

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

26 January 2023
SC(24)JAN03 – Protest offences
TBC
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1 ISSUE

1.1 This meeting is to agree the offences which should be included in the Protests guideline.

2 RECOMMENDATION

2.1 That the Council

- Considers the offences within scope and agrees which offences should be included.

3 CONSIDERATION

3.1 Public protests have been a high-profile issue recently, and the government has introduced a number of new offences to address trends in protest activity. In explaining the rationale for these new offences the Government stated: ‘These new measures are needed to bolster the police’s powers to respond more effectively to disruptive and dangerous protests. Over recent years, guerrilla tactics used by a small minority of protesters have caused a disproportionate impact on the hardworking majority seeking to go about their everyday lives, cost millions in taxpayers’ money and put lives at risk. This has included halting public transport networks, disrupting fuel supplies and preventing hundreds of hard-working people from getting to their jobs.’

3.2 New offences to address disruptive activity by protestors causing public nuisance were introduced in 2022, and additional offences were created in 2023 to address very specific activity being adopted by protestors such as tunnelling and locking on.

3.3 Guidelines already exist for some offences commonly charged during the course of protests, including criminal damage, assault and public order. Other offences are also commonly charged for activity in the course of protests, including aggravated trespass and offences under the Public Order Act 1986 for which guidelines do not currently exist.

Data

3.4 Usually, in considering which offences should be within scope of a guideline, volumes of offences are provided to enable assessment of whether offences are high volume, indicating the guideline will aid consistency of approach and sentence, or low volume, meaning guidance is likely to be useful to sentencers given the relative rarity of the offence.

3.5 Currently, no data is available for volumes of newer offences and is not anticipated to be available until Spring 2024. This is due to delays with MOJ statistics publications. It is anticipated that data for some offences will be obtained by the March meeting, although this will still be limited to offences sentenced up to June 2023. Further statistics will be available in the Summer.

3.6 In the absence of data this paper is limited to providing a list of all offences known to be commonly charged for which guidelines would be useful for sentencers. These are included by the CPS as potential offences which can be charged during protests, demonstrations or campaigns. The Council is asked to consider if all of these offences should be considered for inclusion in a Protests guideline.

Offence	Statutory Maximum	In force date
Intentionally or recklessly causing public nuisance (Section 78 PCSCA 2022)	10 years imprisonment (either way)	Section 78 Police, Crime, Sentencing and Courts Act 2022 (PCSCA) abolished the common law offence of public nuisance and created this statutory offence, in force from 28 June 2022
Interference with use or operation of key national infrastructure (Section 7 POA 2023)	12 months imprisonment (either way)	3/05/2023
Aggravated trespass (Section 68 CJPOA 1994)	3 months imprisonment (summary only)	1994
Wilful obstruction of the highway (Section 137 Highways Act 1980)	From 12 May 2022: 6 months' imprisonment, an unlimited fine, or both.	New sentence in force from May 2022

	Prior to 12 May 2022: Level 3 fine (summary only)	
Locking-on (Section 1 POA 2023)	6 months imprisonment (summary only)	03/05/2023
Being equipped to lock-on (Section 2 POA 2023)	Unlimited fine (summary only)	03/05/2023
Obstruction of major transport works (Section 6 POA 2023)	6 months imprisonment (summary only)	02/07/2023
Causing serious disruption by tunnelling (Section 3 POA 2023)	3 years imprisonment (either way)	02/07/2023
Causing serious disruption by being present in a tunnel (Section 4 POA 2023)	3 years imprisonment (either way)	02/07/2023
Being equipped for tunnelling (Section 5 POA 2023)	6 months imprisonment (summary only)	02/07/2023
Breach of a condition on one-person protest (Section 14ZA POA 1986)	Level 4 fine (summary only)	28/06/2022
Failure to comply with a condition imposed on a public procession (Sub-section 12(4)&(5) POA 1986)	Organiser – 6 months' imprisonment, a level 4 fine, or both Participant – Level 4 fine (summary only)	28/06/2022
Failure to comply with a condition imposed on a public assembly (Sub-section 14(4)&(5) POA 1986)	Organiser – 6 months' imprisonment, a level 4 fine, or both Participant – Level 4 fine	28/06/2022

	(summary only)	
Offences relating to trespassory assembly (Sub-section 14B(1)&(2) POA 1986)	Organiser – 3 months' imprisonment, a level 4 fine, or both. Participant – Level 3 fine (summary only)	28/06/2022

3.7 While there are more offences than are usually included in guidelines it is likely that a number of these will have overlapping features and it may be possible for multiple offences to be covered under one guideline in some cases, such as where offences share similar features or statutory maximum sentences. This will be considered during development and groupings proposed if appropriate. Similar issues were present during the development of the Public Order guidelines, particularly with s4, s4A and s5 offences.

3.8 It is also important to note that as many offences are summary only there will be limited evidence available to inform guideline development, as transcripts will not be available for cases dealt with in the magistrate's courts. Work will be undertaken to identify appropriate evidence sources to inform recommendations.

Question 1: Does the Council agree that all offences listed should be included in the Protests guideline? Are there any offences the Council considers should be removed from scope?

Question 2: Does the Council have any further views on the proposed guideline and its scope?

4 EQUALITIES

4.1 There are no equalities issues to consider at this point.

5 IMPACT AND RISKS

5.1 The right to protest is protected by law. However, Parliament has sought to address activity causing disruption and inconvenience to the public and deter offending. This guideline is likely to raise concerns regarding erosion of individual rights and freedoms, similar to issues which arose in the development of the Public Order guidelines. The Council effectively addressed potential criticism during that project and officials will ensure robust rationales underpin proposals and decisions.