

# Scottish & Community Activist Legal Project

# GUIDE FOR INTERNATIONALS

# ATTENDING PROTESTS IN

# SCOTLAND

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If you have specific questions, or if you experience anything that is completely different to what is written in this Guide, please help us to keep it accurate by getting in touch:

**[activists\\_legal@protonmail.com](mailto:activists_legal@protonmail.com)**

If asking a question keep it hypothetical and you can anonymise your experience if you are telling us about specific interactions with the police or courts.

Instead of writing 'I did / I'm planning this - what will the police do?', try writing, 'If somebody were to do this, what might the consequences be?'.

## Introduction

This guide is intended to provide guidance to Scottish Law as it applies to protest, specifically for internationals (here meaning people who are not citizens of the United Kingdom). It is split up into two Parts:

[Part One](#) For internationals (non-UK citizens) travelling to Scotland including what to expect at the border, what rights you have, in particular what protest rights you may have and what could happen if arrested;

[Part Two](#) For internationals (non-UK citizens) already living in Scotland, including what rights you have and what may happen if you are arrested at a protest.

For more general guidance on Scots law see our [Guide to Activism, Scots Law and the Police](#), and other materials, including translations, on the [SCALP website](#).

### Caution

- *Note that immigration is not a power devolved to the Scottish parliament, so while experiences and attitude may differ, advice here may be relevant for entering the UK at any of the borders.*
- *If you have specific concerns regarding immigration status seek specific expert legal advice.*

**N.B. Due to Brexit and the ever changing political situation, it is difficult to advise reliably on immigration, deportation and protesting. Over recent years, there has been a movement towards creating a "hostile environment" towards migrants. Home Office policy now centers around "good character" and criminality and uses wide discretion in how it applies these terms.**

## Part 1

### Entering the UK - what to expect?

At border control, you will need to show:

- your passport and visa (if you require one)
- your [passenger locator form](#) either printed or downloaded on your phone
- you may also need to provide proof of a negative COVID-19 test, depending on [current testing and quarantine rules](#)
- you will usually be asked why you are coming to the UK and to provide documents (this may include bank statements, hotel reservations, proof of return flights) regarding your stay in the UK.

### Refusal of Entry

You will be told in writing why you've been refused entry to the UK, if you can appeal the decision, and when you will be removed from the UK (this is usually immediate, but you

may be allowed into the UK temporarily with your passport taken from you and you must report to immigration officers at set times).

## **Border Force / Border Policing Command**



Border Force officers are those you will encounter when you are trying to enter the United Kingdom at the border. They wear a navy blue uniform with rank insignia.

They may use body armour, carry handcuffs and extendable batons. They sometimes also carry limb restraints. They communicate on a secure airwave network and, therefore, carry radios and often wear earpieces in order to communicate with other officers.

They are usually equipped with specialist forgery detection equipment in order to be able to identify false passports and identity documents.

Uniformed Border Force officers will have their rank displayed on their shoulder using epaulettes which will be attached to their shirt, jumper or jacket. Border Force Officers who are below Senior Officer rank may also have their identification number displayed.



### **Powers of Border Force**

- Border Force is responsible for frontline border control operations at air, sea and rail ports in the UK. It is responsible for immigration and customs control and the screening of passengers at rail, air and sea ports in the UK.
- Border Force officers are dual warranted, holding the powers of both Customs Officers and Immigration Officers. This power stems from the UK Borders Act 2007.
- Immigration Officers have powers of arrest and detention conferred on them by the Immigration Act 1971 (and subsequent). In practice, Border Force officers exercise powers under Schedule 2 of the Immigration Act 1971 and are not trained to arrest or detain, which differ from inland immigration officers who work under S28A-H of the Immigration Act 1971 and para 17 of Schedule 2. "Designated Immigration Officers" are Border Force immigration officers who have been designated with additional detention powers, under ss1-4 of the UK Borders Act 2007.

When exercising immigration powers, a Border Force Officer may search a person until it is satisfactorily established that the person is a British citizen, may enter the UK without leave or has leave to enter the UK. The Immigration Officer may search for any documents relevant to their examination of the individual. It is possible that such documents could be contained on a mobile phone.

Failure to submit to this search may result in the person being refused entry to the UK (leave to enter), or could constitute an offence under s26(1)(b) of the Immigration Act 1971 and/or could lead to their mobile phone being seized under paragraph 15A(7) of Schedule 2 to that Act.

The Customs and Excise Management Act 1979 permits Border Force customs officers to question passengers regarding their baggage and anything that they are carrying with them and to produce baggage for examination to ensure payment of duties, to prevent the importation of prohibited items, or to search persons where there are reasonable grounds to suspect they are carrying prohibited or restricted goods or goods on which duty has not been paid.

Section 24 of the Police and Criminal Evidence Act (PACE) 1984 empowers Border Force immigration and customs officers in England and Wales to arrest persons who are committing an offence or who they have reasonable grounds to suspect are about to commit an offence. Section 32 permits them to search persons who have been arrested. Section 19 empowers officers to seize items that are evidence in relation to an offence. While there is no such provision in Scots law (i.e. in the equivalent legislation, the Criminal Procedure (Scotland) Act 1995), there is the common law position which means using the minimum required force possible a member of the public can 'arrest' someone committing a serious offence.

### **Schedule 7 of the Terrorism Act 2000**

Schedule 7 of the Terrorism Act 2000 gives Border Force officers unique powers to investigate those who pass through the United Kingdom's borders. It allows officers to stop, question and when deemed necessary, search and detain, individuals and goods travelling through the United Kingdom's borders to determine whether they may be involved or concerned in the commission, preparation or instigation of acts of terrorism. While this power has frequently been used against travelling activists, statistics show that the number of people being stopped and searched under Schedule 7 is declining.

Schedule 7 allows a police officer or border force officer to stop, question, search and, if necessary, detain you without prior authority or suspicion. The purpose is to determine whether you are involved in commission, preparation or instigation of acts of terrorism.

- The officer stopping you does not have to give you their names, however, they will give you their force identification number if you request it.
- The examining officer does not need to administer a caution and where searches are made, there is no requirement for a written notice of search to be provided to you.

- Most examinations are brief, however you can be formally detained for one to six hours. The decision to detain you will be reviewed one hour after you have first been detained and then every two hours thereafter. During this your personal and welfare needs should be taken into consideration.
- The officer has the power to detain you and use reasonable force if necessary. It is considered an offence if you wilfully fail to comply with a request made by an officer under this legislation.
- You will be asked for your passport, so that you can be identified. You must give this to them, as well as other documents of information that the officer requests.
- You can be searched, together with anything you have with you or belonging to you that is on the aircraft, ship, train or vehicle you arrived in. This includes electronic devices and you can be required to provide the login information, including passwords, to such devices. Under certain circumstances, the officer can seize any property they find. This property is normally returned straight away, however, they may be held for up to seven days for further examination, or even longer if it is used as part of a criminal investigation.
- The police are obliged to keep a record of all examinations and detentions. This, if not prosecuted, will not constitute part of a criminal record.

### **Your Rights under Schedule 7**

- If you have not been formally detained you can request legal advice at your own expense. This may delay your examination.
- If you are subsequently detained, your rights will be fully explained to you and you have the right to legal advice which may be at public expense.
- The examining officer has discretion to allow you to have someone informed that you are being examined.
- If you are subsequently detained you will have the right to have someone informed of your detention.
- There is a "Code of Practice" which governs how police and border force should use Schedule 7, if you wish to see a copy you can ask the examining officer.

### **What to expect**

- Many have described a change of attitude at the UK border, with more data collected from those who are entering the UK, detention, and being treated with hostility and suspicion. Attitude of Border Force officers may be unsympathetic and overtly hostile, uncooperative and unhelpful.
- There is a good chance that you may be fingerprinted and photographed, asked why you are in the UK, for how long, if you have a return ticket, where you are staying, your occupation and other personal details. These are all within the

powers of the Border Force agent and refusal of any of these may lead to refusal of entry to the UK.

- Border Force agents have been recently granted more power, for example to use "reasonable force" to detain asylum seekers and non-UK citizens.
- People from the global South may experience random searches of luggage, get extra questions, be asked to prove that they have money (show bank statements for example), and provide proof of hotel bookings.
- Regarding Visas, you must enter and depart the country on the set days, if you want to change this then you may have to get a new visa which can cost a lot of money, it also does not mean that you can travel in and out of the UK within the time frame. The Visa is usually for one entry and one departure from the UK.

## **Conclusion**

There is a movement towards harsher borders in the UK where you may experience different treatment due to your identity. However, it is possible to prepare for some of these eventualities and it is best to have documents ready.

## **Right to Protest**

The right to protest is protected by the law. These rights are articulated in the European Convention on Human Rights (incorporated into British law through the Human Rights Act 2018). Everyone (including foreign travellers) has the right to freedom of expression (article 10) and everyone has the right to freedom of peaceful assembly (article 11).

There are limitations to these rights but they must be prescribed by law, necessary and proportionate.

The most common criminal offences associated with protests, for which you may be arrested for, are:

- Public order offences (which includes threatening, abusive, or insulting words or behaviour, or a display of visible representations which are likely to cause fear of, or to provoke, immediate violence; intentionally cause harassment, alarm or distress; or are likely to cause harassment, alarm or distress)
- Harassment and stalking offences
- Hate crime
- Communications offences and social media
- Offences involving trespass

For more detail on laws used against activists, see [SCALP's Guide to Activism, Scottish Law and Policing](#).

## **What happens if you're arrested?**

To arrest you the police need reasonable grounds to suspect you are involved in a crime. If you are arrested you will usually be taken to a police station, held in custody - and if you are not charged with a crime - you may be questioned. If you are unable to speak or understand English, then you are entitled to an interpreter free of charge. If you are not a British national, the police should contact your High Commission, Embassy or Consulate to tell them where you are and why you are in the police station. Someone can visit you in private and arrange for a solicitor to see you. You will be given the opportunity and should contact friends or family, preferably someone local to you. During COP26, you can use details from a bustcard to contact the SCALP Legal Back Office and solicitors recommended by SCALP. It is possible that you may be released on bail with your passport confiscated, you may be released on bail and be detained in an immigration centre, or you may be held in police custody until charged. If you receive a custodial sentence of a certain length then you may automatically qualify for deportation under section 32 of the UK Borders Act 2007. If you are deported, you are subject to a ban from entry to the UK, and may only return if there has been a revocation for the Deportation Order. Scotland retains territorial criminal jurisdiction meaning that if you are prosecuted and convicted you may be imprisoned in the UK and then deported, or you may be deported and be imprisoned in your home country.

## **Part 2**

### **Protesting, Immigration and Brexit**

**Due to Brexit and the ever changing political situation, it is difficult to advise reliably on immigration, deportation and protesting. Over recent years, there has been a movement towards creating a "hostile environment" towards migrants. Home Office policy now centers around "good character" and criminality and uses wide discretion in how it applies these terms.**

There are many different immigration statuses which may apply to you or those you are at a protest with:

- British passport holder
- Settled - Indefinite Leave to Remain, Permanent Residents, Settled Status, Refugee Settlement
- EU- national (registration/pre-settled/settled status)
- Limited leave to remain (non-EU); commonwealth and non-commonwealth, Tier 4 Students, PBS (work related, Discretionary Leave)



- Refugee Status/Humanitarian Protection
- Asylum Seekers (i.e. with application for protection pending)
- Application pending (no current status, Discretionary leave, applications pending)
- Without Immigration Status (undocumented, those who are not known to the Home Office)

There are many different implications for people with different statuses attending protests.

## **Conviction, deportation and immigration status**

Under the Immigration Act 1971 sections 3(5) and 3(6) the UK Secretary of State has the power to make an order of deportation against a foreign criminal, meaning that they can deport as part of a sentence, or if the Secretary of State decides that deportation would be, in their opinion, "beneficial for public good"\*.

\*Under the UK Borders Act 2007 s32 a foreign national may be subject to "automatic deportation" if they have been convicted of an offence in the UK and are sentenced to a period of imprisonment of 12 months or more. This is generally considered 'beneficial to public good' by the Secretary of State.

If you do not have any leave to remain (immigration status) and have not applied for any, you are at risk of removal. The Home Office has to give you notice that they are intending to remove you (generally this period is 7 calendar days if you are not detained or just 72 hours if you are detained).

If you have leave to remain or settled status, usually deportation ("forced removal"/ "administrative removal") action will only occur if you have been convicted of a criminal offence, with automatic deportation occurring if you receive a custodial sentence of 12 months or more. Deportation action can be taken against anyone who is not a British citizen and includes those who have indefinite Leave to Remain. If you are liable for deportation, your spouse or civil partner and/or child are also liable to be deported unless they have Indefinite Leave to Remain in their own right, or are British, or have been living apart from you.

If you are sentenced to more than 4 years, the Home Office requires "very compelling circumstances" in order for a deportation order not to be made. If you are sentenced to less than 4 years but more than 12 months or your offending is deemed to fall into the "causing serious harm" category, the immigration rules say that deportation would be proportionate except if deportation would be in breach of your human rights (article 8).

For EEA nationals with Settled Status or Pre-Settled Status in the UK, there is still the risk of deportation from the UK in case of conviction for criminal offence.

It is difficult to know where things are headed, but the UK Home Secretary Priti Patel has the ambitions to make it harder for someone convicted of an offence to avoid deportation and has announced that anyone who does not have British nationality who is sentenced to more than 12 months in prison will be deported and/or excluded from entry to the UK. It is also believed that the Home Office will try to deport 'persistent offenders' who have received a jail sentence of less than one year.

## **Conclusion**

Only the most severe criminal cases lead to deportation. The European Convention on Human Rights and the Human Rights Act still apply in all cases. EU/EEA citizens (without any settled or pre-settled status) and non-EU/EEA citizens should now be treated the same when entering the UK.

## **Deportation due to arrest at a protest**

As noted above, deportation orders only occur if you are convicted of a criminal offence of a certain gravity. However, if you have previous convictions, minor new convictions can risk deportation actions.

## **Immigration status and arrest at a protest**

Your current immigration status may be impacted if you are arrested or convicted of a criminal offence. This may also have an impact on future applications for naturalisation or settlement etc. and possibly on your right to work. Future applications and naturalisation may be hindered: "suitability requirements" and "good character" can be impacted if you give your details to the police or are arrested as this can be enough to indicate that it is more likely than not that you may have been involved in crime for your application to be rejected.

Currently the potential implications of being arrested are difficult to reliably advise upon due to police tactics, sentencing policy, increasing politicisation of approach to migrants and migration, frequent and unpredictable changes to Home Office Policy, and national security and terrorist provisions.

If you have secure immigration status ("indefinite leave to remain") you are not liable to be detained under immigration rules.

N.B. If you are simply stopped by the police you do not have to tell them your name or answer their questions, however future identification may be made from photographs

that they may take. You are only required by law to give details (your name, address, date of birth, place of birth and nationality) to police if you are arrested, are a suspect or a witness to a specified crime or are the driver of a vehicle. You don't have to answer other questions. Say 'no comment' to avoid incriminating yourself or others.

## **Conclusion**

It is unlikely that someone with secure immigration status will be deported for being at a protest, but being arrested or stopped may have an impact on future applications.

## **Without immigration status?**

If you encounter police and they suspect you are committing an immigration offence, they may arrest you. You may be detained if you are encountered by authorities at a protest and, with some exceptions, anyone who is undocumented can be detained. In theory, detention should lead to quick removal, however, the Home Office do have the power to detain indefinitely.

**If you are detained, you have the right to apply for bail and should seek legal advice urgently!**

## **Potential Consequences for arrest and criminal conviction based on status**

Settled with current limited leave, EU nationals, refugees	Consequences likely to be dependent on the charge, minor public order offences are unlikely to impact immigration status. However, for a more serious offence there can be more consequences.
No current leave	Immigration authorities will be contacted and immigration officials will visit the police station with the likely consequence of detention and deportation. It is likely that there will be limited access to legal advice and possibly no access to legal aid.
When trying to re-enter the UK with immigration status	Potential refusal of leave to enter due to wide discretion.

When trying to re-enter the UK without immigration status	Curtailment of leave, detainment at an Immigration Removal Centre, or release on immigration bail with the potential of a long battle with the Home Office, issues obtaining good legal advice and precarious access to legal aid.
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### **Considerations for any immigration status, protest and potential arrest**

- current immigration status and implications of arrest for that status
- any future planned applications to the Home Office for further leave/settlement/naturalisation
- would arrest impact whether your basic needs are met: e.g. loss of permission to work or access to welfare

### **Applications to the Home Office**

- entry clearance applications
- further leave to remain
- settlement / indefinite leave to remain
- EU settlement
- naturalisation

For all these applications, the Home Office has wide discretion in deciding whether the "good character" requirement is satisfied and has access to a wide range of materials held by other branches of the state. While materials pertaining to arrest or 'Stop & Search' during protest might not be disclosed, or should not be legally taken into account, this does not mean that it cannot cause you problems. While cautions or recorded police warnings should not be taken into account by decision-makers, they may be.

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