies must consist of at least twenty persons and be at least partly in the open air. Processions must occur in a public place [s. 16].

Where the chief constable (chief of the local police) reasonably believes that an assembly is intended to be held on private land or land to which the public’s access is limited, in the open air, without permission of the occupier of the land, the chief constable may apply for an order from the local council

which, if approved, has the effect of banning all assemblies in the area designated by the order. The order must not apply to an area larger than a 5 mile radius or for longer than 4 days. Within the designated area a uniformed constable may direct persons whom he reasonably believes to be on their way to a banned area to go in a different direction than towards the assembly [Public Order Act 1964 ss. 14A, 14B, 14C].

Detention and Arrest

The police have two separate powers: detention and arrest.

Detention

You may be detained if you are reasonably suspected of having committed an offence that is subject to imprisonment - an example would be Breach of the Peace [Criminal Procedure (Scotland) Act 1995, s. 14].

You need to be told that:

- you are being detained, and
- what you are being detained for.

They can detain you for a maximum of 12 hours, and can extend this for a further 12 hours for more serious 'indictable' offences (not Breach of the Peace). The decision to extend this period must be made by a 'custody review officer' of rank of inspector or higher, and only if it is necessary to secure, obtain or preserve evidence of an offence in connection with that which you are being detained. Either you or your solicitor can make a representation regarding the extension. You must be told if your detention is being extended. If you are detained this may be because there is not sufficient evidence yet to have you arrested, and that they wish to question you. You have to give your name, address, date and place of birth and nationality. You do not have to give details about your occupation, your plans for the day, nor do you have to explain any items of clothing you are wearing or any bits of paper that you are carrying. We advise you to say no comment to any questions.

Whilst you are detained you have the right to have a person informed of your place of detention. In some circumstances this right may be delayed for the investigation or the prevention of crime or the arrest of offenders [s. 15, 1995 Act]. You should use this right to contact the Scottish Activist Legal Project. You have a similar right to also have a solicitor informed of your detention, and have a right to speak with the in private, either in person or by phone,

before being questioned.

Arrest

The general power of the police to arrest is defined at common-law so there are no certain criteria. As a working rule if they reasonably believe you have committed an offence you may be arrested. This is the practice where you are caught in the act. Otherwise it is usual to detain you.

You will usually be arrested by two officers. You should be cautioned and anything you say after that point to any police officer can be used as evidence. You do not have to give any information apart from your name, address, date and place of birth and nationality.

You may, depending on the circumstances, be processed at the scene. In this case you will be taken to a police van, formally charged, asked a number of questions (we advise you to say “no comment” until you have consulted a solicitor) and photographed (the photograph at this point will be a “Polaroid” of you standing between your arresting officers). You will be asked if you understand the charge and if you want to say anything in response (we advise you not to reply). You will then be put into the van and taken to the police station while your arresting officers return to the action.

If you are not processed at the scene then your arresting officers will accompany you to the police station. At the station the procedure will be essentially the same whether you were processed at the scene or not (i.e. you may be asked all the same questions again).

Once at the police station, you may be kept in the van for a while or put in a holding cell if the station is busy.

Eventually you will be brought up in front of the custody officer. Here you will be asked a whole range of questions. You only have to give your name, address, date and place of birth and nationality - we advise you not to answer any other questions.

You will be searched and all your possessions put in a bag in the custody office. (You will be asked if there is anything sharp in your pockets first and warned that it’s an extra offence not to tell them if there is).

You will be asked if you want anyone informed that you are there. You have the right to have a person informed of your place of detention. You should use

this to contact the Scottish Activist Legal Project.

You also have a right to have a solicitor informed of your arrest. We advise you to contact a solicitor and to say no comment to any questions until you have spoken to your solicitor. The names of solicitors will be on the bust card.

If you have any dietary requirements make sure you tell the custody officer (they may not ask). If you have been hurt in any way you should demand to be seen by a doctor. If you are on any medication or have a medical condition which could require it, then make sure you tell the custody officer at this point.

After this you will be put in a cell. Try to relax (sleep if possible - you may be held for a long time). You should be given three meals a day although if you're arrested in the evening you may not get fed until morning. At some point you will be taken out of your cell to be fingerprinted, to be photographed (properly this time) and they may also take a DNA sample (using a mouth swab). They have a right to use reasonable force to do all these. Remember that you are still under caution so do not chat with the officer who is fingerprinting or photographing you. You may also be questioned and again we advise you to say "no comment".

You may be formally charged when you are being booked in or you may be taken back out of your cell later for this. You will be asked if you understand the charge then if you wish to make a reply (we advise you not to reply). You may be transferred to another police station at some point.

You will be either released, asked to sign an undertaking (see Bail, Undertakings & First Court Appearance below) or held until the next working day for court. If you are released please contact ScALP and let us know you're out, we will try and pick you up.

Arrest can be a very intimidating and isolating experience. It can also be a very boring and slow-moving one. Stay calm, relax when you can, remember your rights and you'll soon be out.

Juveniles

Anyone aged 16 or over is treated as an adult in Scots law. If you are under 16 and are arrested then the police will inform your parents. They may also (especially if you live abroad or your parents cannot be contacted) inform Social Services. They may refuse to release you until your parents come to

pick you up. (If you are coming to the protests with an adult other than your parents it's worth that person bringing a letter from your parents authorising them to act on their behalf - the police don't have to accept this but it can help). They could, if your parents are unable to attend the police station or are uncontactable, hand you over to Social Services.

If you are under 16 then you should not be interviewed without a 'responsible adult' being present (parents or social worker etc.) and you should not be put into a cell with adults.

Bail, Undertakings & First Court Appearance

The police have three options as to how they deal with you. They can keep you in custody until a court appearance, which is by far the most likely. They can release you with a report being sent to the Procurator Fiscal (prosecutor) for them to consider whether to prosecute. Alternatively they can release you on an undertaking to appear in court in the next few weeks. An "undertaking" is used if it seems unnecessary to detain you for court, but the matter is such that it will be dealt with comparatively urgently. If there are doubts about your identity or address an undertaking may not be accepted.

You are not required to sign an undertaking but it may increase the likelihood of you being held for court if you refuse.

If you are held for court to be released on bail you will be held till the next available court date (ie. not a weekend), so if you are arrested on a Friday you will be held till Monday. This is something to consider when planning an action.

If you appear in court from custody you will be told the basic accusation against you. Most people will appear in court on a "complaint". This sets out the charges you are accused of, and will be the document that any subsequent trial is based on. If you have been served with a complaint, the Procurator Fiscal will prosecute you summarily (that is without a jury). Anybody who appears on a complaint must be tried within a year of their first appearance.

There is no right to choose jury trial. Certain crimes can only be tried summarily, others must be tried with a jury. Where there is a choice, it is the Procurator Fiscal's choice and his/her decision will turn on the likely sentence you may receive if convicted. You can be tried summarily in the district court or the sheriff court, or with a jury in the sheriff court. Where you are tried

summarily you will appear either before a professional judge (a sheriff or in Glasgow possibly a stipendiary magistrate) or before a lay judge or judges (up to three depending upon the local custom).

There are lower limits to sentences where there is no jury, generally twelve months imprisonment in the sheriff court.

For very serious matters you will appear “on petition”. If you appear on petition the Procurator Fiscal intends to prosecute you “on indictment” with a jury trial. At the first hearing you may be asked questions in court by the Procurator Fiscal, and asked whether you wish to make any other comment (“judicial examination”). You will have an opportunity to consult a solicitor privately beforehand, and your solicitor will be present during this questioning. There is no obligation to answer any questions or make any comment whatsoever. If you do not answer questions and later rely on something (such as an alibi) which you could have mentioned at this point, the Procurator Fiscal or judge may make a negative point about this, but the fact is that it is almost routine for an accused not to make any comment whatsoever on legal advice.

If you appear in court from custody you can apply for “bail” so that you remain at liberty until the trial (which may be many months away). Bail is more likely where the police can confirm your address in the UK. Conditions can be attached to bail, such as a curfew requiring you to stay at home or preventing you from going to a certain area (e.g. during the G8 people were made to stay at their home address or were banned from areas of Scotland). If you are from abroad you may be required to surrender your passport. Requiring the payment of money as security for your subsequent appearance is virtually unheard of, although legally possible.

Most people will appear in court having been released earlier by the police. Also most people appearing in court from custody will be released on bail. Again most people will be tried summarily rather than on indictment. The more serious the allegation, or previous criminal record, the more likely that you will be kept in custody for a court appearance, refused bail and be tried on indictment.

It is our experience from previous large protests (e.g. J18 and Mayday) that people who plead guilty at their first court appearance are more likely to receive a harsher sentence as the judge wants to make an example of them.

Also remember that the longer a case goes on the more chance there is of the prosecution making mistakes and you getting acquitted.

Laws Commonly Used Against Activists

Here we set out some of the offences that demonstrators may be charged with. We have not included every crime, nor even every crime that could be committed in a political context.

You should bear in mind that most offences in Scotland are very broad, common law offences. Since they cover such a wide range of situations under the one heading the maximum for that offence may be life imprisonment but you may be charged with it for something very minor and come out with a £50 fine. If you are tried summarily then the maximum is much reduced.

Breach of the Peace

Breach of the Peace (BoP) is a very wide ranging offence, which you can be arrested for. Unlike in England, you can be convicted rather than just bound over. Sentence would usually be a small fine although (as it is a common law offence) there is no maximum sentence.

In theory, BoP requires conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. It should be conduct that is genuinely alarming and disturbing, in its context, to any reasonable person. It is clear that something substantially greater than mere irritation is involved. BoP cases also sometimes refer to breach of public order or a breaking of the social peace.

You can be convicted of BoP even if no-one present was actually alarmed, if any reasonable person would have been had they been there. People are often arrested for BoP for simply refusing to do what a police officer told them to do, but if all you have done is refuse to do what you're told you shouldn't be convicted. However, refusal to comply with a police request can be a substantial part of a BoP charge as long as there is other stuff as well (e.g. blocking the road).

In practice BoP is wide open to almost any interpretation. Some courts have consistently convicted for BoP people who merely sat peacefully in the road despite evidence of the good natured atmosphere and total lack of alarm even from the police witnesses.

Mobbing

Mobbing is effectively a collective breach of the peace. The mob must be in pursuance of a common purpose. The common purpose may arise spontaneously. “Intimidation” may occur through sheer mass of numbers.

It is treated more seriously than breach of the peace. Any person who is part of a mob is also criminally liable for any act of any other member in pursuit of the common purpose. So if you were part of a mob that went about smashing up windows you could be found guilty of malicious mischief in damaging windows even if you didn’t break any glass yourself, providing you were supporting it and were doing so for the common purpose of general vandalism.

Because of the difficulties with common purpose it is rarely prosecuted.

Malicious Mischief (Criminal Damage) & Vandalism

Malicious Mischief or Damage is the deliberate or reckless damage of property (in England it would probably be called Criminal Damage).

Malicious Mischief includes interfering with property in a manner that causes loss. If you press a fire alarm, that may cause profits to be lost even if there is no physical damage. Covering a CCTV camera with a plastic bag does not necessarily constitute Malicious Mischief in itself, if no economic damage is actually caused.

Causing damage by fire is prosecuted as Wilful or Culpable and Reckless Fire-Raising and is treated as more serious than ordinarily damaging property.

Vandalism is a minor offence which consists of intentionally or recklessly causing damage without reasonable excuse [Criminal Law (Consolidation) (Scotland) Act 1995].

Usually the same conduct could be prosecuted as either Vandalism or Malicious Mischief. There is no requirement of permanent damage (e.g. chalking could constitute either Vandalism or Malicious Mischief). The maximum sentence for vandalism is three months, or if there is a previous conviction for Vandalism six months. Fines are more common. The maximum sentence for Malicious Mischief is unlimited.

Theft

Theft is a common law offence. It involves the appropriation of another

person's property without their consent with the intent to deprive them of that ownership. Property must be a physical object. To "appropriate" it you have to physically move it, or deal with it in a way that suggests you are treating it as your own. If you found a police notebook in the street, picking it up would not be theft if you return it, but if you changed your mind and kept it to read, that would be theft. It is enough if you wish to deprive someone of their property permanently, indefinitely or for a wrongful purpose as judged by the court. There is also an offence of clandestinely taking and using, which consists of covertly taking another's property to make use of it.

There is no maximum sentence for theft and sentences depend on the circumstances such as the value of the goods. Except for theft of large amounts, those without previous convictions for theft will probably be fined.

Assault

The usual offence for crimes involving physical harm to individuals is "assault", which is a common law crime. There is only a single category of assault and it may be comparatively trivial and dealt with by a fine and there is no maximum sentence.

Assault is deliberately causing someone physical harm, or deliberately interfering with them physically, by for example touching them on any part of their body when they do not wish to be touched, or deliberately putting them in fear of attack. At its most trivial, this might be done by shouting threats and waving your fist.

Assaults can be aggravated by the circumstances. These depend on the nature of any weapon, any injury, and the status of the victim. Thus an assault against a police officer will be dealt with more severely, as will an assault with a weapon. The sentence will partly depend on these circumstances and the more aggravating factors the more likely is imprisonment

There is also a specific statutory offence of Assaulting or Obstructing a police officer in the course of their duty [Police (Scotland) Act 1967] which allows a sentence of up to nine months imprisonment to be given without jury trial, but in the absence of aggravating circumstances or a bad criminal record it will usually be dealt with by a fine. Obstruction does not require any act of physical resistance, it includes remaining immobile when arrested so that you have to be carried, though this is rarely prosecuted. Obstruction does not include refusing to answer questions that you are not obliged to answer.

Reckless endangerment or injury is where a person puts another person or the public in danger in circumstances that show a severe lack of care. For example, if someone throws a brick through a window to vandalise a shop, and the brick collides with an employee, the person may be convicted of reckless injury even though they intended no injury to occur.

Trespass

Trespass is entering private property or land without the permission of the owner. It is only an offence to commit trespass in combination with:

- occupying a premises or a building,
- encamping on land,
- lighting a fire on or near a roadway, or,
- lighting a fire on or near cultivated or enclosed land.

The maximum penalty is a fine of £200 although the police may arrest you for this offence. This power has been used against workers conducting a “lock-in” at their workplace [Trespass (Scotland) Act 1868].

There is also an offence of aggravated trespass. Unlike in England, it only applies to land in the open air. If a police officer reasonably believes that you are trespassing so that you can disrupt or obstruct lawful activity you can be required to leave. If you do not leave, or if you return within three months, that is an offence in itself. The maximum sentence is three months imprisonment [ss. 68 and 69, Criminal Justice and Public Order Act 1994].

The Scottish Activist Legal Project is a recently formed loose collective of activists who are often involved in legal support. Through the principles of mutual aid and solidarity we aim to support anti-capitalist political activists who come into conflict with the law.

Further Guides

We have other legal guides available for specific situations such as internationals, under-16 year olds, drivers of vehicles and representing yourself in court amongst others. Visit the welcome desk or our website.