



# GUIDE TO THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022

CHANGES TO LAW AFFECTING PROTEST

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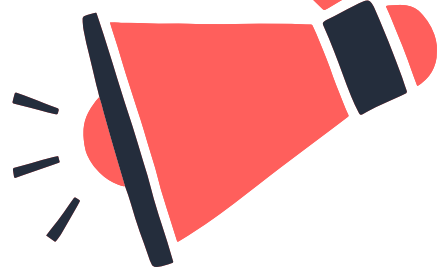


**Green & Black Cross**



**Activist Court Aid Brigade**

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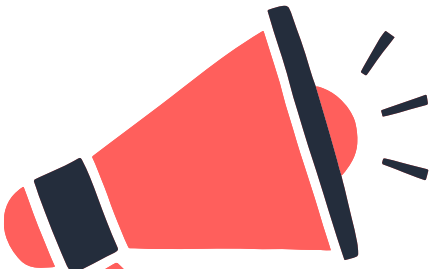
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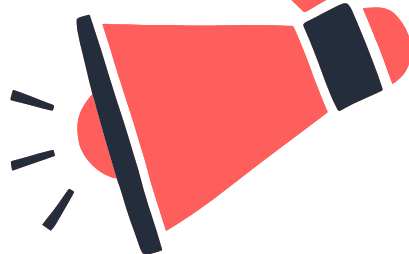
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# INTRODUCTION



This guide was written through the collaboration of Green and Black Cross (GBC) and the Activist Court Aid Brigade (ACAB). There has been much public discussion about the Police Crime Sentencing and Courts Act (herein: the PCSC Act). We have produced this guide in the spirit of mutual aid to distribute practical and simple English information about what the Act says, how it might work, and what to do about it. Please note that this guide only covers the parts of the PCSC Act that we believe are likely to be relevant in protest situations, it does not cover everything the Act changes.

## THE BOTTOM LINE

The law changes often; the reforms in this Act may be more notable than usual, but it does not, as many have claimed, make 'all protest illegal' nor does it mean you'll be imprisoned for 10 years for using a megaphone on a march or sharing a social media post. The main thing is to not panic and to stick to practical info like the 5 Key Messages.

If you do get arrested or charged, reach out to us and we'll do our best to support you through the process and put you in touch with a good solicitor. Importantly, this booklet is **not** an introduction to knowing your rights. You can find out the key messages to know when going on a protest and read our know your rights booklet to gain a fuller understanding. This guide should be read as a supplement or update to our existing guidance.



As always, if you have any questions, or want more specific information, call the **Protest Support Line** (07946 541 511).

# NEW OFFENCES

## CRIMINAL TRESPASS

*In force from June 28th 2022*

The PCSC Act introduces a new offence of “**residing on land without consent in or with a vehicle**”. This means that it will now be a criminal offence (rather than a civil matter) for a person aged 18 or over to reside on land without the consent of the owner if they have, or intend to have, a **vehicle** with them, and refuse to leave and remove their property when asked. They also need to be causing, or deemed likely to cause, significant **damage** (including excessive noise, smells, litter or other damage to the environment), **disruption** (including interference with a ‘supply of water, energy or fuel’) or **distress** (including using words or displaying any writing that is ‘threatening, abusive or insulting’). If police believe this is happening, they **may seize any ‘relevant’ property** belonging to, or in the possession or control of the alleged defendant, including vehicles or any property on the land, which they may keep for up to 3 months or until the end of any criminal proceedings that result from the matter.

You cannot return to the same land for 12 months after being asked to leave.

If convicted of this offence, you can be sentenced to up to 3 months custody and/or a fine of up to £2,500, and your seized property does not have to be returned.

s83 PCSC Act 2022

# OBSTRUCTION OF VEHICLE ACCESS TO PARLIAMENT

*In force from June 28th 2022*

There are certain things which are specifically illegal if they're done in the **'controlled area' around Parliament**, including Parliament Square. The PCSC Act adds some roads to this controlled area that weren't in it before. It also adds a 'prohibited activity' of **obstructing vehicular access** to the Parliamentary Estate, which means making it harder or impossible for a vehicle to get in or out of the various entrances to Parliament. You must be told by a Police Officer to stop doing one of these activities, to give you a chance to stop, before you're arrested.

The maximum sentence is an unlimited fine, but it's likely that fines will be similar to those given for other minor offences, in the low to mid hundreds for first time offenders.

s76 PCSC Act 2022



# FAILURE TO COMPLY WITH RESTRICTIONS ON A ONE PERSON PROTEST

*In force from June 28th 2022*

Before the PCSC Act came in, Section 14 of the Public Order Act 1986 allowed the police to place conditions on a 'public assembly', which is two or more people gathered together in a public place. This Act allows police to now also put conditions on a **one-person protest**, if the **noise** generated may result in serious disruption to the activities of nearby organisations or cause significant impact to other people in the area. It's up to the senior officer what conditions to impose, but this can include prohibiting the protester from entering certain public spaces. It is an offence if you **know or ought to know about these conditions** and **fail to comply** with them. It is also an offence to incite another person to commit the offence.

If convicted of this, you can receive a fine of up to £2500. If you incite someone else to commit this offence, you can be sentenced to up to 6 months\* imprisonment and/or a fine of up to £2500.

s79 PCSC Act 2022



# STATUTORY PUBLIC NUISANCE

*In force from June 28th 2022*

The offence of Public Nuisance has been updated. The only significant change is that the maximum penalty has been **reduced from life imprisonment to 10 years or an unlimited fine or both**. There has been a lot of hype/panic about this but mostly because people didn't know there was a common law offence (law based on precedent set by previous court cases) of Public Nuisance in the first place.

It is often the case that there is an increased use of an offence when it has been put into statute (the law made by Parliament). This is partly because there is a preference to use statutory over common law offences. The other reason is the CPS likes trying out new things. This is in fact a long overdue "tidying up" reform and while we may see a spurt of cases it does not make the legal position worse for protesters.

Public nuisance generally means doing something which **creates a risk of serious harm to the public or stops the public from being able to exercise their rights**. The **public** part is important, it can't just affect an individual or a private group, and has to affect the public or a section of it. Examples of public nuisance could be disrupting a major boat race with a large number of spectators, or stopping an airport from functioning by climbing on a plane.

It bears saying that 'serious annoyance' in the legal text is not intended to just mean some people feeling annoyed; there has to be substantial harm to the public.

What people actually get for the new offence will depend on the, as yet unwritten, sentencing guidance and the ongoing struggle in the courts on the appropriateness of jailing peaceful protestors.

[s78 PCSC Act 2022](#)

# CHANGES TO EXISTING LAW AND PROCEDURE

## CHANGES TO SECTIONS 12 AND 14 OF THE PUBLIC ORDER ACT

*In force from June 28th 2022*

Despite the changes to both s12 and 14, our guidance as always is the opposite of the British Transport Police: **Don't see it, don't say it, sorted.** Anything which shows that you knew about the conditions could be used against you, so never discuss these conditions, never take leaflets from the police, never post about them on social media, and if you suspect there may be one in place: NEVER ask the police if that's the case.

### WHEN RESTRICTIONS CAN BE IMPOSED

The PCSC Act brings in provisions to allow a senior police officer to set legally binding conditions on marches and assemblies based on the prospect of **noise** generated by the protest causing serious disruption to an organisation nearby, or the noise causing serious unease, alarm, distress, intimidation or harassment. Previously, the reasons were limited to the prospect of intentional intimidation or disorder/violence. This might seem vague, and the Act also gives **powers to the Home Secretary to make more specific guidance** about what does and doesn't count as meeting these criteria.





# CHANGES TO S12 & 14 CONT.

There are lots of things the police have to take into account when issuing an order under section 12 or 14, including Article 10 and 11 rights to expression and assembly. These changes widen the scope, but do not give a free pass to the police in all situations. If your protest has been affected by section 12 or 14 conditions, **ring the Protest Support Line** on **07946 541 511** to talk through your options. These orders have been successfully challenged before in court, leading all charges connected to them to be dropped.

## WHEN YOU'VE BROKEN THE LAW

There are two parts to breaking these laws, what you physically **do** (actus reus) which could be leaving the prescribed route or area, and what you were **thinking** (mens rea), such as the fact that you knew you were breaking the conditions and did it on purpose.



People are often arrested just for stepping out of the prescribed area, but to actually be convicted (found guilty), the CPS have to show both parts (mental and physical). Before the PCSC Act, they had to show that you knew the conditions, whereas the Act changes the law so that they only have to show you knew them or ought to have known them. This makes it easier to prosecute, which is all the more reason to stick to our key messages.

# CHANGES TO S12 & 14 CONT.

## CHANGES TO SENTENCING

The Act has also increased the maximum sentence available to the courts when sentencing those who are found guilty of these offences.

For someone who **takes part** in a procession or assembly and is convicted of this offence, they can receive a maximum sentence of a fine of £2500. First time offenders would be likely to receive a fine of about £200-300 and a conditional discharge. It is a defence for the person to prove that the failure to comply arose from circumstances beyond their control.

For someone who **organises** a procession or assembly and is convicted of this offence, the maximum sentence is imprisonment for up to 6 months\* or a fine of £2500 or both. First time offenders would be likely to receive a fine or a Community Order. It is a defence for the person to prove that the failure to comply arose from circumstances beyond their control.

For someone who **incites others to take part** in a procession or assembly and not comply with s12 or 14 conditions, they can receive a maximum sentence of up to 6 months\* imprisonment or a fine of £2500 or both. First time offenders would be likely to receive a fine or a Community Order.

s73-75 PCSC Act 2022



# CHANGES TO SENTENCING FOR ASSAULTING AN EMERGENCY WORKER

*In force from June 28th 2022*

The PCSC Act brings in a change in penalty for the offence of assault on an emergency worker (s1 Assaults on Emergency Workers (Offences) Act 2018) when tried in the Crown Court. The maximum sentence will be raised from 12 months to **2 years imprisonment**.



CPS guidance says that this offence should normally be charged rather than the older offence of Assaults on a Police Constable.

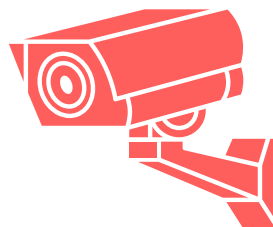
s2 PCSC Act 2022

# CHANGES TO EXISTING POWERS OF REMOVAL FROM LAND AND SEIZURE OF POSSESSIONS

*In force from June 28th 2022*

If you commit 'Aggravated Trespass' you now cannot return to the same land for **12 months** after being asked to leave (this was previously 3 months).

s84 PCSC Act 2022



# CHANGES TO PRE-CHARGE BAIL

*Date of introduction not yet announced*

Previously, when released on police bail, you would only be subject to the bail and any conditions imposed upon you for 28 days (unless, of course, they were extended). However, this has now changed and **police bail time limits now start at 3 months.**

When nearing the end of the 3 month period, the police will **review** the case against you and if they feel that there is not yet enough evidence to charge you at that point, and they feel it is both necessary and proportionate to keep you on bail, they will seek the authorisation of an officer of the rank of inspector or above to **increase your bail period** by another 3 months (making it a total of 6 months). Your bail period can be extended by 3 months twice more (**up to a total of 12 months**). Each time the decision is made by someone in an increasingly higher rank. Anything past 12 months, they have to go to a magistrate. The bad news is that a magistrate is pretty much always going to agree with the police's arguments for why they need to keep you on bail.

The powers given to **magistrates** to increase bail periods have not changed drastically but what has changed is the **duration** by which they can extend your bail. Depending on how long you've already spent on bail and whether the police need more time for investigation, Magistrates can extend your bail up to a total of 24 months. The length of extensions has different criteria. **If you are on bail, get in touch and we can talk through your options and what could potentially happen.**



# CHANGES TO PRE-CHARGE BAIL CONT.

Another change to pre-charge bail is that the police now have a duty to **take the alleged victim's views into account** when granting bail and issuing bail conditions. The alleged victim of the crime will now be able to suggest changes to bail conditions. We don't know how this will be used yet, although we don't believe it was intended for protest cases.

The final change that is relevant is if you are arrested for breaking bail conditions or for failing to surrender to the police station at the time and date you were supposed to. Previously the police could hold you for 24 hours without charging you (without seeking any extensions). However, you can now be **held for a period of up to 27 hours**, as the first 3 hours of you being at the police station do not count towards the custody clock.

[s45 PCSC Act 2022](#)



# COMMUNITY AND DIVERSIONARY CAUTIONS

*Date of introduction not yet announced*

Community and Diversionary Cautions are **new types of Caution that entirely replace the old ones** (simple Cautions and conditional Cautions, as well as penalty notices for disorderly behaviour). These Cautions should not be confused with the police cautioning you on arrest (when they tell you that anything you say can be used against you etc.). A Caution as we mean it here is **written admission of guilt** that goes on your criminal record.

As a general rule, we advise people to **NOT** accept a Caution as it's an easy win for the police and can stay on your record for a long time. Certainly don't accept one without speaking to a recommended solicitor and if they advise it, ask them why specifically. The new types of cautions allow the police to **attach conditions** to the caution, such as not visiting certain postcodes and people, doing unpaid work, or paying a financial penalty. These cautions could be used to restrict your right to protest and move around freely, and can be given out without the defendant being able to present their defence.

The main difference between the two types of caution is the types of offences they can be given for and the consequences if you break them. In general terms, **diversionary cautions** are given for **more serious offences**, and **community cautions** for **less serious ones**. If you break the former, you will be **prosecuted for the offence** at which point the caution ceases to have effect. If you break the community caution, there may be a financial penalty condition added which can be registered for enforcement as a fine if you don't pay.

# CHANGES TO OBSTRUCTION OF THE HIGHWAY

*In force from May 12th 2022*

For the offence of Wilful Obstruction of the Highway, it is **no longer a defence** to say that the highway was **already blocked** when you sat down, locked on, or otherwise obstructed it. This applies if the road is already blocked by police, traffic wardens, or anyone else.

Obstruction of the Highway is now a **recordable offence**, which means the police can force you to give your biometrics (fingerprints & DNA) if you don't do so voluntarily, and a record of the arrest will be stored on the Police National Computer. The maximum sentence has increased from a £1000 fine to 6 months\* imprisonment and an unlimited fine. First time offenders and those obstructing smaller city centre roads are likely to receive a small fine.

s80 PCSC Act 2022



# CRIMINAL DAMAGE TO A MEMORIAL

*In force from June 28th 2022*

The possible penalty and mode of trial for criminal damage generally depends on whether or not the damage is valued at more or less than £5,000. However, **memorials have now been made an exception** to this (alongside the already existing exception: damage caused by fire). The **value of damage to a memorial is no longer relevant** to where it can be tried and all criminal damage to a memorial is now **triable either-way** (which means it can be tried in either a Magistrates' or Crown Court). Therefore even low-value damage can be heard at the Crown Court, meaning a sentence of **up to 10 years** in prison could be given.



There are various reasons why Crown Court trials can be better, such as that juries may be more sympathetic to your cause than a judge. Most activists choose to have a Crown Court trial for this reason, as is your right.

s50 PCSC Act 2022



# CHANGES TO PACE ACT

*In force from June 28th 2022*

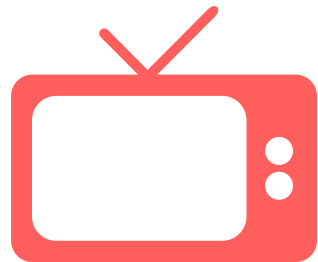
If someone has been arrested for a recordable offence they now can be **recalled to the police station to have their photo and/or fingerprints taken**, even if this had previously been done, for example if the original had been destroyed or was not considered good enough. This could happen years after your arrest. Once the police realise they need to do this they have up to 6 months, unless you are convicted or accept a caution, in which case the time limit is 2 years.

s52-53 PCSC Act 2022

# CHANGES TO COURT PROCEEDINGS

*In force from June 28th 2022*

Changes are being made that would make it possible for a court to enable members of the public to see a **live stream** of a proceeding, but only if present at a designated live stream premises or given access to the live stream having first identified themselves to the court.



s198 PCSC Act 2022

# PROCEDURE FOR EXTRACTING INFORMATION FROM DEVICES

*In force from May 12th 2022*

The Act creates a legal framework for something the police already do: extracting information from electronic devices **with the consent of a user**. The consent only has to be one of the users, and in cases of children, their parent or guardian can do so on their behalf, or if they're not available, any relevant adult. In cases of adults without 'mental capacity', parents, carers, deputies and those with special legal status to make decisions on someone's behalf can give consent, or relevant adults if none of those are available. Children and adults without capacity are deemed not capable of giving or withholding their own consent.

This **does not create police powers to force you to give your password** or any data you don't want to, and should only be used for 'preventing or investigating crime', locating a missing person, or preventing harm to at-risk adults or children. In most cases, it's enough to assert that you **do not consent** to any information being extracted from your device if asked. For minors and those deemed to be without capacity, it's worth really considering whether it's worth taking devices to actions where you risk arrest, and to leave devices in the care of a sympathetic person. This is especially true if your parents/guardians aren't supportive and are likely to give consent for your phone to be accessed, or if you don't have a relevant 'Appropriate Adult' as you will be provided one who is likely to side with the police.

# GLOSSARY

**Bail** – release from police custody to await a later appearance at court or a police station.

**Community Order** – a non-custodial sentence with conditions attached (e.g. unpaid work, curfew, prohibited activities).

**Conditional discharge** – you are released (with the offence registered on your criminal record), but no further action is taken by the court as long as you do not commit a further offence within the time decided by the court (no more than 3 years). If you do commit an offence, you can be sentenced for both offences.

**Crown Court** – deals with more serious offences. A jury (12 randomly selected members of the public) decides whether or not you are guilty, and a judge decides your sentence.

**Either-way offence** – these are offences which can be heard in either the Magistrates' or the Crown Court.

**Magistrates' Court** – lower level court which deals with 'summary' or 'either-way' offences, where the case is heard by 2-3 magistrates or a district judge. They can only give up to 6 months\* imprisonment (as well as other penalties such as fines, community sentences or bans on certain activities).

**Recordable offence** – recordable offences are those that are recorded in the Police National Computer, and for which you have to give biometric data after arrest. All imprisonable and some more minor offences (such as nicking a pedal cycle) are recordable.

\* Section 281(5) of the Criminal Justice Act 2003 extends the maximum prison sentence for summary offences from 6 months to 51 weeks. This has not come into force. However, if it were to then 6 months should be read as 51 weeks.

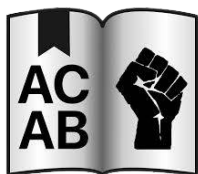
# ABOUT THE AUTHORS



**Green and Black Cross** (GBC) is an independent grassroots project which provides legal support to social and environmental struggles in the UK.

Find out more at [greenandblackcross.org](http://greenandblackcross.org)

Email: [gbcresources@protonmail.com](mailto:gbcresources@protonmail.com)



**Activist Court Aid Brigade** (ACAB) provides information and support for activists who have been arrested or charged with offences.

Find out more at [acab.legal](http://acab.legal)

Email: [courtsupport@protonmail.com](mailto:courtsupport@protonmail.com)

Together, the two groups run the **Protest Support Line**, a 24/7 helpline which you can contact on **07946 541 511**.

