

Scottish & Community Activist Legal Project

GUIDE TO ACTIVISM, SCOTTISH LAW AND THE POLICE

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Who and what is this guide for?

This guide is maintained by the Scottish Community and Activist Legal Project to support people working for social and ecological justice in Scotland, and communities impacted by policing.

As our most comprehensive resource on activism, Scottish law and the police, it will be most useful to those in organising roles and legal support roles. However, the guide will also be useful to anyone wanting to know more about their rights when participating in protest or direct action.*

The guide is designed to give you some idea of how the law and the police can affect protests, such as rallies and marches, civil disobedience and direct action. Laws, police powers and other regulations are reviewed, as well as the role of private security and – if arrests take place – what you might expect from the criminal legal system. We are also working on a range of new resources that detail specific considerations for particular members of our communities, and areas of work within the legal system, and you can see our published [resources on the SCALP website](#).

Legal information is often a bit abstract, dry and (dare we say it?)... a bit boring. The law, policing and the criminal legal system are deliberately hard to understand – so that they can be used as mechanisms of control by the state, and legal knowledge can be the preserve of highly paid legal professionals. The main reason to bother reading all this is because **information is power**. We hope that this guide will leave you more informed and better equipped to keep yourself and your pals safer than if you hadn't bothered reading it. We've tried to break things down and included pictures and infographics that will hopefully make the information more accessible.

There is a [glossary attached to the guide](#) - if you are confused by any of the words we are using or need more information, that might be a useful first place to look.

So make yourself a cuppa, settle down and let us begin...

Notes on the 3rd edition:

1. There has been a lot of discussion of the policing of protest in Scotland and the rest of the UK since we published our first edition of this guide, mainly around the sweeping new anti-protest powers introduced with the Police, Crime Sentencing and Courts Act (2022). The majority of this Act does not apply in Scotland, with the exception of some changes to how convictions will be dealt with across borders, some road traffic changes and some trespass laws targeting Travelling

communities: described in detail by the [Law Society of Scotland](#). While we have concerns about the general purpose of the Bill, and how the theme of increased repression might influence Scottish lawmakers, the main effects will be felt by communities and protestors in England and Wales. Guidance for outside of Scotland is available from [Green & Black Cross](#) and [NetPol](#).

2. In November 2021, we carried out the largest legal support mobilisation in recent Scottish history, to support activists protesting the COP26 summit in Glasgow. Much of the new information in this guide has come about because of our (and your) experiences in November 2021, and you can read more about the policing of this in the report [Respect or Repression? An independent report of the COP26 Conference in Glasgow](#) published by NetPol, including contributions from our Legal Observers who were on the ground. Huge appreciation to all of the many LOs, back office team and arrestee support volunteers who were part of that team, and to the activists who took action in the face of overwhelming police surveillance and dreich November in Glasgow.

Limitations of this resource

This guide has been compiled by a team of experienced campaigners, arrestees, organisers and lawyers and is based on knowledge gained through research and many people's experiences.

However, this guide won't tell you absolutely everything about protest law – and besides, it is not necessary to be well-versed in specific laws for you to know your rights while protesting.

While the information provided strives to be accurate and up to date, it should not be read as formal legal advice. If you want legal advice specific to your situation you might consider consulting a lawyer although if you don't qualify for legal aid you may have to pay. We hope that this guide will give you enough information to make decisions when the opportunity arises, and to be more informed about the potential consequences of taking action for social and ecological justice.

If you are familiar with English law it is important to be aware that Scotland does have a very different legal system. Just for illustration, here is a non-exhaustive list of differences:

- In Scotland police powers come from the Criminal Procedure (Scotland) Act (1995) and Police Scotland operate under a set of Policies and Standard Operating Procedures (SOPs). So the English Police and Criminal Evidence Act (PACE) and accompanying Code of Practice do not apply here.

- People are usually “charged” while in the initial custody period rather than having to return to a police station or receive a charge in the post.
- Some offences have different names in Scotland: Damaging property would be Vandalism or Malicious Mischief. Breach of the Peace is a criminal offence in Scotland unlike the civil procedure in England.
- There is a lot of different terminology and the Scottish Court structure is different.
- There is a third possible verdict of “Not Proven”. To get a conviction there must be corroborating evidence.
- The Police, Crime, Sentencing and Courts Act (2022) largely doesn’t apply in Scotland.

CAUTION: While a lot of this guide covers the law and how it is meant to be implemented, people who are supposed to implement the law sometimes ignore the law. The police and private security sometimes behave in unpredictable, intimidating and violent ways and will not always adhere exactly to the law. It is worth remembering that you can be arrested for one offence and then charged with a different one. Also, many people are not prosecuted for what are technically offences. Prepare for the unexpected and spend time planning how you can support each other if something surprising happens.

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

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?’.

General principles

1. **Be prepared for all eventualities including the worst case scenario.** Being prepared can help reduce stress and minimise the risks to yourself and others.
2. **Make informed choices by knowing possible consequences.** Breaking specific laws or physical confrontation can increase the risks to yourself and

others. Knowing potential consequences can help you to make more informed choices and consider the safety of you and/ others.

3. **No Comment.** 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.
4. **Under what power?** Ask police if you are legally required to do something they ask of you. This can be a useful way of indicating to the police that you know your rights and that you are monitoring what they are doing. It can also sometimes be helpful to have this information if your case goes to court. The police have wide ranging powers to disrupt or stop protest and may arrest first and ask questions later. Sometimes they don't know what power they have to do certain things and / or don't have the legal power to do them.
5. **Your identity may impact how you are treated.** There are specific legal rights for under-16s and non-UK nationals and extra ways you may be impacted by the law if you are disabled, trans, or a person of colour. Look out for SCALP guides specific to these identities.
6. **Don't accept a duty solicitor.** Duty solicitors generally tend not to be experienced in protest law and do not understand why people protest. You have the right to a solicitor of your choice. SCALP is developing a list of solicitors who are familiar with protest law and support social and ecological justice. We offer named solicitors through our Legal Support teams.
7. **Think about your strategy in relation to [Recorded Police Warnings](#).** These are different to Cautions that you might be given in the rest of the UK, although Scottish police sometimes call them cautions. Accepting a Recorded Police Warning doesn't mean that you are accepting guilt, does not count as a conviction and it can be appealed within 28 days. It is sometimes offered by police as an alternative to arrest so if avoiding arrest is very important you might choose to accept it (and possibly appeal it later). If you do not accept it they can go on to give you a [Fixed Penalty Notice](#) which can also be appealed later.
8. **Take care of each other during and after interactions with the police and the criminal legal system.** Follow up might include practical tasks like safely storing notes, photos and footage that might be needed as evidence, as well as emotional support and debriefing. For more, check out our [Guide to Legal Support & Collective Care](#).

Who's who on a demonstration or action?

In attendance at protests and actions you will often find a number of groups with specific responsibilities, powers and objectives. Understanding what these roles are can help you recognise risks and prepare for more effective protest.

Police Scotland



In Scotland the police are organised as a single force called 'Police Scotland'. This is divided into North, East and West regions and further into thirteen Divisions. In exceptional circumstances police officers from elsewhere in the UK have been brought into Scotland to provide additional officers, for example during the G8 Summit in 2005, and COP26 in 2021. The Metropolitan Police operate in Scotland to protect

the Royal Family and senior politicians. There are also specialised UK wide police forces that operate in Scotland: the Ministry of Defence Police who guard military bases and operations, Civil Nuclear Constabulary who protect nuclear power stations, the British Transport Police who police the railways, and The National Crime Agency who investigate organised crime.

The police are meant to comply with Standard Operating Procedures (SOPs) which combine guidance, information and instruction for officers and staff. However, SOPs do not describe how police will always behave as officers sometimes choose not to follow them. Knowing the SOPs can be helpful if you have a clear understanding of how police are supposed to act and can sometimes be useful for custody and complaints but practical experience of how things operate on the ground is usually more helpful.

For more on policing tactics and procedures see our [Guide to Public Order & Police Tactics](#).

Police liaison officers

In 2009 Scottish Police started using Police Liaison Officers at protests. These specially trained officers try to engage with activists and protestors, and wear baby blue bibs identifying



their role on the back. On the surface they appear to be trying to open dialogue and work as a means of communication to help them “facilitate” protest. In reality they aim to gather intelligence on who is organising, what is planned and when. This is used by the police to hamper and disrupt protests and direct action. By engaging this way they can also claim legitimacy for their policing. They can be very chatty and friendly, claim to support your cause, try to be helpful to gain trust, and can often get a lot of information from people who don’t realise their true purpose. There is no such thing as just a friendly conversation with the police, and anything you say can be noted and used against you or other people, no matter how irrelevant it may seem at the time.

Private security

Security guards may work directly for a specific company, such as a shop, night club or university, or they may work for a contractor such as Securicor or G4S. They have no special powers under the law, but anyone working in a security role must have a licence from the Security Industry Authority. On the instruction of the building’s owner, private security can remove you from inside a building but they must only use “reasonable” force in doing so. Private security, like anyone else, can perform a citizen's arrest. Private security will often call the police at an early stage of any incident and may share information with police.



So who is looking out for you?

Legal observers



A Legal Observer (LO) is someone who monitors police behaviour to help curb police abuse and support activists. LOs usually wear orange high-vis jackets and are likely to be seen carrying a notebook to detail police movements and actions, including arrests. LOs will often work within a wider legal support team at a protest, sharing information about police tactics, behaviour and arrests with organisers and [arrestee support](#). LOs rarely talk to the police but may give legal guidance to protestors or hand out **bustcards** with guidance. They are not stewards and do not normally become involved with protest management.

Back office & arrestee support

On protests and actions with a risk of arrest it is common for a **legal back office** to be organised that provides support to people arrested. They may publish a bustcard with a phone number for people to give as their personal contact when arrested, and track arrestees through the custody process alongside a trusted solicitor. They will also receive information from people on the ground at a protest, most often LOs. Arrestee support will often arrange for a trustworthy lawyer to have their number available so that arrested protestors need not rely on a duty solicitor. **Arrestee support** volunteers might meet people as they are released from police stations, offer emotional support and meet welfare needs such as food and making sure people get home safe if they are released in the middle of the night, far from where they were arrested. The legal back-office may provide support and give evidence later on if a case comes to court.

Other support roles

Where a police presence is anticipated it is common for organisers to designate a **Police Liaison** (*not to be confused with [Police Liaison Officer](#)*) as the first point of contact between protesters and the police. Such a person may use their role to draw police away from conversation with other activists, to combat police intelligence gathering. Many groups do not discuss protest management with the police and hold a “no comment” line, however, some will use such a Police Liaison role in an attempt to negotiate with the police.

Stewards may be appointed on larger rallies and marches and are usually responsible to a central organiser. They may offer first aid, water, directions, information for disabled people, hand out placards, be a contact point for lost children and so on. If protest organisers have made prior arrangements with the police or local authority, stewards may be asked to uphold these arrangements, such as directing people away from specific buildings or the street - in this way stewards can often come into conflict with protestors.

Interacting with the police

Giving your name and address

In general you do not have to give your personal details to the police or answer their questions about anything. There are three circumstances when you are required by law to give your **name, address, date and place of birth and nationality**:

1. If the police “reasonably” suspect that you have committed a crime, or have potentially witnessed a crime. 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 crime. Failure to give your name, address, date and place of birth and nationality, or giving false details, can be an offence (punishable by a fine) and an officer can arrest you if they suspect you of giving false details. If you are a suspect you can be made to stay with the officer at the scene for 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. You are under no obligation whatsoever to give any further details and we advise you not to.

2. If you have been [arrested](#).
3. If you are stopped when driving a motor vehicle. If this happens you may also be required to produce a driving licence, insurance certificate and MoT certificate. If you don't have them with you which you are not required to by law you can be told to provide them at a police station within 7 days. Passengers do not have to give their details.

Note that giving a false name or address can be an offence.

You should expect that any personal details you give to a police officer, including in what may appear to be an informal conversation, may be added to police intelligence databases. As such, it is recommended to only give what information you are required to give by law, otherwise answering 'no comment'.

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 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.

Drugs and alcohol

In the UK psychoactive substances are controlled through one of [three laws](#). It is important to know the legal implications of being in possession of any quantity of drugs. [Stop & search](#) powers may be used if police have a specific reason to suspect you of being in possession of illegal substances.

In some cases, officers may issue a [Recorded Police Warning](#), on the spot or retrospectively, for example to someone in possession of a small amount of cannabis that would be considered an amount for personal use.

Drug driving

In October 2019 Scotland brought into effect new legislation relating to drugs and driving. This new legislation brings a zero-tolerance approach and is more strict than the rest of the UK.



Alcohol

In many places in Scotland it is illegal (under local byelaws) to drink alcohol on public streets/parks/etc. As a result of changes in legislation made during the pandemic, this now includes Edinburgh and all ScotRail trains.

It is illegal to drive a vehicle on the public road under the influence of alcohol. The police can require you to give a sample of breath to be analysed. If the alcohol present is above the legal limit you can be taken to a police station to have further samples taken with more accurate machines. The blood alcohol limit in Scotland is substantially lower than in England and Wales and you can face a driving ban, fines and prison for drunk driving.

Knives, bladed instruments and weapons

It is illegal to carry a knife or bladed instrument in a public place. There are specific exceptions which mainly rely on you to be able to prove to a court that you have a reasonable excuse. Carrying a knife is taken very seriously and it is highly likely you will be arrested if you are found to have one on you in public and then have to argue the case in court.

The law on knives does not make it illegal to carry a folding knife with a blade of or under three inches, or 7.62 cm, as long as it does not lock in the open position. Carrying any locking knife, concealed knife or anything that has been constructed with the intention of being a weapon, is illegal. An item can also become an offensive weapon if used as one eg. a hammer on a building site is not considered a weapon but if you threaten someone with it it would be. There are exceptions where there is reasonable excuse, eg. a chef travelling to work, or if it is part of national dress or for religious purposes.

You should think very carefully before bringing any bladed item to a protest or similar event.

Stop & search

The police have no general right to search you, but there are important exceptions: for example under Misuse of Drugs laws, if they have reasonable grounds to suspect you of possession of illegal drugs. The police can also search you upon arrest (see Arrest below).

It is illegal for the police to search you without either a warrant or reasonable grounds, under s65 Criminal Justice (Scotland) Act 2016. The exception is if



you enter or attend an event where consenting to a search is a condition of entry, eg. festival grounds or a sporting event.

The police however will often try to get people to agree to be searched 'voluntarily' when they have no legal power to compel them to do so. Police protocols are quite clear on this, although we know of many cases of illegal searches. Whenever the police ask to search you, be sure to find out whether they have legal authority to search you. Ask them to identify the power they are using and why, remember what they say, then write it down. If you have been searched by the police they should give you a receipt with information about the search. You should always ask for this.

Unless you have been arrested, search powers only give the police the power to search your possessions and conduct a "pat down" search of your body, during which you may be required to remove outer clothing (e.g. a coat). You have the right to be searched by an officer of the same gender. [Transgender people](#) are specifically included in these protocols under the Police Standard Operating Procedures but in practice this may not be respected. Gender is not one of the pieces of information that you are required by law to give to the police so if you do not tell them they are supposed to make an assessment on which gender you identify as and they generally operate with an assumption that gender is binary.

Always get a receipt of your search.

If you have been arrested you may be searched more thoroughly, see [Arrest](#).

Section 60 Orders - searching and wearing masks

[Section 60 of the Criminal Justice and Public Order Act \(1994\)](#) gives police extra powers to stop and search people in anticipation of violence. Actual violence is not required: if a police Inspector believes that incidents involving violence are likely to occur and it is necessary to do so to prevent their occurrence, they may give authorisation to stop and search people and vehicles within a specified area for up to 24 hours (this period can be extended by a further 24 hou.

Once a Section 60 Order is in force uniformed police officers of any rank can stop people and vehicles to 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, even if it would normally be lawful to carry them. The general advice concerning searches above applies (i.e. pat down only, officer of same gender etc.).

The search should not be used for any other purposes, such as to search for a suspect. 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, although they may try.

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 cooperate with this, unless you have been arrested. **You do not have to give your name and address, explain why you are there, or answer any questions.**

Where a Section 60 Order (s60) is in force the police can require you to remove anything that they reasonably consider to be for the purposes of disguise. If you refuse you can be arrested and prosecuted.

The actual wording of the law is "items wholly or mainly for concealing identity." This should therefore mean police do not have power to demand you remove items worn for other purposes, such as to protect from the sun (e.g. sunglasses, sun hat) or from fumes or microbes (e.g. a protective facemask) or for religious reasons. It is unclear whether face paint constitutes a mask.

Restrictions on movement

General

It is against the law for someone in a group of two or more to obstruct another person passing through a public place if they fail to stop on being warned by an 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, marches and parades



You do not have to give notice or ask permission for a "static assembly." This means a protest or gathering that stays in one place and doesn't move.

Where a public march or procession is planned, the local authority (the council) should be given at least 28 days advance notice. The notice has to specify: the date and time when the procession is to be held, its route, the number of persons likely to take part in it, the arrangements for its control being made by the person proposing to hold it and the name and address of that person. Councils have forms on their website for this.

The local authority may then make an order prohibiting the procession or impose conditions on it, for example restricting the date, time and duration. [Civic Government (Scotland) Act 1982, s. 63].

There is the possibility of applying for a waiver for the 28 days requirement for exceptional circumstances such as responding to urgent events or because an event was rescheduled.

The most senior police officer present at the procession can also impose various conditions if they believe the protest may cause serious public disorder, “damage or disruption to the life of the community”, or if they believe it is intended to intimidate.

They can impose conditions on a static protest that relates 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 [ss. 14](#)] or that you were unaware of them.

A public assembly is defined as two or more people and must be at least partly in the open air. Moving protests or parades must occur in a public place [s. 16].

Where the police reasonably believe 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 people they reasonably believe 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].

When organising a protest or march keep in mind that organisers can be held legally responsible for what happens at that event. Things like having your name attached to social media accounts, speaking at an event or directing people, appearing to steward an event, can all put someone at risk of prosecution. You might want to consider who appears to be an organiser and what information you share about who has coordinated the protest.

What happens if the police think you have broken the law

How the police interpret the law and what, if anything, they choose to do about it if they think you have committed an offence varies hugely. There are lots of situations where the police will ignore bold challenges to the law but you should never take it for granted

as they are very inconsistent. Often the police will try and persuade you to stop protesting in the manner or place that you are. They will also physically try and stop you from what you are doing in certain circumstances.

If the police decide to take legal action against you they have various options:

- Issue a [Recorded Police Warning \(RPW\)](#) on the spot
- Issue a [Fixed Penalty Notice \(FPN\)](#) on the spot
- [Arrest](#) you
- Take your details and send a report to the Procurator Fiscal

Recorded Police Warning

A Recorded Police Warning (RPW) can be issued by a police officer on the spot or after a period in custody without being formally charged if they think you have committed a low level offence and are over the age of 16. You can refuse it but that might mean that they take other actions. If you accept a RPW you have 28 days to appeal it in writing [Note: Appealing a RPW is relatively simple unlike an English Police caution where there is no automatic right of appeal and the process for getting it removed is more complicated and lengthy].

It is not an acceptance of guilt but is considered by the police to be an alternative to prosecution. It does not count as a conviction but it will be recorded on the Criminal History System for a period of two years and can be taken into account if you come to the attention of the police again in that time.

If you are issued an RPW it could be considered for disclosure in relevant circumstances. An RPW will not automatically be included on an enhanced disclosure certificate or Protecting Vulnerable Groups (PVG) scheme record but a chief constable can include information about your warning as 'Other Relevant Information', if they reasonably believe that it's relevant to the disclosure's purpose.

To appeal a RPW write to "Criminal Justice Services Divisional Coordination Unit (DCU), Police Service of Scotland, Falkirk Police Station, West Bridge St, Falkirk FK1 5AP" and they will pass it to the area where it was issued. Either it will then be reported to the PF for a potential prosecution or your appeal will be upheld and the crime reporting records will be updated.

Fixed Penalty Notice

If the police think you have committed a minor offence they can issue you with a Fixed Penalty Notice (FPN, sometimes called an Anti-Social Behaviour Fixed Penalty Notice, a fine) either on the spot or after a period of custody and being formally charged. [Anti-Social Behaviour (Scotland) Act 2004, part 11]. The notice should say: what the alleged offence is and what the circumstances were, the amount of the fine, the Justice of the Peace Court where it must be paid and how you can appeal against it.

An FPN can be up to £500 but is usually lower. If you do not pay it within 28 days it will go up by 50% and be registered with the Scottish Court Services for collection.

If you think your fine was issued unfairly you can appeal it to the police in writing within 28 days. The address to write to will be on the FPN. A report will then be sent to the PF who will decide whether to proceed with a prosecution in which case you may have to appear in court. The police will keep information about your fine for 2 years. A fixed penalty notice is not a criminal conviction and will show up only on enhanced disclosures as 'non-conviction disposals'.

Fixed Penalty Notices issued for drug or traffic related offences operate under different legislation.

Arrest



The general power of the police to arrest is mainly defined by the Criminal Justice (Scotland) Act (2016). As a working rule if police believe you have committed an offence they have the option to arrest you. There is sometimes a series of appeals made by police to convince protesters e.g. in a blockade to leave or unlock voluntarily and avoid being arrested but this is not required, and police can and often do, make arrests suddenly and without warning.

Sometimes, especially in mass actions, the police will issue a warning in the hope that people will stop doing whatever they are doing, e.g. blocking a road. This might be done by a senior officer using a megaphone. Refusing “to desist when required to do so” can become part of the charge of Breach of the Peace or you can instead or additionally be charged with Obstructing a police officer (see [Laws Commonly Used Against Activists](#)).

If you are in a situation where the police can't just arrest you and take you away, like in a lock-on situation, other people such as a specialist police “protester removal team” or even the fire brigade may be called in to release you first. This could mean that the police will move everyone including support people back from the area and even screen it off. If you are behind a screen it can be useful to narrate what is happening so that legal support can document it but be careful not to incriminate yourself or others through what you are saying.

You will usually be arrested by two officers, one will be your “arresting officer”. 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. We recommend not answering any

other questions or giving any other personal details with the exception of telling them if you take medication and if so when the next dose is due. Be clear with them about how urgent the medication is, and the effect upon you if you do not get it on time.

The police can put you in handcuffs if they believe it's reasonable. It counts as a use of force so they need to be able to justify it. All UK police use "quick-cuffs" which are solid in the middle with a handle. They can self tighten when you move unless they have been "double locked." If they tighten and start to hurt your wrist or cut off blood make sure to let the police know. You can be handcuffed in front or behind. If you have health issues that make being cuffed behind your back dangerous or painful, tell them.



You may be processed at the scene, but this is very rare, and is similar to being processed at the police station. In most cases your arresting officers will accompany you to the police station. Once at the police station, you may be either kept in the van for a while or put in a holding cell if the station is busy.

You will be brought up in front of the custody officer, and civilian staff who deal with administration, prisoner transfer and prisoner "welfare" (looking after your most basic material needs e.g. food and blankets). 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 with the exception that if you have been hurt in any way or if you are on any medication or have a medical condition which could require it you should demand to be seen by a doctor. While you're in custody, police have a duty of care and should provide medications and other medical care you need. If you take prescription medication, it can help avoid delayed access to medication to have it with you in pharmacy packaging, with the prescription labels on them (your full name and dosage etc). For more about care and access in custody, see the section for [People with Disabilities](#) and our extensive [Guide for Disabled Activists](#). Also if you have any dietary requirements make sure you tell the custody officer (they may not ask).

They will confirm your address by searching police records, or the electoral roll (list of everyone registered to vote), or checking any ID you have on you. If they can't confirm it they may ask any legal support back office, people waiting in the police station or send officers to your door to confirm with people you live with. If you can make sure people know what address you intend to give to the police so they can confirm it. This will speed up release.

They will ask a bunch of "welfare" questions, including asking if you have taken any drugs in the last 24 hours, if you feel suicidal or have a history of mental health problems. If they believe you are at risk of self harm they may watch you more closely, check on you regularly, and be more strict with what clothes you are allowed to keep.

Unfortunately, the disruption of being checked up on regularly can also be very stressful, and reduces the chances of being able to sleep. However, it's up to you as an individual to do what you feel is the best option for yourself in answering these questions or saying "no comment", so that you can manage your time in the cells safely.

While you are not required to answer these questions, it may make your time in custody easier to tell them if you are not under the influence of drugs or feeling like you will self harm so you can consider answering these. Make sure you don't incriminate yourself or others or answer other questions.

You may pass through an area with a UV light to check if you are marked with Smart Water which is an invisible liquid applied to valuable items and used to detect theft. You will be searched, usually in a different room. You will be asked if there is anything sharp in your pockets before they are emptied and warned that it's an extra offence not to tell them about something that can hurt them. You will have to remove outer clothing and footwear. An officer will search your whole body through your clothing and waist bands and bras will be checked. You should be searched by an officer of the same gender. All your possessions will be searched and will be put in a bag in the custody office. If you have a book you can ask to keep that (and your glasses) in your cell but it is at the discretion of the custody officer. You may be asked to sign a list of your possessions. You are not legally required to do this but if you do, marking the bottom of the list with a cross can help prevent police from adding items to your personal possessions that might incriminate you.

You can be strip searched when in custody. This must be justified for specific reasons, not just routine. These reasons must be explained to you and recorded on your file. The search should happen in a closed room with two or sometimes more officers or support staff of the same gender. They should only make you remove clothes from one area at a time rather than have you completely naked. They can also ask you to squat, bend over and turn around. They can use reasonable force to make you do this.

A more intimate search, physically searching someone's body and orifices, can only be carried out with a warrant from a Sheriff and must be carried out by a health care professional.

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 ask them to contact any legal support that has been set up for a demo or action, or if these aren't available, a friend or family member. Give the police permission to share details with anyone you ask them to contact otherwise it can be difficult for people on the outside to get information or check in about your release later on. You do not get to make the call, the police call on your behalf.

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

for the demo or action. The police may try and push you to use the duty solicitor as it makes life easier for them. See the section on Solicitors below.

After this you will be put in a cell on your own. There will be a toilet and a mattress and possibly blankets. It's a good idea to ask for extra blankets as it might get colder. Try to relax, this may be the first time you are alone since a potentially stressful arrest (sleep if possible - you may be held for a long time). You should be given three meals a day and not held for more than 4 hours without food 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 and photographed 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 police caution so do not chat with the officer who is fingerprinting or photographing you.

You may be taken for a formal interview, or be interviewed in your cell. You can request your solicitor to be there with you. This may be with your arresting officers, or other uniformed police, or Criminal Investigation Department (CID), who don't wear police uniforms. You will be taken to an interview room and the interview may be recorded or they might just write answers down on paper. We advise you to answer "no comment" to any questions, and any good lawyer will advise the same, except in very unique circumstances. They may use a lot of tricks to get you to talk, such as "good cop bad cop," saying your friends have all spoken, saying it is in your best interests to talk and that consequences will be more serious if you don't. Remember, they are trying to gain evidence to convict you, not help you. This is not your trial, not the time to explain your defence, and you can't take back anything you say. 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. It is best not to reply but anything you say will be written down and will likely be read out in court. You may be transferred to another police station at some point.

You will be either released, asked to sign an undertaking or held until the next working day for court. (see Release, Undertakings & First Court Appearance below). If you are released please let any legal support or people waiting for your release know you're out. It's a good idea for someone to come pick you up.

You should only be held in custody if there are reasonable grounds to suspect you. After 12 hours they should assess if you should still be charged or released. They can hold you for another 12 hours but they have to ask for the authority of a senior police officer, and you or your solicitor should be able to speak to this person, or write a letter. You should be released after 24 hours, unless you have been charged and are being held to appear in court. If you're taken to hospital for medical treatment, the length of time that you are in hospital for does not count towards the length of time you've been held in custody for. Not unless the police interview you at the hospital or when travelling to or from the hospital.

How the police are supposed to treat you while you are in custody is covered by the [Care and Welfare of Person in Police Custody SOP](#).

Arrest can be a deliberately intimidating and isolating experience. It can also be a very boring and slow-moving one. It is possible that you might feel panicked or stressed. It can be helpful to think through how you might react to arrest so that your fear response doesn't make you do something that might further incriminate you or that you might later regret. Anything that the police might interpret as aggression could cause them to change their behaviour towards you. Relax when you can and remember your rights. When anyone is released from arrest it is important to offer them emotional and practical support.

Solicitors: Trained lawyers can give crucial and helpful advice while you're in custody and throughout court proceedings and represent you to the police and courts. Some solicitors don't understand that people may not want to blame their co-accused for a lighter sentence, or that someone might plead not guilty to something they blatantly did because they believe the law is unjust. You can get free legal advice from your solicitor or a duty solicitor either in person or on the phone when you are in custody. You only need your solicitor's name, you don't need to have their phone number. It is important to have an idea of how you want your case to be dealt with, and be very wary of ever speaking in an interview as you can't take it back. Any good solicitor should only advise you to say no comment. It is best to use a solicitor who is experienced in the types of case you are being held for, so if you are going to a protest where you expect there to be arrests it's a good idea for legal support to arrange a suitable solicitor in advance. If you unexpectedly find yourself in custody and have no solicitor lined up then speaking to the Duty Solicitor might be better than having no solicitor.

Young people and arrest

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 your parents or guardian go to the police station they must be allowed to see you if you are under 16, unless a senior officer refuses it for very specific reasons.

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. After arrest people under the age of 18 may go through the same processes as outlined below but may be put through the Children's Hearing System.

Citizens Advice Scotland have [more information about arrest and Under 18s](#).

People without British citizenship and arrest

If you are not a British citizen before you go to a demo, you should think about the risks you are able and willing to take. This is important because the UK Home Office which is responsible for immigration across the UK including Scotland can be very draconian and has the power to revoke visas/deport people even for minor things. Challenging these government actions can be very time-consuming and costly. That said most mainstream protests in Scotland are fairly predictable and no one gets arrested. However, there is always the risk that the police will decide to arrest people even if they personally are not involved in any offence. More information on immigration law and legal implications for non-UK citizens is available in our [Guide for Internationals](#).

European Union citizens

While we were in the EU it was extremely hard to deport EU citizens from the UK unless they committed a really, really serious offence. Now, EU, EEA and Swiss citizens must apply for "settled status" under the [EU Settlement Scheme \(EUSS\)](#), to remain in the UK legally. This does not apply to Irish citizens. The Settlement Scheme is not a registration system, it is an application and can be refused. The EUSS suitability check involves asking applicants to self-report any criminal convictions that appear in their criminal record in the UK or overseas. Applications are then checked against the Police National Computer (PNC) and the Warnings Index (WI), a system used by UK border staff to identify terrorists and criminals.

EU citizens may face deportation action for historic offences if they have:

- Received any sentence of imprisonment at all within the last five years;
- At any time (no matter how historic) received a sentence of 12 months or more for a single offence;
- For those resident for less than five years, if they in the last three years received three or more convictions (including non-custodial sentences);

A pending prosecution or investigation which might meet the refusal on suitability grounds criteria will mean the application not being decided until the outcome of any prosecution is known.

Indefinite leave to remain

If you have indefinite leave to remain, getting arrested for a minor offence will usually not result in that status being revoked.

If you are applying for leave to remain having been arrested or even having provided your details to the police may impact whether you can meet the suitability requirements.

Your indefinite leave to remain can be revoked and you can still be deported if you receive more than 12 months prison sentence or are convicted of very serious offences.

If you are applying for citizenship, you will need to prove your “good character”. Usually citizenship will be refused if you have had convictions in the last three years but having been arrested at a protest even if you were not convicted can be used to show it is more likely than not that you were involved in a crime.

Tier 4 student visa

Most international, non-EU students are on “tier 4” student visas. From Dec 31 2020 EU students have to apply for this too. If you are on this type of visa, your “leave to remain” can be curtailed (you lose this status and must leave the country) for many reasons and the Home Office has very broad discretion in deciding when to do so.

The [immigration rules](#) state that someone’s leave to remain can be curtailed because of *“the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct ... character or associations or the fact that he represents a threat to national security.”*

This can be used against protesters. Another thing to bear in mind is that your immigration status is based on you being a student. If you lose this status because the university decides to expel you (based on their internal disciplinary rules), you are also losing your visa (if you cannot transfer to another institution which can sponsor your visa).

Being undocumented

If the police encounter you at a protest and suspect you are committing an immigration offence they may arrest you. The police often share information with the Home Office. Immigration authorities can also detain you if you are convicted of a criminal offence as a result of a protest and then made subject to deportation action.

If you are detained you have the right to apply for bail.

What to do?

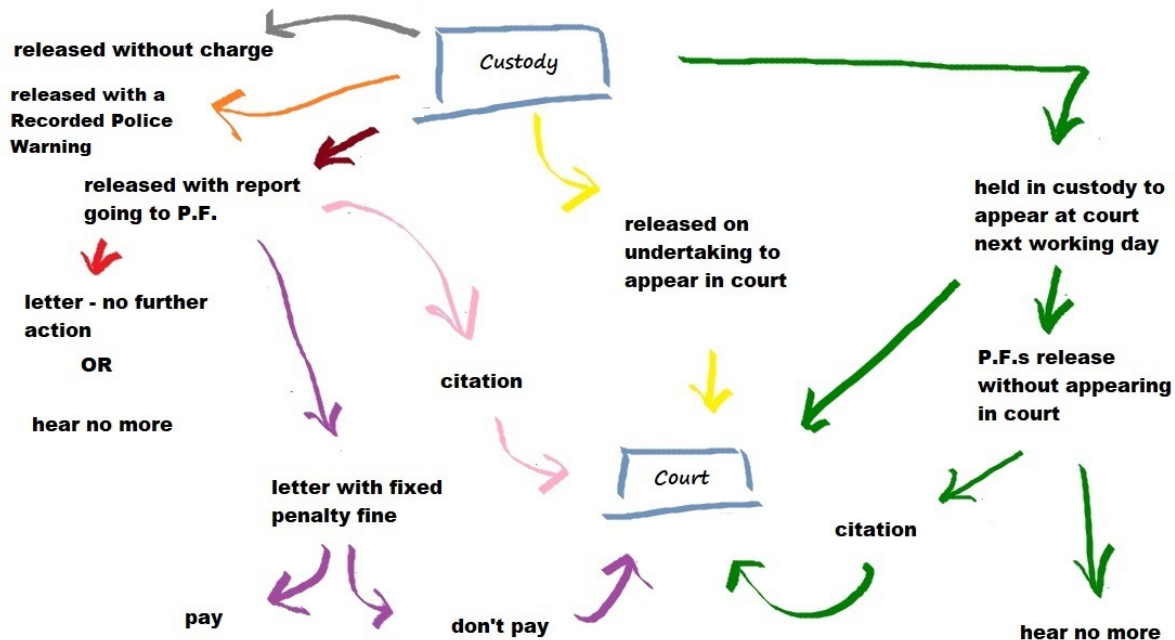
Hopefully this helps you to make informed decisions about protesting in the UK. Consider agreeing with your friends / affinity group / fellow organisers / people partaking in the protest with you about what your boundaries are, so that you don’t find yourself alone if the police start acting badly.

Some things it is important to remember:

- **You don’t have to carry your passport or form of ID in the UK** – indeed we recommend you don’t carry these things.
- You **never** have to give the police your personal details if they are searching you.
- If you are arrested, you are legally obliged to inform the police of your nationality if they ask you for it.

- Answer “**No comment**” to all police questions – it is easier to simply say nothing than to decide which questions to answer.
- If you are questioned at a police station, you are entitled to a translator as well as a solicitor if you’d like one.
- If you use a solicitor, you should get one who is experienced in protest law
- More information on immigration law and legal implications for non-UK citizens is available in our [Guide for Internationals](#).

After arrest: release, undertakings & first court appearance



Flowchart of post-arrest proceedings

The police have three options as to how they deal with you after you have been arrested and charged with an offence. They can keep you in custody until a court appearance. They can release you with a report being sent to the Procurator Fiscal (prosecutor) for them to consider whether to prosecute or some other option like offering you a Fiscal Fine. Alternatively they can release you on an undertaking to appear in court at a named date in the next few weeks. An “undertaking” is used if they consider it unnecessary to detain you for court, but the matter is such that it will be dealt with comparatively urgently. It is now the most common outcome. If there are doubts about your identity or address an undertaking may not be offered and you will be held for court.

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 released on an undertaking you will have certain conditions placed on you. This is sometimes referred to as Police Bail. The standard conditions are to not commit any more crimes, to turn up at court and not to interfere with witnesses. They can add extra conditions eg. to stay out of a certain area. It is an additional crime to break these conditions.

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

You will be moved from the police station to the relevant court by a private security company, normally in a large truck or van with individual cells. You will be searched again, and when you are moved will be handcuffed to a member of staff. You can be held in groups in court cells, segregated by gender, and be fed at lunch. Court cells are often loud and chaotic and your case may not be called until late in the afternoon, or eventually released without appearing in court. If you are arrested together with a group of others you may be brought into court and your case heard together.

For criminal cases there are three different kinds of courts in Scotland: Justice of the Peace (JP), Sheriff or High Court. It depends on how serious the charge is. There are also two different procedures in Scottish law: "Summary" proceedings for less serious criminal offences where you would appear on a 'complaint'. These cases call before a justice of the peace or a sheriff sitting without a jury. "Solemn" proceedings are for more serious criminal offences. The charges for these appear on an 'indictment' and trials are heard before a judge and a jury of 15 people either in the Sheriff court or the High Court. High Court solemn procedure usually starts off in the Sheriff Court.

The Procurator Fiscal decides the charge against you, which court you will appear in and if you are pleading not guilty whether you will be tried by a jury. You can initially be on solemn proceedings but then it is dropped to a summary complaint.

To find the address of a court visit scotcourts.gov.uk.

Most protest cases will be heard at the justice of the peace or sheriff court as a summary case. You will be served with "a complaint" which sets out the offences you are accused of and will be the document that any subsequent trial is based on regardless of what you were charged with when you were arrested. If you are being prosecuted jointly with other people they will also appear on the complaint. Anybody who appears on a complaint must be tried within a year of their first appearance.

For very serious matters you will appear "on petition" which means the Procurator Fiscal intends to prosecute you under solemn procedure with a jury trial and 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. The actual charge against you, the indictment, will be served after the PF has considered the evidence or made further enquiries.

At the first hearing in a summary case called a pleading diet (all Scottish hearings are a “diet” of some sort) whether you appear from custody or have turned up to answer to an undertaking you will be asked how you plead. There are many personal and political considerations in deciding how to plead but it is worth thinking in advance about what you might do if you are held for court and discussing it with others involved while you can. Knowing the potential consequences makes that decision less stressful. There are good practical reasons to plead “not guilty” at the first hearing and you can always change your plea later. There are also good practical reasons to plead guilty in certain situations.

Some reasons to plead not guilty:

- You have time to consider what you want to do and prepare any defence, legal or political.
- You have time to talk to others in the same case about a legal strategy.
- You have time to get legal advice.
- The PF might just drop the case without any obvious reason.
- It is our experience from previous large protests where there is negative reporting in the mainstream media 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. It might be better to wait until the hype has died down.

Some reasons to plead guilty

- The PF is asking that you be held in prison until your trial and there is a chance that the judge will agree.
- The PF is asking for bail conditions you don’t want to live with if the judge grants them
- You think you will inevitably be found guilty and if you are given a fine it should be discounted by a third for an early guilty plea for saving them the bother and expense of putting you on trial.
- Don’t have to travel back to the court (possibly several times if there are adjournments).

If you plead not guilty, dates will be set for a trial diet and also an intermediate diet which is basically for checking in if everyone is ready for the trial.

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. after the eviction of the Mainhill Solidarity Camp from a proposed coal mine everyone arrested was not allowed within 500m of the site boundary). 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.

If you are charged with something more serious, have a long criminal record, have been arrested more than once in a short period or have broken previous bail conditions the Procurator Fiscal might ask for you to be “remanded in custody” in other words held in prison. You or your solicitor have an opportunity to argue with this and it is up to the judge to decide.

If you plead guilty it will be dealt with there and then. The PF will give a brief account of what you did taken from the report they have from the police. You will have an opportunity to:

- disagree with some details but if you contest essential parts of the PFs version then the court will record it as a not guilty plea and set trial dates.
- give a “plea of mitigation” which is an explanation of why you did what you are accused of.
- accept a record of previous convictions. Check them because sometimes there are mistakes.
- give information about your financial situation. This is optional although being without much in the way of income or savings tends to reduce any fine.

The judge then decides what sentence to give you. This could be: an absolute discharge (with no conviction recorded), an admonishment (with no punishment other than a conviction), a fine, a compensation order, a community payback order (usually doing unpaid work), deferred sentence (to come back at a later date and if you have stayed out of “trouble” then the punishment will be reduced)

For more information about going to court in Scotland, the court system and representing yourself, see our upcoming [Guide to Going to Court](#).

Warrants for arrest

If you don't turn up for court, haven't paid a fine or breach your bail conditions a warrant can be issued for your arrest. The police can enter private property to arrest you and hold you in custody to appear in court. If you are arrested or your details checked somewhere else (e.g. at an airport or ferry or a protest anywhere in the UK) you can be held until transport can be arranged to the area where the warrant was issued. Some people have had long and uncomfortable journeys for warrants resulting from minor offences.

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. Police, procurator fiscals and the courts are all unpredictable and even those with extensive experience of the Scottish legal system don't have much certainty of what laws they would be charged with, in a given situation or action. It is our aim to allow a working knowledge of all of the charges commonly used against activists as police are known to apply charges erratically.

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. As well as a fine you can also be given a compensation order. There are no court costs charged in Scotland.

Breach of the peace

The common law offence of Breach of the Peace (BoP) is very wide ranging and has been regularly used against protesters in the past. However, disorderly conduct is now more commonly prosecuted under [Section 38\(1\) of the Criminal Justice and Licensing \(Scotland\) Act \(2010\)](#).

In theory, BoP requires conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. You can be convicted of BoP even if no-one present was actually alarmed, if the judge considers that any reasonable person would have been alarmed if they had been there. In practice BoP is wide open to almost any interpretation and there have been a number of significant appeal cases. Some courts have consistently convicted people for BoP who merely sat peacefully in the road despite evidence of the good natured atmosphere and total lack of alarm even from the police witnesses if there was a "disturbance to the community" such as a long traffic queue.

Section 38 says that you commit an offence if you (a) behave in a threatening or abusive manner, (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and (c) you intend by the behaviour to cause fear or alarm or are reckless as to whether the behaviour would cause fear or alarm.

Sentences for BoP are usually a small fine, although in a Justice of the Peace Court the maximum is £2500 and in under summary procedure in a Sheriff Court £10,000. Under solemn procedure in a Sheriff Court or the High Court there is no maximum. For Section 38 the maximum sentence in a Sheriff Court is imprisonment of 12 months, or a fine up to £10,000 or to both although in practice any sentence is likely to be much less.

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 a charge or prosecuted.

Malicious mischief & vandalism

Malicious Mischief is the common law offence of 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 statutory 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.

Fly-posting, stickering or attaching posters in public places, can be treated differently to vandalism using Town and Country Planning laws. These mainly aim to stop commercial advertising and so it is a crime to have your goods or services advertised by fly posting even if you didn't put the posters up yourself. Under planning legislation, posters regarding an election have permission to be put in public spaces like lampposts, but must be removed within 14 days of the election. Removing them if they are not yours is considered theft.

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 and reckless endangerment

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 waving your fist. Assault cannot be committed by words alone or be accidental.

Assaults can be aggravated by the circumstances. These depend on the nature of any weapon, any injury, and the status of the victim. For example an assault which is racist will be dealt with more severely, as will an assault with a weapon. The sentence will partly depend on these circumstances.

It can be a defence in assault cases that someone was acting in self defence, or defence of another, but this can be difficult to prove. The act has to be proportionate and necessary to prevent imminent attack.

Reckless endangerment or injury (of the lieges) 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 of 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. A high degree of recklessness is required, more than what could be construed as carelessness or negligence.

There is a specific statutory offence of assaulting a police officer under the Police and Fire Reform (Scotland) Act 2012. Additionally there is a crime of assaulting, obstructing

or hindering emergency workers under Emergency Workers (Scotland) Act 2005. As well as firefighters, paramedics and medical workers this also includes police officers.

Obstructing a police officer and resisting arrest

It is an offence to obstruct an officer in the course of their duty. This means while they are doing something they are specifically legally entitled to do. 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 can include not answering questions you are legally required to, but does not include refusing to answer questions that you are not obliged to answer.

Rescuing or attempting to rescue someone from custody, also known as de-arresting, and resisting your own arrest, is a crime under the Police and Fire Reform (Scotland) Act 2012 s. 90 & 91.

Trespass

There is an offence of Trespass in Scottish Law, but it refers specifically to camping on land without the owner's permission. [The Trespass \(Scotland\) Act 1865](#) makes it a criminal offence to lodge, occupy or encamp on any privately owned land without the consent of the owner or legal occupier. This includes private roads and land near private roads. It can carry a maximum sentence of a £200 fine or 14 days in prison. Under the Land Reform (Scotland) Act 2003 you have the right to responsible access of all land, which includes camping (but not with vehicles). This is often referred to as the Right to Roam, and there are exceptions, such as the areas around someone's house or other buildings, farm land if being there disrupts activity, areas that charge entry fees and also military bases.

More commonly, occupation of land will be dealt with as a civil matter. This process starts with you being told to leave by the landowner. This may be done by a Sheriff's Officer.

The offence of **Aggravated Trespass** only applies to land in the open air. If you are on land so that you can disrupt or obstruct or intimidate people engaged in lawful activity you can be arrested for Aggravated Trespass. [\[ss. 68 Criminal Justice and Public Order Act 1994\]](#) If a senior police officer believes you are on land for that purpose they can instruct you to leave and if you don't or if you return within three months, that is an offence in itself. [\[ss. 69, Criminal Justice and Public Order Act 1994\]](#) The maximum sentence is three months imprisonment or a fine of £2500 for each offence but it usually results in a lower fine.

Some areas have specific byelaws that criminalise access to certain areas such as railways, train stations and airports. Military bases are usually covered by [Ministry of Defence byelaws](#). Additionally [certain nuclear sites](#) in Scotland are designated under the [Serious Organised Crime and Police Act 2005](#) as is the area around the Scottish Parliament at Holyrood, although there has not yet been any protocols published about

its use here nor are we aware of SOCPA being applied at Holyrood yet. If you are organising an action at Faslane or Coulport nuclear bases, do get in touch with SCALP for additional legal information.

More information about possible offences relating to trespass and camping can be found at [Prosecuting Gypsy and Traveller communities for stopping on unauthorised sites - Shelter Scotland](#). It should be noted that guidance on the treatment of Gypsy and Travellers does not apply to people who are not from those communities.

Drug and Alcohol Laws

Misuse of Drugs Act 1971 (MoDA)

The MoDA covers the possession, sale, import and export of named drugs. The drugs named under this law are illegal to have, give away for free, sell or bring into and out of the country. The drugs are split into three different categories which have different legal consequences associated with them:

Class A: Penalties for possession are up to 7 years in prison and/or an unlimited fine. Penalties for supply are up to life in prison and/or an unlimited fine. This includes drugs like MDMA (ecstasy), LSD, magic mushrooms, cocaine and heroin.

Class B: Penalties for possession are up to five years in prison and/or an unlimited fine. Penalties for supply are up to 14 years in prison and/or an unlimited fine. This includes drugs like cannabis, ketamine and amphetamine.

Class C: Penalties for possession without a prescription are up to 2 years in prison and/or an unlimited fine. Penalties for supply are up to 14 years in prison and/or an unlimited fine. This includes drugs like benzodiazepines (Valium), GHB and anabolic steroids.

In some cases, officers may issue a [Recorded Police Warning](#), on the spot or retrospectively for example to someone in possession of a small amount of cannabis that would be considered an amount for personal use. See more on [RPWs](#).

Psychoactive Substances Act 2016 (PSA)

The PSA covers any substance that produces a psychoactive effect that is not already listed in the MoDA or HMR. The drugs covered in this law do not have to be specified by name but must be shown to produce a psychoactive effect. The law was brought into effect in order to prevent the sale and distribution of drugs that might be formerly known as 'legal highs'. It was introduced in the UK in 2016 and makes it an offence to manufacture, export/import (i.e. buying from a non-UK website) supply or offer to supply any psychoactive substance, if likely to be used for its psychoactive effects.

The law does not cover possession of psychoactive substances but instead covers sale and export.

Nitrous Oxide (laughing gas or NOS) is covered by the Human Medicines Regulations (2012) but when it has been thought that someone is intending to supply the gas for human consumption to psychoactive effect there have been successful convictions under the PSA.

Despite being psychoactive, alcohol, nicotine, tobacco and caffeine are exempt from the act. Under the PSA, possession with intent to supply is an offence. Possession is not an offence, except in a 'custodial institution' (e.g. prison, young offenders centre). Penalties range from civil sanctions to a 7-year prison sentence but some offences will be considered to be aggravated, including selling to under 18s or around schools and children's homes etc. The Human Medicines Regulations (2012) and the Misuse of Drugs Act (1971) including Temporary Class Drug Orders (TCDOs) will remain unchanged. The police have increased powers to stop and search individuals and premises, and New Psychological Substances may be treated like a controlled drug until proven otherwise.

Human Medicines Regulations (2012)

The HMR covers the distribution of listed medicines, who is allowed to distribute medicines and how this should be done. The law covers manufacture, import, distribution, sale and supply of those products; for their labelling and advertising. The Act controls supply of the drugs it covers, but does not define any offence of simple possession.

Possession of a prescription only drug may be an offence if it is also covered by the PSA or MoDa e.g. possession of Valium is viewed as possession of a class C drug without a prescription. Carrying prescription drugs in packaging with your name on with a copy of your prescription from your doctor can help you keep access to your medication.

The Drug Driving (Specified Limits) (Scotland) Regulations 2019

In October 2019 Scotland brought into effect [new legislation relating to drugs and driving](#). This new legislation brings a zero-tolerance approach and is more strict than the rest of the UK. It is now illegal to have specified traces of a controlled substance in your blood, saliva or urine and operate a road vehicle. There is no longer a requirement to prove impairment while driving in order for an offence to have been committed.

Please be aware that detection of any drug will depend on purity, regularity of use, other medications or drugs you have taken, your body and how it's taken. The controlled compound in cannabis, THC, can remain at detectable levels in a urine sample for up to 30 days after last use.

Police Scotland can now carry out roadside testing for cannabis and cocaine using a saliva swab. They can also take you to a police station and perform a blood test for other drugs.

For additional information on drugs see [Release | Drugs](#) - note that the legal information here is not Scotland-specific.

Information for specific identities

Human Rights Act 1998. Article 14 requires that all of the rights and freedoms set out in the Act must be protected and applied without discrimination.

Article 10 - protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud (for example through public protest and demonstrations). Article 11 - protects your right to protest by holding meetings and demonstrations with other people

“Discrimination occurs when you are treated less favourably than another person in a similar situation and this treatment cannot be objectively and reasonably justified.”

People with disabilities

Notes

1. We have recently published an extensive [Guide for Disabled Activists](#), which includes much more information than is covered here.
2. Disability here is understood as being due to society. It is not someone's condition which disables them, but it is the physical, attitudinal, cultural, social, structural barriers in society which disable a person.
3. Disabled peoples' experiences of protest, direct-action, the police, custody, prison and the criminal legal system is distinctly different from that of non-disabled people. It is up to everyone to make an environment where all people can express their views and exercise their right to protest without discrimination.

Medication If you take prescription medication, ensure that you have with you the packaging of all your medication, with the prescription labels on them (your full name and dosage etc). When [arrested](#), be clear to let the police know straight away that you take medication, and let them know if it is urgent or not and the effect upon you if you do not get it on time. The police may insist that you see a nurse or doctor at the police station before giving you a dose of the medication, or they may check the medication with a medical professional over the phone. Delays in being given the first dose of medication following arrest is a recurring issue brought up by activists who have been arrested and some have taken a dose of their medication as near to when they are just about to be arrested as possible – that's if this works out with their prescription.

Right to medical treatment You have the right to medical help if you are ill or injured. [\[Standard Operating Procedure: Rights for People in Custody, 11\]](#). If you want to see a healthcare professional tell the police as soon as possible. You can refuse to get examined by the healthcare worker that the police provide. Instead, you can choose

your own general practitioner (if they are available). However, there is likely to be a significant charge for this service, and the police will note down any payment made.

The police will ask you questions about your health and wellbeing. This is mainly to determine whether you will be at risk while in custody, and if so, what level of risk. Questions will include whether you have any mental health issues and whether you have a history of self-harm, or any thoughts about suicide. If you do answer yes to having mental health issues or a history of self-harm, or if you give a “no comment” reply to these questions, then it’s fairly likely that police will want to check you regularly during the time you are locked in the cell. Unfortunately, the disruption of being checked up on regularly can also be very stressful, and reduces the chances of being able to sleep. However, it’s up to you as an individual to do what you feel is the best option for yourself, so that you can manage your time in the cells safely.

Appropriate adult [The police have a duty to facilitate](#) support for vulnerable persons in police custody by providing an Appropriate adult, when the person is in custody, over 16, and is considered to have mental health issues or a learning disability. In addition, the police have to consider the person to be unable to communicate effectively or unable to sufficiently understand what is happening. In circumstances where the police are not able to confirm that you have a diagnosis but they feel it is clear that you cannot understand procedures or communicate effectively with the police (and that the cause of this difficulty is not solely due to alcohol or substance use), then the police are advised that they should request an Appropriate Adult – even though you may not ask for one.

Access for people with learning disabilities Police Scotland rely on individual officers to identify people who are having difficulty understanding. As a result, there is significant potential for learning disabilities to remain unidentified, and for individuals to progress through the system unsupported. Research into the experience of the criminal legal system for people with learning difficulties has found amongst other things; the lack of an Appropriate Adult during police interviews; the accused not understanding what was happening during their trial and court decisions, including bail and sentence decisions; lack of specially prepared, accessible and/or easy read information, such as on prison procedures and internal prison forms; and difficulties in complying with community based orders, which increases the likelihood [of custody](#)

People who are deaf, hearing-impaired, or have speech difficulties The police should arrange for an interpreter to be present in the room with you if you are hearing impaired or have trouble communicating clearly. This could be a BSL interpreter or another [appropriate professional](#).

Many people find that it can be hard to follow everything that is happening at the police station. It’s important that you ask for help if you are not sure about anything, and ask for help with reading if you need it.

Reasonable adjustments Under the Equality Act 2010, employers, service providers, education providers etc, have an anticipatory duty to make reasonable adjustments for disabled people accessing their services, who are placed at a substantial disadvantage

due to their disability. If reasonable adjustments apply, but have not been made, then the provider may be acting unlawfully.

In spite of this activists with disabilities have experience of:

- custody desk/bar being too high for anyone in a wheelchair or a different than average height, so that the person is unable to see the officer speaking to them
- non-existence of accessible toilets when in custody,
- lack of accessible sink for brief wash in custody
- the fixed seat used for ID photos being inaccessible
- the fingerprint machine being too high for some people to manage raising arms (so officers have resorted to supporting the person's arm, whilst each individual print was taken),
- the Letter of Rights (Scotland) not being provided in an accessible format on request.
- the raised part of the cell for the mattress being too low and inaccessible for many disabled persons to use and be able to get up again
- call button in cell not being reachable to those with some disabilities
- the door hatch not being at a height someone in a wheelchair can also see out of. (The hatch can sometimes be left open if someone is feeling claustrophobic at an officers discretion, but someone short, or in a wheelchair cannot benefit as much from this as cannot see out)
- The thin disposable cups used for water are particularly hard for people with some disabilities to hold without spillage
- Fluorescent lighting in some cells being more likely to trigger epileptic seizures
- The mattress being too thin for anyone in any pain to manage
- Transportation vans for prisoners not having any wheelchair accessible/safe spaces

Accessible information All people have a right to liberty and security under Article 5 of the European Convention on Human Rights. This includes being given information on arrest and charges in a language that the individual understands, however, lack of accessible written information and resources is an issue.

Many people can find the court environment very challenging, but this is especially so if you have learning disabilities and have difficulties following what is being said or what is happening. The solicitor is expected to provide all the required support in court. In some individual cases an Appropriate Adult can be provided, or advocates and other supporters may be able to offer some assistance

Call button Where a prisoner may have difficulty accessing the call button due to access issues, the Custody Supervisor has to account for this within the care plan, and as an alternative, they must consider the use of adapted cells, increased visits, and/or consideration should also be given for the prisoner to be placed under constant observation. However, the Scottish Police's [Standard Operating Procedure \(SOP\) at 19.4.10](#) explains that "Medical conditions and head injuries should not be used as a

reason for constant observations unless directed by the healthcare professional. If someone is so ill that they need constant observations they should be taken to hospital.”

Transportation In the standard operating procedures, police are expected to consider the suitability of the transport used to convey people between the place of arrest and the police station. They are meant to consider its suitability in terms of accessibility, personal safety and the dignity of the individual. If a standard police vehicle is considered unsuitable, then the arresting officer is expected to consider using an alternative vehicle such as a taxi with wheelchair access where necessary.

The reality is that there can be a long wait for an accessible vehicle, and whilst others in your group may have gone in a van and are now being processed, if you're a wheelchair user, things can take much longer.

Toilets “Each and every prisoner must be considered as an individual with specific needs relevant to his or her particular circumstances, health and condition. Reasonable requests, which do not interfere with operational requirements or security, should only be refused when there are justifiable reasons.” [[SOP: Care and Welfare of Persons in Police Custody 2.2](#)]

Despite this, toilets in cells are not accessible and there is rarely an accessible loo in the custody suite so if you are desperate to go to the loo then you may want to ask if there is a toilet in the foyer that is accessible. There should be, as it's expected that reasonable adjustments will be carried out to make public buildings accessible under the Equality Act 2010. If there is an accessible loo, ask if the police can take you to that toilet.

Department of Work and Pensions There have been instances in England of the police reporting attendance at protests to the DWP and people having reassessments. SCALP is not aware of this happening in Scotland.

Removal of items such as mobility equipment, clothing or spectacles You can ask to keep your glasses if being without them puts you at risk of falling and to retain warm clothing if you could become unwell if you get cold but these are at the discretion of the custody officer. A decision to remove mobility equipment such as a walking stick or wheelchair or even a prosthesis could be taken by the Custody Supervisor but the justification must be recorded. “Considerations should include; vulnerability, dignity, comfort and mobility of the prisoner, etc.” [[SOP](#)]

Legal position of PAs/carers/enablers when assisting a disabled person on a protest Currently the situation seems to be that if you have a carer with you, enabling you to take part in a protest, they may also be committing arrestable offences, even if they were unaware beforehand that you planned to do an action e.g. if they are, for instance, pushing your wheelchair, or supporting you to walk towards a fence that you then damage in a peaceful action, or if they help you to get into the roadway that you then block. In the past, there have been some mass blockades in Scotland where police liaison has taken place and addressed the need for some people who were disabled to

have their PA's with them, even to help out when in custody, although this situation is rare.

Neurodiversity, social acceptance, and interactions with the police People with various forms of neurodiversity might experience difficulties when on actions and coming into contact with the police. It can be easy for some people with neurodiversity to be arrested if their behaviour is wrongly interpreted. It is especially concerning that the decision as to whether a person needs to be removed to a place of safety, rests with individual police officers who are likely to have little or no experience of neurodiversity.

Transgender, non-binary and gender non-conforming people

Code of practice for police constables exercising the power of [Stop and Search - Annex B](#) covers stop & searching transgender people. [SOP Care and Welfare of Persons in Custody](#).

The guidelines set out:

- What police are supposed to take into consideration in searching a transgender person
- How this relates to the Gender Recognition Act (2004)
- A few basic introductions to transgender identities and terms

The guidelines say that police must 'maintain a professional and respectful manner' throughout searching, and specifically says that they shouldn't comment on physical variation due to transition. 'All searches and procedures must be carried out with courtesy, consideration and respect for the person concerned'

People have the right to be searched by, or in the presence of, persons of the same sex, This includes e.g. a trans man may choose to be searched by a female officer, and still be referred to using he/him pronouns and otherwise have his gender respected. Legally, gender (and sex) is the one you were assigned at birth, unless you have been issued a Gender Recognition Certificate (GRC) under the Gender Recognition Act (2004) (GRA). There is not a legal distinction between sex and gender.

If a person is thought or known to be transgender prior to a search being carried out, then the constables should ask that person:

'Is there anything I need to know before I search you?'

If you are trans, information about your gender is **protected information**. It will be recorded in police custody records and search records. The GRA creates a criminal offence for anyone in an official capacity, such as a police officer or police staff, acquiring the protected information relating to a persons' transgender identity and thereafter disclosing it to a third party without the transsexual person's consent. There are exceptions to this if you are in custody and where it has to be disclosed in relation to 'the prevention of crime or investigation of crime against' you. And doesn't exclude

passing information to other police staff or prison/parole organisations where 'relevant, legal, proportionate and fair'. You should always be told who the disclosure is passed to and the reason they have for doing so.

Being [searched](#), including strip searches You must be treated according to your stated (binary) gender while in custody, regardless of medical transition, and cannot be asked to provide a GRC. If you don't give this information, police are required to determine the 'predominant gender in which you live' (using name, title on ID documents: licence, bank cards etc.) and treat you accordingly.

This means that normal search procedures should be followed, by staff of the gender you state (or police decide you are).

People of Colour

There is very limited information available about codes of practice for the police that specifically relate to people of colour. However, a [recent report](#) acknowledged that Police Scotland is institutionally racist and we have limited information about how this affects people in practice.

We recognise that this section of the Guide is limited and we are actively seeking experiences from people on the ground to expand it and to be able to offer more relevant support and information for people of colour. If you are a person of colour and would like to contribute anonymously, please get in touch with SCALP at activists_legal@protonmail.com.

The Scottish Activist Legal Project (SCALP) is a group of activists from social and environmental justice groups in Scotland who are collaborating on activist legal support.

Find more resources at scottishactivistlegalproject.co.uk.