

LEGAL BRIEFING

BEING ARRESTED

The arresting officer will say to you, "I'm arresting you for (or, 'on suspicion of').....You do not have to say anything but it may harm your defence if you fail to mention when questioned something which you intend to rely on in court. Anything you say may be given in evidence." This is called the caution. You do not have to say anything in reply to it, but anything you do say should be taken down and later read out in court, so saying something brief and non-incriminating (eg "Nuclear weapons are a crime against humanity") may be worthwhile. You may at some point be asked to read and sign the arresting officer's notes, but you are under no obligation to do either and it is strongly advised that you do not sign anything.

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.

AT THE POLICE STATION

YOUR RIGHTS

After being arrested you should be taken to the nearest police station. 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. 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 sometimes speak to that person on the phone.
- You are entitled to have a pencil and paper.
- 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 custody sergeant will fill out a standard type form, on which there will be sections for your date of birth, occupation, height etc. You are under no obligation to answer any of these questions and do not feel pressurized in to doing so. You will also be asked to sign the form – again there is no legal obligation to do this, but most people do. You will have your property taken from you, including any watch or belt, 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.

BEING SEARCHED

You will be searched on arrival at the police station; however, this usually consists only of being 'patted down' by an officer of the same sex as yourself. You cannot under most circumstances be asked to remove more than outer clothes. On occasions, the police may want to retain some of your clothing as evidence (e.g. in cases of criminal damage where there may be paint etc on them). In such a case, they must provide you with something else to wear. The police are only allowed to strip search someone if there is good reason to believe that the person is concealing an item which s/he should not be allowed to keep, such as a weapon or evidence or drugs. In certain circumstances following arrest, usually in the case of more serious offences, the police have the power on the authority of a senior officer to conduct a search of premises or vehicles for evidence without having to obtain a search warrant.

EATING AND DRINKING

The police are required to feed you three times in a 24 hour period, at roughly the 'normal' mealtimes, and to provide you with drinks at 'reasonable' intervals, whatever that means. They are supposed to take account of special dietary requirements, but don't count on it. You may be allowed to keep food you have with you when arrested (police stations vary widely in what they allow) so it's worth taking a snack and a sealed carton of drink.

Points to Note

- The most important point to remember during your time in police custody is to stay calm and relaxed. 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.

- 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 have 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.
- Make sure the custody sergeant has noted on your custody record the correct time when you arrived at the police station.
- The custody sergeant is responsible for your detention from your arrival at the police station. If you are under any doubt as to the reason why you are being detained then ask the custody sergeant, who is under a duty to tell you.
- If you have any injuries – eg bruising from handcuffs - make sure these are logged by the custody sergeant, and insist on seeing the police doctor. 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 afterwards.
- 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. 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

If you have been arrested for something like highway obstruction or disorderly conduct, it's unlikely (but not impossible) that you'll be interviewed. However, if you've been arrested for a more serious charge (e.g. criminal damage, burglary), there is a good chance that you'll be interviewed, unless you were caught red-handed in which case they may not bother. If damage has been done, and they're not sure who did it (or even if any of you did it), you will almost certainly be interviewed in the hope that someone will spill the beans. 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.

You should REMAIN SILENT or answer "no comment" 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.*

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 further detention in order to gain more evidence by questioning to secure a conviction. Although the courts may draw an "adverse inference" from your silence, the case will only get to court if the police can put together enough evidence, and they regard the interviewing of suspects as one of the main tools in obtaining this.

Points to Note

- Anything you say outside the taped interview may also be used in evidence against you – eg an informal chat in the police car after you have been arrested. The police often try to engage you in friendly chit-chat 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.
- Solicitors often advise suspects to make a short statement to the police nowadays, because the courts may draw an "adverse inference" from their remaining silent. Our advice however is to remain silent for the following reasons.

Firstly, 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 in turn make statements implicating you. Your solicitor may not care what happens to other activists, but you should.

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

- REMEMBER – The police are only interviewing you in order to gain evidence against you and / or other activists, in order to obtain a conviction.

PHOTOGRAPHS, FINGERPRINTS AND DNA

Photographs

Prior to charge the police can now take your photo, using “reasonable 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

New legislation in the form of the Criminal Justice Act 2003 now means that the police can take the fingerprints and DNA of anyone who has been arrested for a “recordable offence”. This covers any situation where you have been arrested except where the arrest was for breach of the peace. 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 YOU BE HELD?

Under the recently passed Criminal Justice Act 2003 the police can now 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 which is not strictly speaking “arrestable”, then the maximum time they can hold you is still 24 hours as before.

Points to Note

- Any offence is “arrestable” if it is punishable by 5 years’ imprisonment or more upon first conviction. On top of this there are a set number of offences which are also “arrestable”, including criminal damage, theft, burglary and violent disorder (Section 24 PACE). “Non-arrestable” offences include aggravated trespass and sections 3, 4, 5, 12, 14 of the Public Order Act 1986.
- 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.
- If you are not charged the police have to let you go after a maximum of 24 hours (or 36 hours in the case of an “arrestable offence”) from your arrival at the police station . You may be given “police bail” whereby you are released with a duty to return to a police station on a specified date while the police continue to make further enquiries.
- If you are charged then you will usually be bailed to appear in court. You may be held overnight to appear in court the next day if it’s a serious charge, or if they cannot verify your name and address, or if you’re already on bail for other offences.
- If you have been charged with common law breach of the peace, then normal police practice in the past has been to hold you overnight to appear in court the next day. However recent cases have ruled that overnight detention in such cases is unlawful unless the police have reasonable grounds to suppose that you will commit a further breach of the peace soon after release.

GETTING OUT

Sooner or later, the police will do one of six things with you. The possibilities are: a. They will charge you with an offence. b. They will ask you to accept a caution. c. They will issue you with a formal warning. d. They will bail you pending enquiries e. They will report you with a view to prosecution f. They will release you without charge.

a. Being charged This means that the police believe that they have enough evidence against you to have a reasonable chance of conviction in court. The offence with which you are being charged will be read out to you and you will be asked if you have anything to say. What you say must be read out in court so this is another opportunity for making a statement about the purpose of the action if you wish, but you do not have to say anything. You cannot be asked any more questions about the alleged offence once you have been charged with it. Once charged, the police will decide whether or not to bail you (see below).

b. Being cautioned This is sometimes used for more minor offences and where the person concerned does not have much of a criminal record. It is more commonly used for juveniles (under 17) than adults. It is supposed to mean that the police believe there is sufficient evidence to convict you in court, but will not ask for you to be prosecuted if you accept your guilt by signing a caution. However, it seems to be quite common for people to refuse a caution and then not be charged with the offence which suggests that the police didn't have enough evidence against them and therefore should not have been trying to caution them at all. Bear this in mind when you decide whether or not to accept a caution; however, you could be unlucky and be charged if you refuse. If you're anxious to avoid court for whatever reason, it may be an idea to accept it. A caution does constitute a criminal record and must usually be disclosed in the same circumstances as ordinary convictions, for example on a job application. Although convictions can in many circumstances be treated as 'spent' after a period of time, the period depending on the sort of sentence imposed, convictions and cautions no matter how old do sometimes have to be disclosed for certain jobs, such as teaching.

c. Formal warnings A formal warning is a record of your offence - which you have to admit to by signing a form - which is held on record only at the police station at which it is issued. It does not constitute a criminal record and is disposed of if you do not come to the attention of that police station again within three years. If you do end up at that station again, the police will take the formal warning into account when deciding what action to take against you subsequently. The police have no power to take fingerprints, DNA or photographs when they issue a formal warning.

d. Being bailed pending enquiries There are a number of situations where you might be released on bail from the police station with an obligation to return after a period of days, weeks or even a month or two. For example, the police may not have had time to take all the statements they require from witnesses in order to make a decision as to whether or not to charge you, or they might require legal advice from the CPS (Crown Prosecution Service) before making a decision. If the alleged offence is summary (i.e. triable only in a magistrates' court), charges must be brought within six months of the alleged offence. If the offence is 'either way' or indictable (i.e. can be, or must be, tried in Crown court), there is generally no time limit on bringing charges. There is no power to impose bail conditions when releasing suspects in this situation, but it is a criminal offence - punishable by a fine, imprisonment or both - not to return to the police station when required to do so.

e. Being reported This means that the police haven't decided whether to charge you or not; they will send a report of the alleged offence to the CPS, who will make a decision on prosecution. Time limits on bringing charges are the same as if you're released on bail pending enquiries (see d above). If a decision is made to charge, you will receive a summons to attend court. The police do not have the power to impose bail conditions if you're reported.

f. Being released without charge This is just what it says - the police decide there's not enough evidence against you and release you with no further action. Being released without charge is not at all uncommon in these situations; very often there is no reason to arrest you at all, but you will be arrested on some dubious pretext such as breach of the peace and left to cool your heels for a few hours, simply as a means of getting you out of the way. Before you are released all your property must be returned to you, even if the police think it has been used to commit an offence. Sometimes they may try to hang onto it - don't let them get away with this.

BAIL

If you are charged with an offence, the police will have to decide whether to grant you bail (i.e. to release you from custody pending your court case). There is usually a right to bail, but there are a number of circumstances where the police may refuse bail. These include a belief that you may not turn up at court (e.g. if you have not turned up in the past or if they are not satisfied with the address you have given); their belief that you would commit further offences, (e.g. if you already have a criminal record); that you are already on bail for something else; or even that they think that you feel so strongly about the issue that you might take similar action again. You may well have bail conditions imposed on you such as staying away from the site where you were arrested, sleeping at your home address each night, or even signing on at your local police station a number of times per week. If you don't agree to these conditions, you won't be released but will be held in custody and taken to the next sitting of the local court (usually the next day unless it's a weekend in which case you'll have to sweat it out in the cells until Monday) where you will be able to argue that the bail conditions the police wish to impose are too harsh. When you are bailed you will be told where and when to return to court, and warned that failure to appear is an offence which can lead to a fine, imprisonment or both. You will be asked to sign a form agreeing to attend at the time stated. If you refuse to sign the form then you will not be released. If the police decide that you should not be granted bail at all, they will take you to court where the CPS will make a case to the magistrates as to why you should not be released, and you or your solicitor will be able to put forward reasons why you should be given bail. If their decision is that you should be remanded in custody, you'll be taken back to the cells to await transport to the nearest prison.

WHAT TO TAKE IF YOU'RE RISKING ARREST

If you're thinking of doing something which carries a risk of arrest, however small, it's good to be prepared for the time at the police station, to make your life as comfortable as possible. Even if you're not thinking of risking arrest, it may be good to have these things with you anyway as there's probably no such thing as a 100% risk-free action. Recommended articles include: A book (or three) - you may be on your own in a cell for many hours. A notebook (not spiral bound) and pencil (you're more likely to be allowed to keep a pencil than a pen). Food and drink, especially if you have special dietary requirements. Spare clothes - it can get very cold in the cells. Cigarettes if you smoke (you will probably be allowed to have cigarette breaks while in custody unless it is a no smoking police station).

WHAT NOT TO TAKE IF YOU'RE RISKING ARREST

This is fairly obvious - the police or Special Branch are interested in all 'political' action and would enjoy getting their hands on your address book, diary, list of people you met at a gathering last week. Don't give them the pleasure - leave it all at home. Likewise don't have anything with you which shows that you've been preparing for the action, or anything which mentions future actions or other groups - essentially, leave anything personal or political behind. If you usually carry a penknife, make sure you leave it behind as the police could conceivably construe it as an offensive weapon. In certain circumstances you could have the film from your camera removed and developed by the police, so make sure there are no incriminating pictures on it. Check your pockets and bags before you leave home, and obviously don't take any drugs with you.

This legal briefing is a guide. It is not a definitive statement of the law and does not cover all eventualities. The following websites provide further information:

www.freebeagles.org

www2.phreak.co.uk/ldmg/index.php

www.activistslegalproject.org.uk

www.schnews.co.uk/diyguide/

Some good solicitors:

Moss & Co: 020 8986 8336

Taylor Nichol: 020 7272 8336

Bindmans: 020 7833 4433

LIKELY CHARGES

The aim of this briefing is to give an idea of the most likely offences that you may find yourself charged with when you participate in direct action. We have only given details of the offences most commonly used against activists. Of course, there are many other offences that you could be charged with.

Aggravated Trespass (Section 68 Criminal Justice & Public Order Act 1994)

S68 applies when you “trespass on land with the intent to disrupt or obstruct or intimidate someone going about a lawful activity on that land (or adjoining land)”. The section goes on to define “lawful activity” as an activity which can be engaged in without committing an offence or trespassing on land. So if the activity wasn't lawful then you will have a defence. Recently amended by the Anti-Social Behaviour Act 2003, this now applies if you are in a building as well as in the open air. If a senior police officer present “reasonably believes” that a S68 offence has, is or will be committed, they will warn you to leave the land. It is an offence not to leave as soon as possible. The maximum penalty is 3 months imprisonment, a fine of up to £2,500 or both.

Obstruction of the Highway (Section 137 Highway Act 1980)

It is an offence to cause a wilful obstruction of the highway without lawful authority or excuse. Highways are roads, pavements and dedicated rights of way (not private property). Before they arrest you the police generally warn you that unless you move you will be arrested. If you don't want to get arrested, move. This is a minor non-recordable offence (ie you cannot be imprisoned for it) usually resulting in a fine or conditional discharge.

Obstruction of a Police Officer in the Course of his Duty (Section 89(2) Police Act 1996)

The crucial thing here is that the police officer must be acting in the course of his duty. 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.

Criminal Damage (Section 1 Criminal Damage Act 1971)

“Without lawful excuse destroying or damaging property belonging to another”. This includes cutting fences, spray-painting, even trampling on grass (but not wild plants!). Damage worth under £5000 is triable only in a magistrates court. Damage over £5000 can be triable in either a magistrates court or crown court. In the magistrate's court the maximum sentence is 3 months in prison or a fine of up to £2,500 and a compensation order of up to £5,000. In the Crown Court the maximum sentence is 10 years in prison or an unlimited fine and a compensation order equivalent to the amount of the damage.

Possession with Intent (Section 3 Criminal Damage Act 1971)

This makes it an offence to use or permit another to use anything in your custody to destroy or damage property. It doesn't matter what your intention is. The mere possession of such articles is an arrestable offence.

Going Equipped

The offence of going equipped is committed if a person has with him/her any article for use in the course of or in connection with certain specified offences. These offences include criminal damage, burglary and theft. Activists found by police on their way to an action with boltcroppers etc have been charged with going equipped to cause criminal damage. The offence must be tried in the Crown Court. The maximum sentence is three years imprisonment.

Sections 4, 4a, 5 Public Order Act 1986

S4, S4a and S5 all deal with the use of “threatening, abusive, insulting words or behaviour (or disorderly behaviour)” likely to cause “harassment, alarm and distress” to another person – usually the police. If you are accused of any of these you will be arrested. However, these are all minor charges, usually ending in a fine, although S4 and 4a do carry a maximum sentence of six months.

Sections 3, 2, 1 Public Order Act 1986

These are all serious offences (S3 Affray, S2 Violent Disorder, S1 Riot) and carry severe penalties. Riot carries up to 10 years, Violent Disorder 5 and Affray 3 years. The underlying thread 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. Riot is triable in the crown court only. Violent disorder and affray can be tried either in magistrates or the crown court.

BREACH OF THE PEACE

If the police can't think of anything else to arrest you for, they may use the common law of “breach of the peace”. In theory there must be violence or a threat of violence for this to occur, but often BoP is just to get people out of the way to prevent a demonstration from continuing. Often you will be released from custody later on when the police believe the demonstration

has ended. It is not a criminal offence but you may be held over for court the next day where you will be “bound over” to keep the peace.

POLICE POWERS TO REGULATE PROCESSIONS AND ASSEMBLIES

Sections 12 and 14 are commonly used by police to impose conditions on demonstrations. You can be arrested for breaching the conditions.

Section 12 Public Order Act 1986

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 Order Act 1986

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 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. It does not usually specify the number of people who may take part. 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.

Arrest and Punishment

Offences under sections 12 and 14 are only punishable by a fine. Breach of Section 12/14 is not, therefore, an “arrestable offence” under Section 24 PACE, and 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 (eg the next day) and if you are arrested your house cannot be searched.