

The information in this document was collected in 2011 and may therefore be out of date. As this document refers to several pieces of legislation please ensure that you seek up to date information on the topics in this guide.

Potential legal restrictions facing campaigners

Campaigners potentially face a range of legal restrictions. Learn what some of the key ones are here.

Confidential Intelligence Unit

The CIU coordinates surveillance against domestic extremists, which might include a wide range of campaigners and activists.

The Association of Chief Police Officers (ACPO) covers Northern Ireland, as well as England and Wales. As ACPO's remit includes the National Public Order Intelligence Unit and within it the Confidential Intelligence Unit, it must be assumed that both operate in Northern Ireland. This will come as a surprise to many, because, even though the general public would be aware of MI5 having offices in and operating in Northern Ireland, these other two organisations have been "flying below the radar". Given that the former Chief Constable of Northern Ireland, Sir. Hugh Orde, is now President of ACPO, one can further assume that campaigns and activities in Northern Ireland are being observed/monitored. The CIU is run by the Association of Chief Police Officers (ACPO), which operates in England, Wales and Northern Ireland. Therefore the remit of the CIU does not extend to Scotland.

There was a Scottish equivalent to ACPO, called [ACPOS](#). There does not appear to be an equivalent to the CIU within ACPOS but it is possible. Also, given that the prevention of terrorism is reserved by the UK Parliament (although all other justice matters have been devolved to the Scottish Parliament) it is possible that there is cooperation between ACPO and ACPOS on the work of the CIU.

The Confidential Intelligence Unit (CIU) was established in 1999 by the Association of Chief Police Officers to monitor terrorist activity. It is actually not a part of the Police, but a private company.

Since February 2009, there has been a significant re-definition of its remit. According to the Guardian (ACPO's own website doesn't have any information about CIU), CIU is 'now coordinating surveillance and infiltration of "domestic extremists", including anti-war protestors, trade unionists taking part in secondary industrial action, animal rights organisations and other groups – though only if they break the law, or worryingly if they 'seek to break the law'.

This does not mean that all campaigns and campaigners are now being monitored. But it is something that all campaigners, especially those involved in high-profile direct action campaigns, should be at least aware of. What is of particular concern is the ambiguous definition of 'extremists'. ACPOs spokesperson conceded to the Guardian that "there doesn't seem to be a single, commonly agreed definition". Which means that protest, dissent, and industrial action (which are all actually lawful, and indeed are enshrined in your Human Rights) could be subject to monitoring.

Separate to the role of the Confidential Intelligence Unit, the [Guardian](#) makes claims that the Police might hold a database of thousands of activists. This is something the Police deny. Regardless of whether there is a database or not, this [Guardian](#) video shows the way in which both activists and the media might be monitored by the Police.

Direct action and the law

Direct action is not necessarily illegal, but often it is. Get a better understanding of where you might stand.

Direct action is an especially drastic form of protest. Sabotage, vandalism, sit-ins, occupations, blockades and pickets are all forms of direct action. Indeed, direct action is often more than a radical form of protest – it is often a deliberate statement of resistance against a policy, a law, or an authority.

Direct action is often perceived as inherently aggressive. While sometime direct action is violent, much direct action is non-violent and peaceful.

One of the most famous examples of this is Mahatma Gandhi's 'Salt Satyagraha' ('satyagraha' means non-violent protest). Under British colonial rule, a tax was imposed on the production of salt, which paid big dividends for traders of the British East India Company. Gandhi deliberately broke the salt laws in 1930 by producing salt without paying the tax. His symbolic direct action protest inspired similar 'satyagrahas' by millions of people across India. Gandhi was arrested for his direct action, which attracted worldwide media attention to the salt laws and the wider objectives of his direct action – Indian Independence. This campaign had a significant impact on changing attitudes towards British rule of India.

Much direct action breaks the law, it isn't by definition illegal. Strikes for example, are a legal form of direct action.

The same laws discussed in Protest and the law are relevant in direct action. Additionally, depending on what the direct action involves, you may be subject to arrest and prosecution for:

►Criminal damage

The law in relation to criminal damage in Northern Ireland is covered under the 1977 Criminal Damages (Northern Ireland) Order.

In relation to trespass, the new criminal trespass law, enacted under s128 of SOCPA, has made it illegal to trespass onto certain designated military and nuclear sites in Northern Ireland. There is a common law offence of trespass against property and a criminal law offence of trespass/harassment against the person, including assault.

The Protection from Harassment (Northern Ireland) Order 1997 makes it illegal to harass a person, which includes alarming the person or causing the person distress. For the purposes of this Order a "course of conduct" must involve conduct on at least two occasions and "conduct" includes speech. See <http://www.legislation.gov.uk/nisi/1997/1180/article/2/made>.

The concept of 'criminal damage' is provided for in the [Criminal Damages Act 1971](#). This Act applies only to England and Wales.

- ▶ Aggravated trespass
- ▶ Assault
- ▶ Burglary
- ▶ Theft
- ▶ Harassment

The laws relating to trespass and theft are different in Scotland. Despite the differences in legal definition, they remain potential reasons for your arrest and prosecution if you take part in direct action. In Scotland you might be subject to arrest and prosecution in relation to direct action for:

- Trespass (the concept of 'aggravated trespass' does not exist)
- Malicious mischief
- Theft
- Assault
- Harassment

'[Breach of the Peace](#)' is the law most often invoked in relation to protest and direct action.

The law relating to trespass in Scotland is covered in the [Trespass \(Scotland\) Act 1865](#) as amended, including by the [Roads \(Scotland\) Act 1984](#) and the [Land Reform \(Scotland\) Act 2003](#). (It's worth noting that section 9 of Schedule 2, limits the extent of the scope of "trespassory assembly" under the Public Order Act 1986).

Malicious mischief is a common law offence relating to property. See the [Police Information website](#) for an explanation of malicious mischief, theft and assault, public order, vandalism and breach of the peace. Bear in mind that it is not fully up-to-date - for example there is no mention of the more recent parades legislation.

Here is the [Activist Legal Project's advice](#) on what you might be faced with after direct action, however as discussed in Lawful Excuse (in the guide on using the law as an ally), those involved in direct action may in some circumstances be able to legally justify breaking the law.

And as discussed in the case study, you may also be sued for taking direct action.

Case study

In December 2008, more than 50 members of [Plane Stupid](#) held a sit-in protest on a taxiway at Stansted airport. The airport was brought to a standstill, and was closed for five hours. The protest caused significant delays to 52,000 passengers. The protestors entered the airport by cutting through the perimeter fence and then chained themselves to fencing near the runway.

Subsequently, 22 Plane Stupid members were convicted of aggravated trespass, many of whom had to do between 50 and 90 hours of community service. The judge said that "Substantial loss was caused to the authorities that were carrying out lawful activities".

Plane Stupid briefly faced the threat of legal action from Ryanair for £2m, based on loss of revenue and "reputational damage".

"It seems if Ryanair follows this through and wins, we'll be paying money to Michael O'Leary for decades, and all because we think our parents' generation failed us so we decided to actually do something about climate change."

Joe Ryle, a sixth-form student, who was one of the Plane Stupid protestors

"We went into it with our eyes open and we are ready to take the consequences."

Leo Murray, Plane Stupid spokesperson

(Ryanair decided not to take action against Plane Stupid on this matter).

Protest and the law

The right to protest is a vital part of our democracy, and protesting is legal. But there are some legal restrictions...

Protesting is legal and the right to protest is a core part of our democracy. Direct action is a particular type of protest and so we will explore that separately. Demonstrations, marches and stunts are all forms of 'protest'. Despite their distinctions, what these different forms of protest have in common is that they are the most visible and public campaigning tactic.

Because of their public nature, protests may face restrictions under the Criminal Justice and Public Order Act 1994, The Protection from Harassment Act 1977, The Highways Act 1980, or the Serious Organised Crime and Police Act (SOCPA) 2005.

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As with other aspects of campaigning, the law does also enshrine the rights to protest. A protestor's most powerful legal ally is the Human Rights Act 1998 which protects free speech and peaceful protest.

The [Public Processions Act \(Northern Ireland\) Act 1998](#) stipulates that advance notice must be given of public processions and related protest meetings. If organising a public procession, 28 days notice is required and if organising a counter-protest, the time frame is 14 days. Campaigners should note that late notifications can be accepted in certain circumstances and the body which adjudicates on all of these is the [Northern Ireland Parades Commission](#). Most of SOCPA's provisions apply only to England and Wales, as defined in section 179. The relevant legislation in Scotland is the [Police, Public Order and Safety \(Scotland\) Act 2006](#).

There is an important distinction between the law around demonstrations and marches:

- A 'demo' will take place in one location. With demos, these can take place anywhere, except for a 'designated area' around Parliament as defined by SOCPA. You also have to ensure that it is not obstructing any roads or paths that the public have the right of access to. As long as they remain peaceful and non-threatening, protests should not be accused of aggravated trespass, as defined by the Criminal Justice and Public Order Act 1994. As we will see in the case study below, in practice even peaceful demonstrations have been stopped under this law.
- A march, by its very definition, will move along a route. As such, you must notify the Police beforehand. This is discussed in more detail in SOCPA, but basically you need to notify the Police six days in advance wherever possible, and provide the names and contact details of the main organisers. You also need to provide the exact date, time and route.

S128 of SOCPA (2005) applies to Northern Ireland if a person enters any designated site as a trespasser. It is the Secretary of State for Northern Ireland who has the power to designate the site, e.g. in relation to national security. Campaigners – in light of dissident republican activity – should liaise closely with the Police Service of Northern Ireland (PSNI) and the Parades Commission when considering assemblies, etc, close to areas of national security, which could become designated sites.

For campaigners travelling to campaign/protest at Westminster, then the relevant provisions of SOCPA apply.

As SOCPA does not apply in Scotland, the relevant legislation in Scotland is different. Marches are covered under the [Police, Public Order and Safety \(Scotland\) Act 2006](#). This Act was introduced following extensive consultation and a review of the current law and practice. See the [Scottish Government website](#) for more information. Demos and gatherings are covered under the [Civic Government \(Scotland\) Act 1982](#).

The law, and in particular the balance between your rights to protest and the Police's rights to 'manage' protest, are very complex, and the subject of much debate and analysis. For a far more detailed yet very readable analysis of your rights to protest, go to Liberty's [Your Rights website](#).

Campaigners should also be aware that Article 26 of The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 gives a police officer power to arrest without a warrant:

1. Anyone who is about to commit an offence
2. Anyone who is in the act of committing an offence
3. Anyone whom he has reasonable grounds for suspecting to be about to commit an offence
4. Anyone whom he has reasonable grounds for suspecting to be committing an offence.

Liberty's website only relates to the law in England and Wales. Unfortunately there is no longer an equivalent body in Scotland.

Key factors to peaceful protests

Quoted directly from the [Civil Rights Movement](#) website.

There are a number of rights and regulations that pertain to peaceful protestors. These rights include:

- The right to assemble and protest on the public highway without permission from the police, council or other authorities
- Protestors are not committing any crime as long as they are peaceful and do not use violence or threatening behaviour

- Protestors can assemble on the public highway as long as they do not completely block rights of way
- Trespassing on private land without permission is not a criminal offence
- Protestors can be removed from private land forcibly but should not be arrested unless they have used intimidation or aggravation
- Peaceful protests are not unlawful providing conduct is kept reasonable

Case study

In September 2011 three protesters dropped a banner (saying: "Traitors not welcome – Hate Clegg, Love NCAFC") from a bridge in Birmingham during the Liberal Democrat conference that was to be taking place. All three were taken into custody, and while two were released, one man remained in jail for the next ten days until his trial.

The charges the men received were for road offences; however the decision to keep this man in prison for such minor offences was problematic for his supporters. It is worth exploring *any* reasons why you might be breaking the law if you decide to protest or campaign. Furthermore you should discuss if there might be any health and safety problems that you will be putting yourself or other people at risk from. Read [here](#) about this case in Birmingham.

Case study

In 1995 two protestors were arrested at Stonehenge and convicted of 'trespassory assembly', a new criminal offence under The Criminal Justice and Public Order Act 1994 (which is an amendment of the 1986 Public Order Act).

After a four year legal battle, the conviction was overturned by the High Court in a landmark legal victory based on the right to peaceful assembly.

Margaret Jones and Richard Lloyd had been arrested after they and other protestors had draped banners over the perimeter fence around Stonehenge. This had been an annual gathering for many years, and in anticipation of it the Police had obtained an order prohibiting trespassory assemblies (under the act, this is defined as a gathering of 20 or more people within a defined area). So, the protestors were in breach of this order, and had broken the law.

But the High Court reversed the conviction stating that there is a "public right of peaceful assembly on the highway". So as long as a protest is peaceful and non-

obstructive, the rights to protest are preserved. Furthermore, the ruling recognised that upholding the conviction would have contradicted Article 11 of the European Convention on Human Rights which confers a "right to freedom of peaceful assembly".

The law lords did add, however, that ""The law of trespass will continue to protect private landowners against unreasonably large, unreasonably prolonged or unreasonably obstructive assemblies upon these highways."

"We started out to protest the Criminal Justice and Public Order Act. We have ended up with the first assertion in British law of a positive right to peaceful assembly"

Margaret Jones, 1999

"I just wish we hadn't had to go through a four- year legal battle to stand peaceably by a road."

Richard Lloyd, 1999

Protection from Harassment Act 1997

It is possible that as a campaigner you could get prosecuted for harassment or have an injunction put in place against you.

In Northern Ireland, the Protection from Harassment Order 1997 applies. Someone found guilty of harassment could be fined or sentenced on indictment for up to two years and fined; or on summary conviction for up to six months, along with a fine. Harassment can also be pursued through a civil action for pursuit of damages. Other remedies against harassment include an injunction and a restraining order under the same legislation.

Whilst this act does cover Scotland, the provisions are different to England and Wales (they're covered by s1-7 and Scotland is covered by s8-11). The legislation does not apply to Northern Ireland with the exception of s13 which makes provision for separate legislation there.

The Protection from Harassment Act 1977 was established to protect people from stalkers, but it has been used on numerous occasions to prosecute peaceful demonstrators.

The law enabled an injunction to be put in place to prevent one person from repeatedly harassing another. If the injunction is breached, it is a criminal offence.

'Injunction' is an English concept. The comparable concept in Scotland is an 'interdict'.

Such injunctions are based on civil law (i.e. without going through a prosecution, one person can have an injunction placed on another). This is an invaluable instrument for people who are being harassed or stalked, as action can be taken faster than going through courts.

Where this becomes relevant to campaigners, is that those who you may seek to influence may put an injunction in place under this law, in effect preventing you from campaigning against them.

This is not what the original law was intended for, but in 2005 the introduction of the Serious Organised Crime and Police Act (SOCPA) significantly widened the legal definition of harassment. Originally, you would need to approach one person twice in a manner that might cause them distress to meet the minimum standard of what could be construed as harassment. From 2005, approaching two people just once could be construed as harassment.

This change in the law means that in theory the Police can end any protest based on harassment grounds. It also means that companies can apply for an injunction to prevent what in any other sense would be considered legal protest. And as described in the case study below, this does get put into practice.

Case study

BAA owns seven airports in the UK (including the largest, Heathrow) and has interests in many abroad as well. In 2007, BAA applied for an injunction to prevent environmental campaigners planning a protest at Heathrow Airport.

BAA was granted an Order that only four individuals could represent a wide range of campaigning interests (such as the RSPB, and The World Development Movement) in any protest at Heathrow Airport. The terms of the Order also meant that BAA would represent all the airport's users and service providers (including

Transport for London and the London Underground), even though neither these or other interests were actually notified or consulted about the injunction.

The High Court, however, massively scaled back the terms of this injunction. While they recognised BAA's private property rights, but rejected the assertion that a protest came under the legal definition of 'harassment'. The court stated that a harassment order could not cover potentially thousands of unrepresented individuals.

What was reassuring for campaigners was that the judgment was clear that the Harassment Act cannot, in most cases, be applied to peaceful demonstrations. Which means that if a claimant wants to impose an injunction to prevent a protest, they are required to provide a higher standard of proof (compared to the kind of harassment that the act was designed to deal with), similar to the kind of evidence they would need to provide if the matter was to go to court.

Nonetheless, it is important for campaigners to be aware that injunctions may be placed on them on harassment grounds, and that unlike in this case, these injunctions may be upheld.

The Serious Organised Crime and Police Act

The Serious Organised Crime and Police Act gives the police wider powers of arrest and restricts the right to public protest.

S128 of SOCPA (2005) applies to Northern Ireland if a person enters any designated site as a trespasser. It is the Secretary of State for Northern Ireland who has the power to designate the site, e.g. in relation to national security. Campaigners – in light of dissident republican activity – should liaise closely with the PSNI and the Parades Commission when considering assemblies, etc, close to areas of national security, which could become designated sites.

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Whilst parts of this act do apply to Scotland, mostly it is not the parts which relate to campaigning. Aspects of SOCPA which extend to Scotland and are relevant to campaigners are the creation of the Serious Organised Crime Agency (SOCA), investigatory powers of the Director of Public Prosecutions (DPP), financial reporting, protection of witnesses, proceeds of crime, provision of information for use by police staff, access to designated sites, vehicle registration. The full list is in the 'Extent' section of the [legislation \(section 179\)](#).

The Serious Organised Crime and Police Act (2005), more commonly known as SOCPA, is a highly significant and wide-ranging piece of legislation. Most significant to campaigners is that SOCPA:

1. Gives the Police much wider powers of arrest than they previously had (indeed the act abolished the concept of 'arrestable offence', in effect meaning that a Police constable now have powers of arrest under a much broader set of criteria).

This part of SOCPA, section 110, does not apply in Scotland.

2. Restricts the rights to public protest within a 'designated area' of a kilometre around Parliament (which also therefore includes Trafalgar Square, an iconic and important place for protest for almost 200 years). Protestors have to apply to the Police six days before, or if that is not possible, no less than 24 hours in advance. SOCPA has been heavily criticised by campaigners, civil libertarians, and even MPs for suppressing political dissent.

This part of SOCPA, ss132-138, also does not apply in Scotland, although it is still obviously relevant to Scottish campaigners coming to Westminster.

However s129 creates a corresponding Scottish offence of unlawful entry onto a designated Scottish site.

Also, the Protection from Harassment Act 1997, widened the concept of what could be deemed as harassment. According to the campaigner [George Monbiot](#), SOCPA meant that protest that is otherwise completely legal, could be banned under the amended harassment laws.