

Public Order Act 2023

Green and Black Cross
Activist Court Aid Brigade

Introduction

The Public Order Act 2023 has received a lot of attention for the impact it will have on activists in England and Wales. This guide is designed to help you understand the law as it is written. It is hard to know exactly how the measures will impact protesters until more time has passed. If you are arrested or threatened with arrest under any section covered here, please let us know by calling the Protest Support Line on **07946 541511**.

PLEASE NOTE: At the time of writing, a chunk of the Act is not yet in force, meaning it cannot be used unless and until it is ‘commenced’ in Parliament. We’ve noted this next to each heading where it applies. To check if this has changed when you’re reading this, see the link below:

legislation.gov.uk/changes/affected/ukpga/2023/15

Offences relating to locking on

Offence Locking on (Section 1)

Most “lock-ons” have previously been dealt with under existing offences such as obstruction or trespass. However, the new Act criminalises not just the effect of a lock-on (e.g. obstructing the highway), but the act of locking on itself.

It is now an offence to (unless in a place of residence) lock yourself, someone else or an object onto another person, object or land, if it causes or could cause serious disruption (see definition in Section 34 on p.11) to multiple people or an organisation, whether or not these are the intended consequences.

It is a defence to prove that you had a “reasonable excuse”.

The maximum sentence is 6 months in prison, an unlimited fine or both.

Offence Going equipped to lock on (Section 2)

It is an offence to have an object which you intend to use to ‘lock on’, when not in a place of residence. To be convicted of this offence the prosecution have to prove that you intended to use the item(s) to lock on.

The maximum sentence is an unlimited fine.



Offences relating to tunnelling

Offence Causing serious disruption by tunnelling (Section 3)

It is an offence to create or help create a tunnel (unless in/under a place of residence), if the tunnel causes or could cause serious disruption (see definition in Section 34 on p.11) to multiple people or an organisation, whether or not these are the intended consequences.

This offence can be dealt with in either the Magistrates' or Crown Court.

Maximum sentence is 6 months (if in Magistrates') or 3 years (if in Crown Court) in prison, an unlimited fine or both.

Offence Causing serious disruption by being present in a tunnel (Section 4)

It is an offence to be in a "relevant tunnel" (in somewhere other than in or under a place of residence) if your presence causes or could cause serious disruption (see definition in Section 34 on p.11) to multiple people or an organisation.

A “relevant tunnel” is one which has been created as part of a protest. It does not matter whether or not you were involved in creating the tunnel.

This offence can be dealt with in either the Magistrates or Crown Court. Maximum sentence is 6 months (if in Magistrates) or 3 years (if in Crown Court) in prison, an unlimited fine or both.

Offence Being equipped for tunnelling (Section 5)

It is an offence to have an object which you intend to use to cause serious disruption (see definition in Section 34 on p.11) through tunnelling or being in a tunnel, when not in a place of residence.

The maximum sentence is a 6 months imprisonment, an unlimited fine or both.

Offences involving works and infrastructure

Offence Obstruction etc of major transport works (Section 6)

It's an offence to obstruct or interfere with the construction or maintenance of certain major transport infrastructure such as harbours, highways, airports and railways. This could involve moving or removing things needed for the works or obstructing those carrying out the works. Having a reasonable excuse is a defence, as is the act being part of a trade dispute.

The types of transport-related sites affected include all those whose construction is authorised directly by an Act of Parliament or under certain planning powers from the Secretary of State. This will mostly affect things like high speed rail, airports, and harbours.

It is triable in the Magistrates' court and subject to sentences of 6 months custody, unlimited fine or both.



Offence Interference with key national infrastructure (Sections 7 and 8)

It is an offence to interfere with the use or operation of “key national infrastructure”.

Currently, “key national infrastructures” means road infrastructure (special roads), rail, air transport, harbour, downstream oil and gas, onshore oil and gas, onshore energy, or newspaper printing. Exactly what is included is up to the Secretary of State (they must show a draft of the amendments to Parliament).

It is a defence to prove that you had a “reasonable excuse” or that you did so due to or to support a trade union dispute.

This offence can be dealt with in either the Magistrates or Crown Court. Maximum sentence is 6 months (if in Magistrates) or 12 months (if in Crown Court) in prison, an unlimited fine or both.

Offence Interference with access to or provision of abortion services (Section 9)

It is now an offence, when within 150 metres from any part of an abortion clinic to try to influence people's decision to access or provide an abortion, to obstruct or impede anyone from accessing or providing one, or to harass or alarm those connected with the provision or access of abortion services
Maximum sentence is an unlimited fine.

Powers to stop and search

On suspicion (Section 10)

Previously, under Section 1 of Police and Criminal Evidence Act 1984 (PACE), the police had the power to stop and search you for various items, provided that there is reasonable individual suspicion:

The new act now allows the police to also stop and search anyone they reasonably suspect intends to commit any of the new offences brought in by the Public Order Act 2023 and Police Crime Sentencing and Courts Act 2023.

Without suspicion (Section 11)

When a police officer of Inspector rank or above reasonably believes certain offences are going to be committed or objects are being carried in connection with them, including obstructing a highway, public nuisance, and the locking on, tunnelling, key infrastructure and obstructing transport work offences from this Act, they can authorise an area within their locality for up to 24h where anyone can be searched for these objects.

This then means that anyone in the area can be searched without there needing to be individually specific grounds to do so. Any items found can be seized and retained.

The time period can be extended by 24 hours by a superintendent or higher ranking officer.

If your person or vehicle is searched you have 12 months to get a written statement that it happened. If you obstruct a search occurring under these powers, the maximum penalty is a Level 3 (£1000) fine, 1 month's custody or both.

Processions, assemblies and one-person protests

Assemblies and one-person protests: British Transport Police and MoD police (Section 16)

This section extends the power to place section 14 restrictions, such as those on the size and location of a protest, to constables from the British Transport Police and the Ministry of Defence police within their jurisdictions. This could be used, for example, on protests in a train station or outside a military barracks if the land is within the jurisdiction of the MoD police.





Exercise of police powers in relation to journalists etc. (Section 17)

This stops the police from using their powers solely to prevent people from observing a protest.

They may still use their powers where it is partially to stop people observing a protest if, for example, it is also to prevent a crime being committed or another lawful purpose. These protections extend to all members of the public and are not limited to just journalists or legal observers.

Civil Proceedings by Secretary of State

Civil proceedings by secretary of state (Sections 18 & 19)

NB: Not in force at the time of writing

This provision gives power to the Secretary of State to bring civil proceedings (trying to get a court order) to prevent activities that seriously disrupt key national infrastructure or access to essential goods that also have a serious adverse impact on the safety of the public. This means that, for example, they could get an injunction to prevent protests on the strategic road network.

Section 19 makes provision for the court to give powers to the police to arrest for breaching the injunction where violence has been threatened or there is a significant risk of harm to someone or the public.

Anyone arrested under these powers must be brought before the court within 24 hours and the court may remand them in to custody (being held in prison) or dispose of the matter at that time, such as by discontinuing action.

Serious Disruption & Prevention Orders

Meaning of serious disruption (Section 34)

The Act gives a definition of serious disruption that applies to the various offences in the Act which involve it.

In the Public Order Act 2023 “Serious disruption” means preventing or disrupting a ‘more than minor amount’:

- **individuals or organisations from carrying out “their day-to-day activities”** (including in particular making a journey, construction or maintenance work, or activities related to such work).
- **making or receiving a “time sensitive product”** (ie. “a product whose value or use to its consumer may be significantly reduced by a delay in the supply of the produce to them” eg. newspapers).
- **accessing any essential goods or services**, which include money, food, water, energy, fuel, systems of communication, a place of worship, transport facilities, educational institutions, or health services.

This can apply to disrupting individuals or organisations or both.

Serious Disruption Prevention Orders (Sections 20-30)

NB: Not in force at the time of writing

What are SDPOs?

Serious disruption prevention orders (SDPOs) are orders made by a magistrates’ court that are designed to prevent protesters from committing protest related offences. These orders create conditions and restrictions, such as attending a regular appointment or staying out of a given area, that are an offence to break.

The standard of certainty for the court to decide is ‘the balance of probabilities’ or being more than 50% sure, which is lower than the ‘beyond reasonable doubt’ standard used in criminal trials.

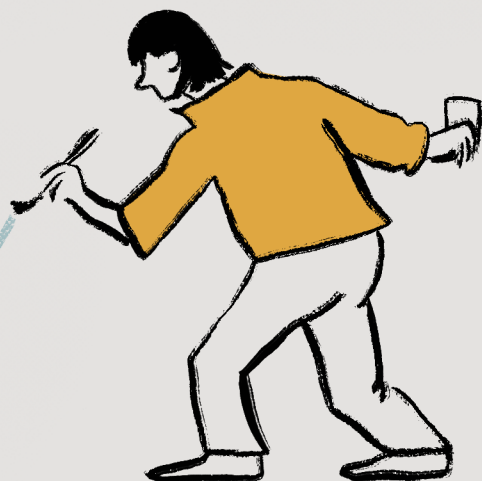
When can they be issued?

They can only be issued to adults, either once you’re convicted of an offence (**order on conviction**), or when the police apply for one at another time (**order on application**).

If an order is made **on conviction**, it has to be shown another protest related offence or breach of an injunction has occurred in the last 5 years, and issuing an SDPO is **necessary to prevent** further such offences or breaches, or serious disruption related to a protest being committed, caused or contributed to. In such cases, the order can only be given alongside a sentence or conditional discharge.

When an **order on application** is applied for by the police, the court can issue an order when satisfied that two protest related offences or injunction breaches have occurred in the last 5 years, and the same condition of the **order being necessary** must also be met.

For both types, the two offences or breaches must have been from different protests, or happened on different days.



What do they entail?

SDPOs can last between one week and two years and allow the court to set conditions, both requirements and prohibitions on someone. These include attending a regular appointment in a given location, not associating with certain people, not visiting certain areas at certain times, not doing things on the internet such as encouraging people to do disruptive protest, not carrying certain articles such as superglue, or notifying the police if they change address.

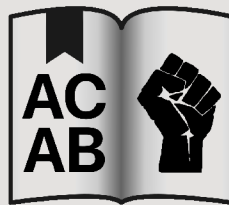
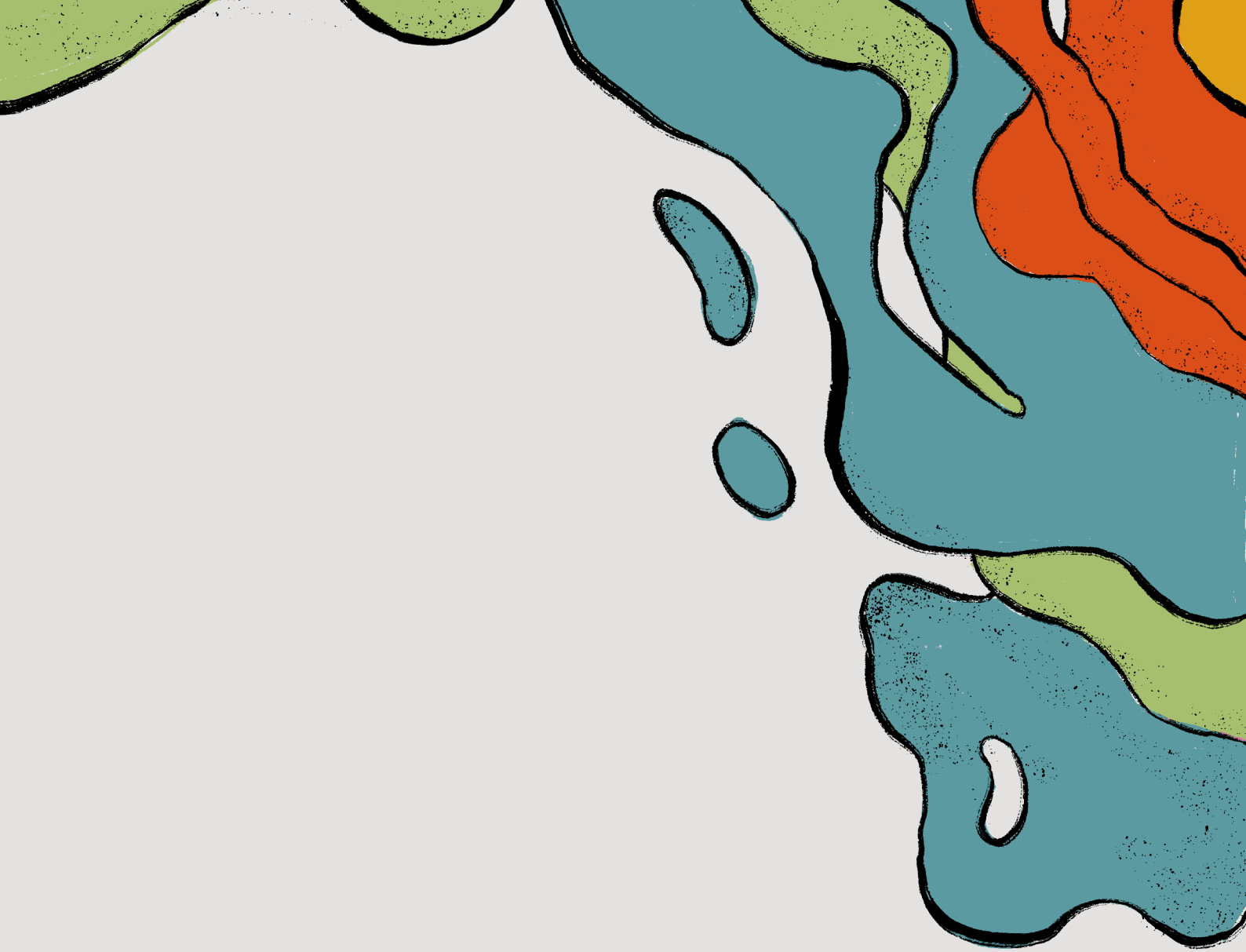
The court must try to avoid any of these conditions being incompatible with each other, interfering with someone's work and education, or conflicting with their religious beliefs.

What happens if I break the conditions?

It is an offence to break the conditions unless you have a reasonable excuse. The maximum sentence is six months imprisonment. The actual penalty given will depend on someone's criminal history and the nature of the breach.

Can I appeal?

All SDPOs can be appealed. How to do this depends on the type of order and where it was issued. Orders on conviction are appealed in the same way a sentence would be for that court. Usually this means appealing to the Crown Court, if the order was given in the Magistrates' court, or less commonly to the High Court.



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