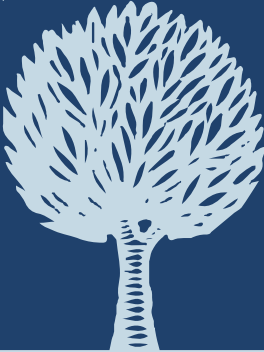


GARDEN COURT



CHAMBERS



**Public Order Bill:
Locking on, tunnelling and obstructing
major transport and infrastructure**

Tuesday 11 October 2022

Tom Wainwright, Garden Court Chambers



GARDEN COURT CHAMBERS



TOP TIER SET
2022



Garden Court Chambers

 @gardencourtlaw

Explanatory Notes



Explanatory Notes

Recent changes in the tactics employed by certain protest protesters, for example, gluing themselves to buildings or vehicles, blocking roads, tunnelling under land that is subject to development, and obstructing access to buildings such as oil refineries and newspaper printing works, have highlighted some gaps in current legislation.



Locking on



Locking on



Locking on

Section 1.

It is an offence for someone to:

- attach themselves to another person / an object / land;
- attach a person to another person / an object / land; or
- attach an object to another object / land.

if...



Locking on

...that act causes, or is capable of causing, serious disruption to:

- two or more individuals; or
- an organisation, in a place other than in a dwelling;

and they intend that act to have that consequence or are reckless as to whether it will have such a consequence.



Locking on

- Reasonable excuse defence
- Summary only.
- Six months maximum.



Going equipped for locking on

Section 2.

It is an offence to:

- have an object with them in a place other than a dwelling;
- with the intention that it may be used in the course of or in connection with the commission by any person of a locking on offence.

Maximum penalty a fine.



Tunnelling



Tunnelling



Tunnelling

Section 3.

It is an offence for someone to create, or participate in the creation of, a tunnel, if the creation or existence of the tunnel causes, or is capable of causing, serious disruption to:

(i) two or more individuals; or,

(ii) an organisation, in a place other than a dwelling

and that person intended or was reckless as to that consequence.



Tunnelling

Definition of tunnel:

An excavation that extends beneath land,

- Whether or not it is big enough to permit the entry or passage of an individual;
- Whether or not it leads to a particular destination.



Tunnelling

Definition of tunnel:

An excavation which is created with the intention that it will become or connect with a tunnel is to be treated as a tunnel:

- Whether or not any tunnel with which it is intended to connect has already been created;
- Whether or not it is big enough to permit the entry or passage of an individual.



Tunnelling

Definition of tunnel:

An excavation includes the extension or enlargement of an excavation and the alteration of a natural or artificial underground feature.

Does not apply to tunnels to the extent that they are in or under a dwelling.



Tunnelling

Defence and sentence

- Reasonable excuse defence, which includes that the creation of the tunnel was authorised by a person with an interest in land which entitled them to authorise its creation.
- Either way offence. 12 months on summary conviction / 3 years on indictment.



Being in a tunnel

Section 4.

- Present in a tunnel, having entered after this section came into force;
- Presence causes / capable of causing serious disruption to two/more individuals or an organisation, in a place other than a dwelling;
- Intend / reckless as to that consequence;



Being in a tunnel

Defence and sentence

- Reasonable excuse defence, which includes that presence in the tunnel was authorised by a person with an interest in land which entitled them to authorise that person's presence.
- Either way offence. 12 months on summary conviction / 3 years on indictment.



Going equipped for tunnelling

Section 5.

It is an offence to:

- have an object with them in a place other than a dwelling;
- with the intention that it may be used in the course of or in connection with the commission by any person of a tunnelling offence.

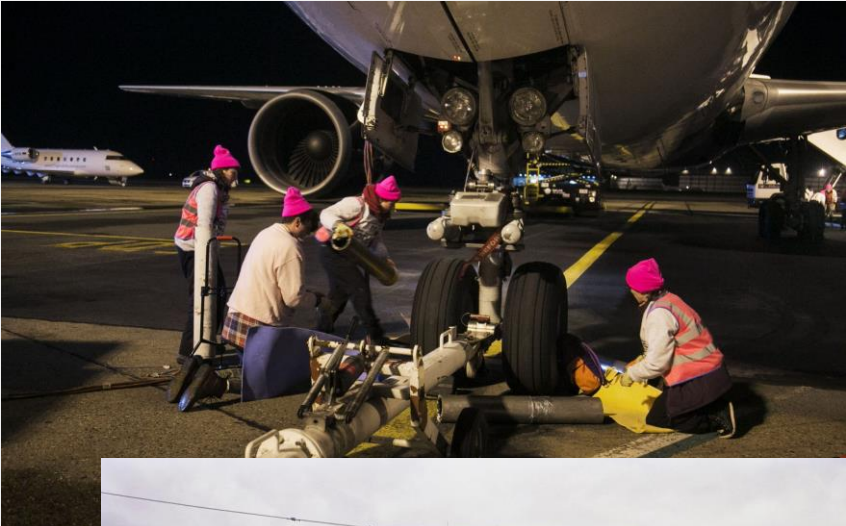
Summary only. Maximum penalty six months.



Obstruction of major transport works / key national infrastructure



Obstructing major transport works / key national infrastructure



Obstructing major transport works

Section 6.

Offence to obstruct the undertaker, or a person acting under the authority of the undertaker...



Obstructing major transport works

- (i) in setting out the lines of any major transport works;
- (ii) in constructing or maintaining any major transport works, or;
- (iii) in taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works.



Obstructing major transport works

Offence to interfere with, move or remove any apparatus which –

- (i) relates to the construction or maintenance of any major transport works, and
- (ii) belongs to the undertaker / the statutory undertaker / a person acting under the authority of the undertaker or statutory undertaker.



Obstructing major transport works

- Reasonable excuse defence, including that the act was wholly or mainly in contemplation and furtherance of a trade dispute.
- Summary only.
- Maximum sentence six months.



Obstructing key national infrastructure

Section 6.

Offence to interfere with (prevent being used or operated to any extent for any of its intended purpose, including causing significant delay) the use or operation of any key national infrastructure if

- intend to interfere with key national infrastructure; or,
- reckless as to whether it will do so.



Obstructing key national infrastructure

Key national infrastructure

- (a) road transport infrastructure;
- (b) rail infrastructure;
- (c) air transport infrastructure;
- (d) harbour infrastructure;
- (e) downstream oil infrastructure...



Obstructing key national infrastructure

Key national infrastructure

...

(f) downstream gas infrastructure;

(g) onshore oil and gas exploration and production infrastructure;

(h) onshore electricity generation infrastructure; or,

(i) newspaper printing infrastructure.



Obstructing key national infrastructure

- Reasonable excuse defence, including that the act was wholly or mainly in contemplation and furtherance of a trade dispute.
- Either way offence.
- Maximum sentence twelve months.





Proposals to expand powers to stop and search under the Public Order Bill

Elena Papamichael, Garden Court Chambers

11 October 2022



GARDEN COURT CHAMBERS



@gardencourtlaw

Why the Bill?

What we have seen in recent years is a rise in criminal, disruptive and self-defeating guerrilla tactics, carried out by a selfish few in the name of protest.

*This bill backs the police to take proactive action and **prevent such disruption happening in the first place.** These measures stand up for the responsible majority and it is time that Parliament got behind them.*

Priti Patel



Powers to Stop and Search

The Bill provides for both a suspicion-led power and a suspicion-less power

Section 1 PACE

Entitles police officers to search any person or vehicle in a public place where they have reasonable grounds for suspecting he will find stolen or prohibited articles

Prohibited articles is currently limited:

- offensive weapons
- bladed articles
- corrosive substances
- fireworks in contravention of fireworks regulations
- Articles made or adapted for use in the course of or in connection with burglary; theft; or taking a motor vehicle or conveyance without consent; fraud; and criminal damage



9 Powers to stop and search on suspicion

- (f) an offence under section 137 of the Highways Act 1980 25 (wilful obstruction) **involving activity which causes or is capable of causing serious disruption to two or more individuals or to an organisation;**
- (g) an offence under section 78 of the Police, Crime, Sentencing and Courts Act 2022 (intentionally or recklessly causing public nuisance);
- (h) an offence under section 1 of the Public Order Act 2022 (offence of locking on);
- (i) an offence under section 3 of that Act (offence of causing serious disruption by tunnelling);
- (j) an offence under section 4 of that Act (offence of causing serious disruption by being present in a tunnel);
- (k) an offence under section 6 of that Act (obstruction etc of major transport works); and
- (l) an offence under section 7 of that Act (interference with use or operation of key national infrastructure).



Practical implications

Bike locks
Superglue
Duck tape

Wilful obstruction involving activity capable of causing serious disruption to 2 or more individuals or organisation

Would allow police to search virtually anyone attending most public protests or demonstrations

Vague – what would they even be looking for?

Oppressive use of police powers intended create hostile environment for protesters



10 Powers to stop and search without suspicion

Provision for a senior police officer to give an authorisation applying to a **specific locality** for a **specified period** and that allows a constable in uniform to stop and search a person or vehicle for an object made, adapted or intended for use in the course of or in connection with a specified protest-related offence.

While the authorisation is in force the constable may exercise the power **whether or not they have any grounds** for suspecting the person or vehicle is carrying such an object.



10(1) and 10(2) – Criteria for suspicion-less search power

Subsection (1) provides for the circumstances in which a senior officer of or above the rank of inspector can give an authorisation enabling a police constable to exercise stop and search powers without suspicion.

Those circumstances are that the **senior officer reasonably believes** that any of the offences specified in paragraph 40 above **may be committed** in a locality within the police force area or that persons are carrying prohibited objects (as defined in subsection (2)) in a locality with the force area



10(3) and 10(4) – additional criteria for 24 hour power

Subsection (3) stipulates that if the further condition in subsection (4) is met the senior police officer may give an authorisation that the suspicionless stop and search powers conferred by this clause are to be exercisable anywhere within a specified locality, which is within the officer's police area, and for a period not exceeding 24 hours.

Subsection (4) specifies the condition under which a senior police officer may give an authorisation. The senior officer must reasonably believe that: the authorisation is necessary to prevent the commission of offences within subsection (1)(a) or the carrying of prohibited objects, the specified locality is no greater than is necessary to prevent such activity, and the specified period must be no longer than is necessary to prevent such activity.

10(5) and 10(6) – Criteria for further 24 hours

If it appears to a police officer of or above the rank of superintendent that it is necessary to do so to prevent the commission of offences within subsection (1)(a) or the carrying of prohibited objects, the officer may direct that the authorisation is to continue in force for a further period not exceeding 24 hours.

This section confers on any constable in uniform power—

- a) to stop any person and search them or anything carried by them for a prohibited object;
- b) to stop any vehicle and search the vehicle, its driver and any passenger for a prohibited object.



10(7) – 10(8) Power to search without grounds and seize articles

7. A constable may, in the exercise of the powers conferred by subsection (6), stop any person or vehicle and make any search the constable thinks fit **whether or not the constable has any grounds for suspecting that the person or vehicle is carrying a prohibited object.**

8. If in the course of a search under this section a constable discovers an object which the constable has reasonable grounds for suspecting to be a prohibited object, the constable may **seize it.**



Parallels with s.60 CJPOA

a) that incidents involving **serious violence** may take place in any locality in his police area, and that it is expedient to give an authorisation under this section to prevent their occurrence,

(aa) that—

(i) an **incident involving serious violence has taken place** in England and Wales in his police area;

(ii) a **dangerous instrument or offensive weapon** used in the incident is being carried in any locality in his police area by a person; and

(iii) it is expedient to give an authorisation under this section to find the instrument or weapon;] or

(b) that persons are **carrying dangerous instruments** or offensive weapons in any locality in his police area without good reason,



Criticisms of s.60 search power extend to new powers proposed under Bill

EFFICACY

Only 4% of searches result in arrest

Only 1% resulted in arrested for weapons

RACIST

Black people are 18X more likely to be searched than white

1 Home Office Police Powers and Procedures, year ending 31 March 2020



13 offence relating to section 10 – Obstructing search

- (1) A person commits an offence if the person intentionally obstructs a constable in the exercise of the constable's powers under section 10.
- (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
- (3) (In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales), the reference in subsection (2) to 51 weeks is to be read as a reference to 1 month.

This amendment increases the penalty for committing an offence under section 1 of the Night Poaching Act 1828 (taking or destroying game or rabbits by night or entering land for that purpose) or under section 30 of the Game Act 1831 (trespass in the daytime in search of game etc).



11 Procedural requirements - may give rise to defence to obstruction

If an inspector gives an authorisation under section 10, the inspector must, as soon as it is practicable to do so, cause an officer of or above the rank of the superintendent to be informed.

An authorisation under section 10 must—

- (a) be given in writing signed by the officer giving it,
- (b) specify the grounds on which it is given, and ³⁵
- c) specify the locality in which and the period during which the powers conferred by that section are exercisable.

A direction under section 10(5) must—

- (a) be given in writing, or
- b) where it is not practicable to comply with paragraph (a), be recorded in writing as soon as it is practicable to do so.



12 further provisions about searches under s.10

- Entitlement to a record of the search if they apply within 12 months starting from the day of the search
- Similarly, drivers of vehicles stopped by a constable under s.10
- Items seized under s,10 may be seized in accordance with regulations made by the Secretary of State



Thank you

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