

A Guide to the Public Order Act 2023

The Public Order Act 2023 was passed on the 2nd May 2023. The full legislation can be found here: <https://www.legislation.gov.uk/ukpga/2023/15/enacted>

The Act is aimed at protestors and criminalises specific forms of protest with the creation of a number of new criminal offences. It also significantly expands police powers of stop and search, including searches without suspicion.

The Act only applies to actions in England and Wales.¹

NEW CRIMINAL OFFENCES: Offences that are now "in force" and can be prosecuted:

- **"Locking-on"** Section 1: This offence would be more appropriately called "Attaching" because there is no requirement for a "lock" to be used.

A person commits the offence if they attach themselves, or another person, to another person, object or land, or if they attach an object to another object or land,² if that act of attaching is capable of causing serious disruption to an organisation or two or more individuals.³ The offence can be committed if that person is **reckless** as to whether the attaching is **capable** of causing serious disruption.⁴

Serious disruption is defined as being "more than... minor"⁵

The offence is punishable by up to 51 weeks in prison.⁶ It is a defence for the person to prove that they had a reasonable excuse for the attaching.⁷ The offence is "summary only"; i.e. with no right to a jury trial.⁸

- **Going equipped to "lock-on"**: Section 2: A person commits the offence if they have an object with them (in a place other than a dwelling), intending that it may be used in, or in connection with, "locking on".⁹

The offence is punishable by a fine and is "summary only".¹⁰ There is no defence of reasonable excuse available.

- **Interference with Key National Infrastructure:** Section 7:

A person commits the offence if they do an act which interferes with the use or operation of any key national infrastructure¹¹ and are reckless as to whether it will do.¹²

Interference is defined as an act that prevents the infrastructure from being used or operated to **any extent** for any of its intended purposes,¹³ including significant delay.¹⁴

Key national infrastructure is defined as road, rail, air and harbour transport infrastructure, downstream oil or gas infrastructure, onshore oil and gas exploration and production, and onshore electricity generation infrastructure. It also includes newspaper printing infrastructure.^{15,16} The offence is punishable by up to 12 months in prison.¹⁷

It is a defence for the person to prove that they had a reasonable excuse for the interference. It is also a defence for the person to prove that the interference was in contemplation or furtherance of a trade dispute.¹⁸

Offences that are not yet "in force":¹⁹

- **Causing serious disruption by tunnelling or being present in a tunnel:** Sections 3 and 4: A person commits the offence if they participate in the creation of a tunnel²⁰ or are present in such a tunnel,²¹ and the creation or existence of the tunnel, or their presence in it, is capable of causing serious disruption to an organisation or two or more individuals,²² if they are reckless as to whether the creation, existence or presence is capable of causing serious disruption.²³ The offences are punishable by up to 3 years in prison.²⁴ It is a defence for the person to prove that they had a reasonable excuse for the tunnelling or their presence in the tunnel.²⁵
- **Going equipped for tunnelling:** Section 5: A person commits the offence if they have an object with them (in a place other than a dwelling) with the intention that it may be used

in, or in connection with, and offence under sections 3 or 4.²⁶ The offence is punishable by up to 51 weeks in prison and is “summary only.”²⁷ There is no defence of reasonable excuse available.

As with the offence of Going equipped to Lock-on, the term “object” is capable of wide interpretation and could feasibly be used to prosecute, for example, someone who provides food or drink to a locked-on protestor or tunneller.

- **Obstructing major transport works:** Section 6: This section is poorly drafted and overly complicated. It does not contain any provision as to whether the offence requires an intentional or reckless obstruction. The section is likely to be amended, before coming into force.

In essence, a person commits the offence if they obstruct the construction or maintenance of any major transport works.²⁸ That obstruction can include interfering with, moving or removing any apparatus used for that construction or maintenance.²⁹ The offence is punishable by up to 51 weeks in prison and is “summary only.”³⁰

It is a defence for the person to prove that they had a reasonable excuse for the obstruction. It is also a defence for the person to prove that the obstruction was done in contemplation or furtherance of a trade dispute.³¹

Defence of Reasonable excuse.

The defence of “reasonable excuse” is technically available to anyone charged under Sections 1, 3, 4, 6 and 7.

However, the recent approach taken by the courts³² makes it unlikely that protestors will be able to give evidence of the motivation for their actions, in order to argue that they had a “reasonable excuse” for them.

Stop and Search:

Police powers of stop and search have been extended, with significant amendments to the Police and Criminal Evidence Act 1984 (section 1), introducing a wide-ranging power to stop and search without suspicion.

If an Inspector (or more senior rank) reasonably believes that a listed offence³³ may be committed,³⁴ they can authorise³⁵ constables to stop any person or vehicle³⁶ and search them for prohibited objects, **without suspicion.**³⁷ Equally if an Inspector (or

above) reasonably believes that people are carrying prohibited items³⁸ in the locality, they can give the same authorisation.

The authorisation can last for up to 48 hours.³⁹ It must apply to a specified location,⁴⁰ but the size of the area covered, is only limited by the authorising officer’s reasonable belief that it is “no greater than necessary.”⁴¹

The listed offences include all of those new criminal offences introduced by the Act. However, they also include Wilful Obstruction of the Highway⁴² and most importantly the new offence of Public Nuisance.⁴³

That offence, created⁴⁴ in 2022, is so widely drafted that it can be used to criminalise almost any form of protest. Any person that does an act that **creates a risk**⁴⁵ of just **serious annoyance**,⁴⁶ commits the offence if they were **reckless** as to whether they were creating that risk.⁴⁷ The offence carries a sentence of up to ten years in prison.⁴⁸

In summary, the impact of the combination of the 2022 and 2023 Acts is this: if an Inspector reasonably believes that someone **may** do something that **creates a risk of serious annoyance**, or that someone is carrying a prohibited item, they can authorise constables to stop and search **anyone, without suspicion.**

A “prohibited object” is widely defined⁴⁹ and could be said to include items as innocuous as placards and loud halers.

If a person intentionally resists that stop and search, they are committing a criminal offence,⁵⁰ punishable by up to 51 weeks in prison.

Civil Actions and Injunctions:

Sections 18 and 19 empower a Secretary of State to bring civil proceedings when they reasonably believe that **one** or more persons are carrying out, or **are likely to carry out, activities related to a protest**,⁵¹ if that activity is causing or **likely to cause** “serious (“**more than minor**”) **disruption**”⁵² to key national infrastructure or access to essential goods or services.

Activities “in contemplation or furtherance of a trade dispute” are excluded.⁵³

If the civil court grants an injunction (for example prohibiting the causing of nuisance or annoyance),⁵⁴ a power of arrest⁵⁵ and remand in custody⁵⁶ can be attached to that injunction.

Serious Disruption Prevention Orders:

Sections 20-29: When a person is,⁵⁷ or has been,⁵⁸ convicted of a “protest-related” offence, and has previously (within the preceding five years)⁵⁹ committed another “protest-related” offence,⁶⁰ a court can impose an order restricting that person’s future protesting.

The order can be made if the court considers it necessary to prevent a wide-range of protest related activity,⁶¹ including contributing to another person carrying out protest related activities likely to result in serious (“more than minor”) disruption to an organisation.⁶²

The restrictions that can be made part of the order include requiring the person to:

- present themselves to a particular person at a particular place at, or between, particular times on particular days⁶³ or to remain at a particular place for particular periods.⁶⁴

or prohibiting the person from:

- being in or entering a particular place or area;

- being in or entering a particular place or area between particular times on particular days;
- being in or entering a particular place or area between particular times on any day;
- being with particular persons;
- participating in particular activities;
- having particular articles with them;
- using the internet to facilitate or encourage persons to—
 - (i) commit a protest-related offence or a protest-related breach of an injunction, or
 - (ii) carry out activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation.⁶⁵

A person subject to an order **must** notify the police of any changes to their name or address for the duration of the order.⁶⁶

The order can last for up to two years⁶⁷ but can be renewed for up to a further two years.⁶⁸ If a person breaches the order, they commit a criminal offence⁶⁹ punishable by up to 51 weeks in prison.⁷⁰

1 Public Order Act 2023 s.35(1)

2 Public Order Act 2023 s.1(1)(a)

3 Public Order Act 2023 s.1(1)(b)

4 Public Order Act 2023 s.1(1)(c)

5 Public Order Act 2023 s.34

6 Public Order Act 2023 s.1(4)(b)

7 Public Order Act 2023 s.1(2)

8 Public Order Act 2023 s.1(3)

9 Public Order Act 2023 s.2(1)

10 Public Order Act 2023 s.2(2)

11 Public Order Act 2023 s.7(1)

12 Public Order Act 2023 s.7(1)(b)

13 Public Order Act 2023 s.7(4)

14 Public Order Act 2023 s.7(5)

15 Public Order Act 2023 s.7(6)

16 Detailed definitions of the specific infrastructures can be found at s.7(8)

17 Public Order Act 2023 s.7(3)

18 Public Order Act 2023 s.7(2)

19

20 Public Order Act 2023 s.3(1)(a)

21 Public Order Act 2023 s.4(1)(a)

22 Public Order Act 2023 s.3(1)(b)

23 Public Order Act 2023 s.3(1)(c)

24 Public Order Act 2023 s.3(4)(b) and Public Order Act s.4(4)(b)

25 Public Order Act 2023 s.3(2)

26 Public Order Act 2023 s.5(1)

27 Public Order Act 2023 s.5(3)(b)

28 Public Order Act 2023 s.6(1)

29 Public Order Act 2023 s.6(1)(b)

30 Public Order Act 2023 s.6(4)(b)

31 Public Order Act 2023 s.6(2)

32 Attorney-General’s Reference No. 1 of 2022 [2022] EWCA Crim 1259; [2023] 1 Cr. App. R. 1 and Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32.

33 Public Order Act 2023 s.11(1)(a) and (b)

(a) that any of the following offences may be committed in any locality within the officer’s police area—

(i) an offence under section 137 of the Highways Act 1980 (wilful obstruction) involving activity which causes or is capable of causing serious disruption to two or more individuals or to an organisation;

(ii) an offence under section 78 of the Police, Crime, Sentencing and Courts Act 2022 (intentionally or recklessly causing public nuisance);

(iii) an offence under section 1 (offence of locking on);

(iv) an offence under section 3 (offence of causing serious disruption by tunnelling);

(v) an offence under section 4 (offence of causing serious disruption by being present in a tunnel);

(vi) an offence under section 6 (obstruction etc of major transport works);

(vii) an offence under section 7 (interference with use or operation of key national infrastructure), or

(b) that persons are carrying prohibited objects in any locality within the officer’s police area.

34 Public Order Act 2023 s.11(1)

35 Public Order Act 2023 s.11(3)

36 Public Order Act 2023 s.11(6)

37 Public Order Act 2023 s. 11 “Powers to stop and search without suspicion”.

38 Public Order Act 2023 s.11(1)(b)

39 Public Order Act 2023 s.11(3) and (5)

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- 40 Public Order Act 2023 s.11(3)
- 41 Public Order Act 2023 s.11(4)
- 42 Highways Act 1980 s.137(1): (1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to [imprisonment for a term not exceeding 51 weeks or] 1 a fine [or both] 2
- 43 Police, Crime, Sentencing and Courts Act 2022 s.78
- 44 Police, Crime, Sentencing and Courts Act 2022 abolished the old common law offence of Public Nuisance (s.78(6)) and replaced it with the new, widely drawn, statutory offence.
- 45 Police, Crime, Sentencing and Courts Act 2022 s.78(1)(b)(i):
- (1) *A person commits an offence if—*
 - (a) *the person—*
 - (i) **does an act, or**
 - (ii) *omits to do an act that they are required to do by any enactment or rule of law,*
 - (b) *the person's act or omission—*
 - (i) **creates a risk of, or causes, serious harm to the public or a section of the public, or**
 - (ii) *obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and*
 - (c) *the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.*
- 46 Police, Crime, Sentencing and Courts Act 2022 s.78(2):
- (2) *In subsection (1)(b)(i) "serious harm" means—*
 - (a) *death, personal injury or disease,*
 - (b) *loss of, or damage to, property, or*
 - (c) *serious distress, **serious annoyance**, serious inconvenience or serious loss of amenity.*
- 47 Police, Crime, Sentencing and Courts Act 2022 s.78(1)(c)
- 48 Police, Crime, Sentencing and Courts Act 2022 s.78(4)(b)
- 49 Public Order Act 2023 s.11(2): (2) In this section "prohibited object" means an object which—
- (a) *is made or adapted for use in the course of or in connection with an offence within subsection (1)(a), or*
 - (b) *is intended by the person having it with them for such use by them or by some other person, and for the purposes of this section a person carries a prohibited object if they have it in their possession.*
- 50 Public Order Act 2023 s.14:
- (1) *A person commits an offence if the person intentionally obstructs a constable in the exercise of the constable's powers under section 11.*
 - (2) *A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding level 3 on the standard scale or to both.*
- 51 Public Order Act 2023 s.18(1)(a)
- 52 Public Order Act 2023 s.18(2)
- 53 Public Order Act 2023 s.18(7)
- 54 Public Order Act 2023 s.19(2)
- 55 Public Order Act 2023 s.19(3)
- 56 Public Order Act 2023 s.19(6)(b) and Schedule 1
- 57 Public Order Act 2023 s.20
- 58 Public Order Act s.21
- 59 Public order Act 2023 s.20 (4) and s.21(3)
- 60 Public order Act 2023 s.20 (3) and s.21(2)
- 61 Public order Act 2023 s.20 (5) and s.21(4)
- 62 Public order Act 2023 s.20 (5)(c)(ii)
- 63 Public Order Act s.22(2)(a)
- 64 Public Order Act s.22(2)(b)
- 65 Public Order Act 2023 s.22(4)
- 66 Public Order Act 2023 s.24
- 67 Public Order Act 2023 s.25(2)
- 68 Public Order Act s.28
- 69 Public Order Act 2023 s.27
- 70 Public Order Act s.27(3)(b)