

# Legal framework and legislation

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## Legal framework and case law

The police have statutory and common law powers and duties in relation to public order public safety (POPS) policing. Further legislation and associated narrative are contained in the National Police Chiefs' Council (NPCC) operational advice documents contained in this POPS APP and provide further information regarding specific legislation as it relates to a specific event or operation.

The police statutory powers and duties in relation to the policing of POPS include those set out in the following.

- [Public Order Act 1986](#)
- [Public Order Act 2023](#)
- [Criminal Justice and Public Order Act 1994](#)
- [Criminal Law Act 1967](#)
- [Police and Criminal Evidence Act 1984 \(PACE\)](#)
- [Police, Crime, Sentencing and Courts Act 2022 \(PCSC\)](#)

This list is not definitive. Other statutory and common law powers and duties support the policing of POPS events and operations, including powers to prevent breaches of the peace. Force POPS commanders, public order public safety advisors (POPSAs), planners and legal personnel should also consider any specific local legislation that applies to their force.

These powers and duties must be used in accordance with the [European Convention on Human Rights \(ECHR\)](#). See also the [Operations APP – Human Rights Act 1998](#).

The convention rights of most central relevance to POPS are as follows.

## Article 10 ECHR

Article 10 ECHR (freedom of expression) materially provides the following.

1. 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers [...]'
2. 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

## Article 11 ECHR

Article 11 ECHR (freedom of peaceful assembly and freedom of association) materially provides the following.

1. 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others [...]'
2. 'No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of administration of the state.'

Article 11 only protects peaceful assemblies, meaning there is no need for an Article 11(2) proportionality assessment to restrict a non-peaceful assembly (although other human rights may still apply).

An assembly includes any gathering, legal or not, where individuals have come together for a collective purpose and does not include accidental gatherings.

## Interpretation of Article 11(2) – restrictions prescribed by law

In [Kudrevičius v Lithuania \(2016\)](#) [62 EHRR 34], the European Court of Human Rights stated that the term ‘restrictions’ in Article 11(2) must be interpreted as including measures taken before or during a gathering, as well as those taken afterwards, such as punitive measures.

Arrest, prosecution, conviction and sentence are all restrictions on Convention rights. However, police intervention short of arrest (such as containment, stadium ‘hold backs’ and Public Order Act restrictions on assemblies or processions) can also amount to an interference with Convention rights.

When determining the lawfulness of a public authority’s interference with an individual’s Convention rights, the below test has been applied.

1. Is the interference prescribed by law?
2. If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11 – for example, the protection of the rights of others?
3. If so, is the interference necessary in a democratic society to achieve that legitimate aim?

### Prescribed by law

The first consideration is whether an interference is prescribed by law. This requires the presence of a specific legal rule that authorises the interference. When trying to interpret whether an interference is prescribed by law, the following should be considered.

- Is there legislative power (such as imposing conditions pursuant to section 12 or 14 of the Public Order Act 1986)?
- Are there statutory powers to use reasonable force and/or arrest, as there are suspected contraventions of criminal law?
- Would the use of powers – for example, to use force – be proportionate, reasonable and necessary?

## POPS actions and when interference might be prescribed by law

### Obstruction of the highway

The obstruction of a highway does not make a public assembly unlawful. Many activities obstruct the highway or cause disruption to traffic. Under the ECHR, roads are to be considered as legitimate spaces for peaceful assemblies. Only unreasonable obstructions of the highway are unlawful.

Determining whether an obstruction is unreasonable requires an individual assessment of the specific obstruction, the disruption it might cause, whether it is intentional and whether participants have a lawful excuse for the obstruction. To act with lawful excuse means to act with lawful justification. This is partly defined in the [Criminal Damage Act 1971](#) under '[without lawful excuse](#)', which states that the required belief for related crimes need not be justified if the belief was honestly held.

If participants have a lawful excuse, no offence is committed and an interference with their Convention rights may not be prescribed by law. Any police action regarding unreasonable obstruction must be proportionate and necessary to achieve the legitimate aim.

## **Offences of intentional harassment, alarm or distress**

ECHR Article 10(1) protects the right to freedom of expression that others may find insulting or offensive.

Individuals taking part in a peaceful protest will only commit offences under [section 4A](#) and [section 5](#) of the Public Order Act 1986 when their conduct involves threatening, abusive or insulting words or behaviour, or disorderly behaviour intended to cause harassment, alarm or distress.

When assessing whether words or behaviour amount to offences under sections 4A or 5, the following factors should be considered.

- Content of the words or behaviour.
- Context and circumstances of the words or behaviour.
- Intention of the person speaking or acting.
- Probable impact.

The types of conduct that could amount to threatening or abusive – or in relation to section 4A only, insulting – words or behaviour include threats made towards innocent bystanders or individuals carrying out public service duties, and the throwing of missiles by a person taking part in a

demonstration or other public gathering, where no injury is caused.

The courts have held that a police officer can be caused harassment, alarm or distress. However, police officers are expected to display a degree of resilience. For an officer to be caused harassment, alarm or distress, the conduct complained of must go beyond that which he or she would regularly come across in the ordinary course of police duties.

Section 31(1)(b) and (c) of the [Crime and Disorder Act 1998](#) creates racially or religiously aggravated forms of offences under sections 4A and 5. A person commits an offence that is 'racially or religiously aggravated' where either:

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates hostility towards the victim of the offence based on the victim's membership (or presumed membership) of a racial or religious group
- the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group

Where offences are aggravated by hostility related to disability, sexual orientation or transgender identity, this must be treated as an aggravated factor by the court when sentencing (pursuant to section 66 of the [Sentencing Act 2020](#)).

## Incitement to hatred

Restrictions on the expression of racist ideas or opinions, statements that incite violence and hate speech are generally legitimate under ECHR Article 10(2) and ECHR Article 17.

Section 18 of the Public Order Act 1986 creates an offence of using threatening, abusive or insulting words or behaviour – or displaying any written material that is threatening, abusive or insulting – if it is intended, or likely, to stir up racial hatred.

Section 29B of the Public Order Act 1986 creates an offence of using threatening words or behaviour – or displaying any written material that is threatening – if it is intended, or likely, to stir up religious hatred or hatred on the grounds of sexual orientation.

## Racial hatred

Racial hatred involves hatred against a group of persons defined by reference to colour, race, nationality (including citizenship), or ethnic or national origins. Jews and Sikhs have been deemed

by the courts to be racial groups. Muslims and Christians, for example, have been considered as religious rather than racial groups.

A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under section 18 of the Public Order Act 1986 if they did not intend the words, behaviour or written material to be – or were not aware that it might be – threatening, abusive or insulting.

## Religious hatred

Religious hatred involves hatred against a group of persons defined by reference to religious belief or lack of religious belief. The reference to ‘religious belief or lack of religious belief’ is a broad one, and is in line with the freedom of thought, religion and conscience guaranteed by ECHR Article 9.

Although this is not a definitive list, it includes:

- religions widely recognised in the UK
- branches or sects within a religion
- groups of persons defined by reference to a lack of religious belief, such as atheists and humanists

The offences are designed to include hatred against a group where the hatred is not based on the religious beliefs of the group (or even on a lack of any religious belief), but on the fact that the group does not share the particular religious beliefs of the perpetrator.

Section 29J of the Public Order Act 1986 provides protection of freedom of expression that prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions, or of the beliefs or practices of those who hold such beliefs.

## Breach of the peace

Breach of the peace gives police powers to intervene and/or arrest when an individual causes harm, or appears likely to do any of the following.

- Cause harm to a person.
- Cause harm to that person’s property, in the person’s presence.
- Put that person in fear of such harm being done through an assault, affray, a riot, unlawful assembly or other disturbance.

Police officers may take reasonable action, including arrest, to stop a breach of the peace, or to prevent one that the police officer reasonably anticipates will occur imminently. Reasonable action may also be taken where a breach of the peace has been committed and where it is reasonably believed that a recurrence of the breach is threatened.

Police action should target the persons responsible for the breach of the peace. Action taken that is not directed at the person committing the breach will generally be unlawful.

The guiding principle is that lawful conduct will rarely, if ever, be other than reasonable. Conversely, a violent reaction to the lawful conduct of others will rarely, if ever, be other than wholly unreasonable.

Where there is a reasonable belief that there are no other means to prevent a breach of the peace, the lawful exercise by innocent third parties of their rights may be restricted by the police. This is a test of necessity, which can only be justified in truly extreme and exceptional circumstances.

Before the police can take any steps that restrict the lawful exercise of rights by innocent third parties in any way, they must take all other possible steps – including making proper and advance preparations – to ensure that the breach, or imminent breach, is prevented and that the rights of third parties are protected.

## **Legitimate purpose**

To be a lawful interference of an individual's Convention rights, where a restriction is prescribed by law, it must also be imposed in pursuit of a legitimate aim. A legitimate aim is one of the prescribed purposes for which the relevant Convention right can be restricted. For example, those set out in [Articles 10\(2\)](#) and [11\(2\)](#).

## **Proportionality – necessary in a democratic society**

This principle requires a link between the purpose (legitimate aim) for the interference and the measures employed to achieve that purpose. It also requires that the interference does not go beyond what is necessary to achieve the legitimate aim.

1. Is the purpose (legitimate aim) sufficiently important to justify interference with a fundamental right?

2. Is there a rational connection between the means chosen and the purpose? In other words, can the measures be reasonably expected to achieve the purpose?
3. Are there less restrictive alternative means available to achieve the intended purpose?
4. Taking 1-3 together, is the impact of the rights' infringement disproportionate to the likely benefit of the means taken.

Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry that requires the evaluation of the circumstances in the individual case. Different considerations may apply to the proportionality of each of those restrictions.

The proportionality assessment at trial depends on the relevant factors being proved beyond reasonable doubt, as well as the court being sure that the interference with the rights under Articles 10 and 11 was necessary. The police's perception and the police action are only two of the factors to be considered.

## Use of force powers

There are situations where police officers may be required to use force. The primary responsibility for using force rests with individual officers. Core questions include the following.

- Does the use of force have a lawful objective – for example, the prevention of injury to others or damage to property, or the effecting of a lawful arrest? If so, how immediate and grave is the threat posed?
- Are there any means, short of the use of force, capable of attaining the lawful objective identified?
- Having regard to the nature and gravity of the threat, as well as the potential for adverse consequences to arise from the use of force – including the risk of escalation and the exposure of others to harm – what is the minimum level of force required to attain the objective identified? Would the use of that level of force be proportionate or excessive?

It is essential that these core questions are considered in line with the [10 key principles](#) governing the use of force by the police service. A [use of force reminder](#) is available to officers to remind them of the law when considering use of force.

## Proportionate use of force

The proportionate use of force is governed through:



- the rights and freedoms contained in the ECHR, which govern the police use of force
- [Criminal Law Act 1967](#)
- [PACE 1984](#)
- common law (as supplemented by the [Criminal Justice and Immigration Act 2008](#))

ECHR [Article 2](#), [Article 3](#) and [Article 8](#) and domestic law impose that, if possible, non-violent means should be used to resolve an incident before force is used.

Torture, inhuman and/or degrading treatment or punishment are all prohibited absolutely by ECHR Article 3, irrespective of the circumstances (including the need to combat terrorism) and the victim's behaviour.

Recourse to physical force against a person that has not been made necessary by his or her own conduct is in principle an infringement of ECHR Article 3.

ECHR Article 8 protects, among other things, the right to physical integrity and is capable of protecting individuals against forms of ill-treatment that do not reach the high threshold of ECHR Article 3.

- [For case references see McCann and Others v UK](#)

## Tags

Public order