

# Activists' Legal Project

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## Legal Briefing 1:

# THE ARREST PROCESS AND YOUR RIGHTS

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### 1. Giving your details

It is not an offence to refuse to give the police your name and address, except when you are the driver of a vehicle (Road Traffic Act). But see below for the potential impact of failing to give your name and address if you are suspected of committing an offence.

### 2. Being arrested

The power of arrest has recently been extended by the Serious Organised Crime and Police Act 2005 (SOCPA). A police constable now has the power to arrest you for **any** offence, however minor, where they have reasonable grounds for suspecting that you have committed or are about to commit an offence and that for particular reasons (stated in the act) it is 'necessary' to arrest you. The reasons include:

- they can't ascertain your name or address
- they believe you've given a false name or address
- to prevent you injuring yourself or someone else
- to prevent you damaging property or obstructing the highway
- to allow the prompt investigation of the offence.

It's too soon to tell whether this change to the law will increase the likelihood of arrest for activists.

Your arresting officer will say something like, "I'm arresting you for (or, 'on suspicion of')..... You do not have to say anything, but it may harm your defence if you fail to mention when questioned something which you intend to rely on in court. Anything you say may be given in evidence." This is called the caution. You do not have to say anything in reply to it, but anything you do say should be noted down by the police and will later be read out in court, so saying something brief and non-incriminating (eg "Nuclear weapons are a crime against humanity") may be

worthwhile. You may be asked to read and sign the arresting officer's notes, but you are under no obligation to do that either. They may take your photograph and also search you at this point for anything which may be evidence of the commission of an offence (for more info on photos and searches see later).

Throughout your time with the police they will be asking questions, and however innocuous sounding these questions might be, they are all part of evidence gathering. There's no such thing as a 'friendly chat', so be careful what you say, or better still say no comment.

### **3. Street bail**

Previously you had to be taken to a police station as soon as practicable after your arrest. The police have recently been given new powers to grant bail after you have been arrested without needing to take you to the police station. This new power allows them to take your details in the street at an action/demo and then to require you to attend a police station at a later date, when they will decide whether to charge you. The police cannot attach additional conditions to this bail, they can only do this after you've been charged (see section 16 for more info on bail conditions).

### **4. At the police station**

If you are taken to a police station, you'll be taken in front of the custody sergeant, who is the officer who authorises your initial detention and is responsible for you whilst you remain in custody. Your arresting officer will give brief details of the offence for which you were arrested, and you will be asked a number of questions including your name and address, date and place of birth, height, and occupation. It's not a criminal offence to refuse to give this information, so don't feel pressurised into doing so. But if you do refuse to give your name and address it's likely to delay your release. If you give false details you could be charged with obstructing a police officer (see Legal briefing 3: A Guide to Possible offences for more information). They may try to verify your name and address either by sending a local officer round to your house, ringing your house or checking the electoral register (often they don't bother to check your address but don't count on this). If you refuse to give your date of birth they may put pressure on you to give it, as it makes it easier to locate you on the police computer, (eg by saying, "Everyone else has given theirs but nobody will be released until you give yours"). This is almost certainly just bluff - once they realise you're not going to be moved, they'll let the matter drop to avoid further loss of face. It's good to decide in advance whether you're going to give them this information or not and to let other potential arrestees know.

## **5. Your rights in detention**

You have a number of rights when you are in detention. The custody sergeant has a duty to inform you of them and will ask you to sign a form to confirm the rights have been offered to you. They include:

### **a. The right to have someone informed of your detention**

This right can be delayed, but only in serious offences and where the police can claim that they believe that allowing the arrested person to contact someone will lead to interference with evidence or alerting of other people involved in the offence. You may be able to make the call yourself, but it is more likely that it will be made for you. You only have a right to one call (but ask if you need to make more - you may be lucky) but obviously you can ask that the person contacted lets others know that you're in custody.

### **b. The right to independent legal advice**

This right can only be delayed for the same reasons as given above. If you wish, you can ask to see the duty solicitor who will be a local solicitor working on a rota to cover the police station. Some duty solicitors are fine, others not so good but they may be worth consulting purely to find out details of law even if you don't want to take their advice. Alternatively, you may contact your own solicitor if you have one. You are entitled to consult with your solicitor in private at any time. This includes any telephone conversations, although in practice the telephone is often in the middle of the custody suite. The services of any solicitor whilst you are in custody should be free of charge under the legal aid scheme.

### **c. The right to consult the Codes of Practice**

These are in a small pink book (the PACE Codes of Practice) in which are set out details of things such as conditions of detention, prisoners' rights, and so on. It's definitely worth knowing what your rights are so that you can ask for them if they're 'forgotten'.

All three rights should be offered to you when you first arrive at the station (unless the offence is very serious and the police decide to delay them); however, even if you decide that you don't want to take advantage of any of them at the time, you have the right to exercise them at any time during your detention.

You also have the right to ask to see a FME (forensic medical examiner, more commonly called a police doctor) if you are unwell or need medication or believe you have sustained any injury (you should definitely do this if you have been injured by the police, as the doctor's notes

may corroborate your version of events, useful if you want to make a complaint or a claim against the police).

## 6. Being searched

You will be searched; however, this usually consists only of being ‘patted down’ by an officer of the same sex as yourself. You cannot under most circumstances be asked to remove more than outer clothes. On occasions, the police may want to retain some of your clothing as evidence (eg in cases of criminal damage where there may be paint etc on them). In such a case, they must provide you with something else to wear. The police are only allowed to strip search you if there is good reason to believe that you are concealing an item such as a weapon or evidence or drugs. If you have been arrested for a more serious or ‘indictable offence (ie the offence is an ‘either way’ offence or must be heard in the Crown Court eg criminal damage, theft) the police have the power to conduct a search of premises (your home or workplace) or vehicles, without the need to obtain a search warrant. See Legal Briefing 3: A Guide to Possible Offences for more info on indictable offences. The premises or vehicles must be occupied or controlled by the arrested person, so in a shared house they can search your room and the shared areas (kitchen, loft, garden shed etc) but not the rooms of your housemates. In order to carry out the search they must reasonably suspect that there is evidence relating to the offence or to other similar offences in the premises.

## 7. Your property

The custody officer will ask you to take everything out of any bags which you have with you, and to turn out your pockets. Anything which has allegedly been used in the commission of the offence for which you have been arrested will be taken from you and retained by the police as evidence. This may include such things as paint, boltcutters, banners and leaflets. They will be listed on your custody record and you will be asked to sign for them. Do so if you wish, but there is no obligation to do so. If you do sign, make sure you do so directly under the last item listed as well as in the place they tell you, so that nothing can be added later. Do this when you’re signing for your other property too. The police can retain anything which they think could be used to cause harm to yourself or to others (belts, ties, laces, glasses, watches etc), interfere with evidence, damage property or effect escape. In practice, this is open to wide interpretation with some officers allowing you to keep such things as pencils and others deciding that you’re going to graffiti their walls and taking them away from you (although the codes of practice referred to above say that prisoners should be allowed to have writing materials (pencil and paper), so make a fuss if they try this). Everything should be returned to you on your release, except where you’re bailed to return to the police station or are charged, when

they will keep the items to be used as evidence, but your personal possessions will be returned.

## 8. In the cells

Once all the above procedures have been completed, you will be put in a cell. There should be a mattress and a pillow, but often isn’t, and you should be provided with blankets if you ask for them. It can get very chilly so wear plenty of warm clothes. Once in the cells, you may be left for several hours before anything else happens, but the gaoler is supposed to come and check on you every hour which gives you a chance to ask what’s going on, although the gaoler is unlikely to know, or to want to tell you even if s/he does know.

## 9. Eating and drinking

The police are required to feed you three times in a 24 hour period, at roughly ‘normal’ mealtimes, and to provide you with drinks at ‘reasonable’ intervals, whatever that means. They are supposed to take account of special dietary requirements, but don’t count on it. You may be allowed to keep food you have with you when arrested (police stations vary widely in what they allow) so it’s worth taking shop-bought sealed snacks and cartons of drink, but not homemade snacks or glass bottles or canned drinks.

## 10. Being interviewed

If you have been arrested for something like highway obstruction or disorderly conduct, it’s unlikely (but not impossible) that you’ll be interviewed. However, if you’ve been arrested for a more serious charge (eg criminal damage, burglary), there is a good chance that you’ll be interviewed, unless you were caught red-handed in which case they may not bother. If damage has been done, and they’re not sure who did it (or even if any of you did it), you will almost certainly be interviewed in the hope that someone will spill the beans.

You have the right to have a solicitor present when you are being interviewed - this may give you some moral support but don’t let the solicitor talk you into saying anything if your inclination is to refuse to answer questions. Remember that you have the right to consult with your solicitor at any time in private, or to request a solicitor at any point even if you’ve previously refused one. This might be a good idea, for example, if the interview is not going the way you expected. At least two tapes are made of the interview; one is sealed in your presence and kept sealed in case of later dispute. The other is copied and made available to the Crown Prosecution Service and the defence. If you are charged, you or your solicitor can request a copy of the tape.

Whether or not to speak to the police at an interview is a hotly debated issue. It is often claimed that the right to

silence was abolished by the Criminal Justice Act 1994. This isn't strictly correct - you still have the right to remain silent, but now inferences can be drawn from your silence, which previously couldn't be drawn. For example, if you were arrested for pulling up GM crops, and in your interview failed to mention that you were trying to protect nearby crops from cross-pollination (which might constitute a defence to a charge of criminal damage). In court, the prosecution could raise this, and the court could draw adverse inferences from it (ie that you only thought up the defence after the fact). But at the same time, it is worth remembering that the police are well trained in interview techniques and may try to lull you into a false sense of security by pretending to be sympathetic to your cause, in the hope that you will drop your guard and give them some vital information.

You may be asked not only about the action itself but also background questions such as who organised it, how you got there, what you know about other people and so on. Whether you answer questions about your own actions is of course entirely up to you, but on no account should you talk about what other people have done, or mention any names at all, in any context. In some instances, it may be the case that the police have insufficient evidence to charge you and are relying on you confessing in your interview. If you refuse to speak, they may have no option but to let you go without charge.

One way out of the dilemma of whether to answer questions is to prepare a statement beforehand setting out everything you wish to say about why you are taking the action. You can tell the police that you'll read out your statement but don't wish to say anything beyond that. This should prevent the 'you didn't tell us about your defence at the time' problem, at the same time as avoiding being drawn into answering questions you'd rather not answer. If you're not allowed to read the statement, you should state clearly that you wish to read it out and are being prevented from doing so, and then insist on the tape being played in court (you have the right to have the whole tape played, or the entire transcript read out) so the court is clear that you wished to say something but were not allowed to.

## 11. Length of detention

You should reckon on an absolute minimum of three to four hours in custody, but it could be much longer, and it's probably unwise to risk arrest if you have any urgent engagements that day. A senior officer must review your case six hours after you first arrive at the station, and decide whether there are grounds for your continued detention. If s/he decides that there are such grounds (and in practice, this is basically rubber-stamping), you can be held for another nine hours before another review takes place, and so on for a total of up to 24 hours where

you have been arrested for a relatively minor offence that can only be tried in the Magistrates court. If it's a more serious or 'indictable offence' (ie the offence is an 'either way' offence or must be heard in the Crown court eg criminal damage, theft) the maximum period of detention is 36 hours. You must either be released or charged before the time limit (24 or 36 hours) has expired. The police must apply to a magistrate if they wish to detain you further without charge.

In general, you might expect to be held for between four and twelve hours - however, it must be stressed that these are very rough figures and there are no certainties, so come prepared for a long stay! The police are under a duty to conduct any investigation with 'all due expedition' - ie as rapidly as reasonably possible. You can therefore make representations to the inspector who conducts the reviews regarding any undue delay. You can ask for any representations or concerns to be recorded on the custody record (see below). One reason for delay may be the requirement that prisoners have an appropriate rest period (8 hours) which might mean, for example, that the police will not start an interview at midnight, but may put it off until the morning.

## 12. Getting out

Sooner or later, the police will do one of six things with you. The possibilities are:

- a. They will charge you with an offence.
- b. They will ask you to accept a caution.
- c. They will issue you with a formal warning.
- d. They will bail you pending enquiries
- e. They will report you with a view to prosecution
- f. They will release you without charge.

### a. Charged with an offence

This means that the police believe that they have enough evidence against you to have a reasonable chance of conviction in court. The offence with which you are being charged will be read out to you and you will be asked if you have anything to say. What you say must be read out in court so this is another opportunity for making a statement about the purpose of the action if you wish. You cannot be asked any more questions about the alleged offence once you have been charged with it. Once charged, the police will decide whether or not to bail you (see section 16).

### b. Caution

This is sometimes used for more minor offences and where the person concerned does not have already have a criminal record. It is more commonly used for juveniles (under 17) than adults. It is supposed to mean that the police believe there is sufficient evidence to convict you in

court, but will not ask for you to be prosecuted if you accept your guilt by signing a caution. However, it is not uncommon for people to refuse a caution and then not be charged with the offence, which suggests that the police didn't have enough evidence against them and therefore should not have been trying to caution them at all. Bear this in mind when you decide whether or not to accept a caution; however, you could be unlucky and still be charged if you refuse. If you're anxious to avoid court for whatever reason, it may be an idea to accept it. A caution **does** constitute a criminal record and must be disclosed in the same circumstances as ordinary convictions, for example on a job application. Although convictions can in some circumstances be treated as 'spent' after a period of time, the period depending on the sentence imposed, convictions and cautions no matter how old do have to be disclosed for certain jobs, such as teaching and nursing.

### c. Formal warning

A formal warning is a record of your offence - which you have to admit to by signing a form - which is held on record only at the police station at which it is issued. It does not constitute a criminal record and is disposed of if you do not come to the attention of that police station again within three years. If you do end up at that station again, the police will take the formal warning into account when deciding what action to take against you subsequently.

### d. Release on bail pending enquiries

There are a number of situations where you might be released on bail from the police station with an obligation to return after a period of days, weeks or even a month or two. For example, the police may not have had time to take all the statements they require from witnesses in order to make a decision as to whether or not to charge you, or they might require legal advice from the CPS (Crown Prosecution Service) before making a decision. If the alleged offence is triable only in a magistrates court, charges must be brought within six months of the alleged offence. If the offence is indictable (ie can be, or must be, tried in Crown court), there is generally no time limit on bringing charges. There is no power to impose bail conditions when releasing suspects in this situation, but it is a criminal offence - punishable by a fine, imprisonment or both - not to return to the police station when required to do so.

### e. Being reported

This means that the police haven't decided whether to charge you or not; they will send a report of the alleged offence to the CPS, who will make a decision on prosecution. Time limits on bringing charges are the same as if

you're released on bail pending enquiries (see above). If a decision is made to charge you, you will receive a summons through the post requiring you to attend court. The police do not have the power to impose bail conditions if you're reported.

### f. Release without charge

This is just what it says - the police decide there's not enough evidence against you and release you with no further action. Being released without charge is not at all uncommon for activists; very often there is no reason to arrest you at all, but you will be arrested on some dubious pretext and left to cool your heels for a few hours, simply as a means of getting you out of the way. Before you are released all your property must be returned to you, even if the police think it has been used to commit an offence. Sometimes they may try to hang onto it - don't let them get away with this.

## 13. Photographs

If you are arrested for any offence the police can take your photograph, without your consent. The photo can be taken either before or at the police station. If you refuse to co-operate with them they can and will use 'reasonable force'.

## 14. Fingerprints

If you are arrested for a recordable offence, essentially any offence punishable with imprisonment, but also a few others like disorderly conduct and breach of sections 12 and 14 of the Public Order Act 1986, (which covers pretty much everything you might be charged with, except highway obstruction and breach of the peace), the police have the right to take your fingerprints, without your consent. You are at liberty not to co-operate with fingerprinting, but the police will use 'reasonable force' if you don't. Your fingerprints can be taken, including at a place other than the police station, before you have been arrested, **but** only by a constable who has reasonable suspicion that you are committing, have committed or have attempted to commit an offence and they cannot ascertain your name and address or they believe you have given a false name and address. Your prints will be added to the national fingerprint database, and will also be subject to a 'speculative search' (ie comparing them with unidentified fingerprints found at scenes of crime to see if they can nail you for anything else as well).

## 15. DNA samples

DNA samples can be taken without consent from anyone arrested for a recordable offence. Usually this takes the form of a mouth swab but sometimes they may pull hair out of your head instead. They are allowed to use 'reasonable force' to take a DNA sample if you refuse to co-

operate. They may also wish in more serious cases to take samples such as blood or scrapings from under your fingernails, which they will use as forensic evidence to link you to the scene of the 'crime'.

It's no longer possible to have your photo, fingerprints and DNA sample destroyed if the charges against you are dropped or you are acquitted.

## 16. Bail

If you are charged with an offence, the police will have to decide whether to grant you bail (ie to release you from custody pending your court case). There is usually a right to bail, but there are a number of circumstances where the police may refuse bail. These include a belief that you may not turn up at court (eg if you have not turned up in the past or if they are not satisfied with the address you have given); their belief that you would commit further offences, (eg if you already have a criminal record); that you are already on bail for something else; or even that they think that you feel so strongly about the issue that you might take similar action again.

You may well have bail conditions imposed on you such as staying away from the site where you were arrested, or sleeping at your home address each night. If you don't agree to these conditions, you won't be released but will be held in custody and taken to the next sitting of the local court (usually the next day unless it's a weekend in which case you'll have to sweat it out in the cells until Monday) where you will be able to argue that the bail conditions the police wish to impose are too harsh. If you decide to accept the bail conditions imposed by the police you can still challenge them at your next appearance in court.

When you are bailed you will be told where and when to return to court (or to the police station if you haven't been charged but are bailed pending further enquiries), and warned that failure to appear is an offence which can lead to a fine, imprisonment or both. You will be asked to sign a form agreeing to attend at the time stated. If you refuse to sign the form then you will not be released.

If the police decide that you should not be granted bail at all, they will take you to court where the CPS will make a case to the magistrates as to why you should not be released, and you or your solicitor will be able to put forward reasons why you should be given bail. If their decision is that you should be remanded in custody, you'll be taken back to the cells to await transport to the nearest prison.

## 17. Custody records

As soon as the custody officer has authorised your detention, s/he is obliged to start a custody record on you. This is a form which details everything which happens to you

whilst you are in police custody and includes a list of your property, the reason you are being detained, whether you seek legal advice or not, times of meals served to you, and so on. You have a right to a copy of your custody record once you are released, whether or not you are charged; this right lasts for 12 months from release.

## 18. What to take on an action

If you're thinking of doing something which carries a risk of arrest, however small, it's good to be prepared for the time at the police station, to make your life as comfortable as possible. Even if you're not thinking of risking arrest, it may be good to have these things with you anyway as there's probably no such thing as a 100% risk-free action.

Recommended articles include:

- A book (or three) - you may be on your own in a cell for many hours.
- A notebook (not spiral bound) and pencil (you're more likely to be allowed to keep a pencil than a pen) - it's useful to write down what you can remember of the action and arrest at once. If your notes are made straight away, you should be allowed to refer to them in court in the same way as the police do.
- Toilet paper - there's rarely any in police cells.
- Food and drink, especially if you have special dietary requirements.
- Spare clothes - it can get very cold in the cells.
- A toothbrush (in case of a long stay, and it gives the police the chance to make jokes about you having come for a holiday).

## 19. What not to take on an action

The police or Special Branch are interested in all 'political' action and would enjoy getting their hands on your address book, diary, list of people you met at a gathering last week. Don't give them the pleasure - leave it all at home. Likewise don't have anything with you which shows that you've been preparing for the action, or anything which mentions future actions or other groups - essentially, leave anything personal or political behind. If you usually carry a penknife, make sure you leave it behind as the police could conceivably construe it as an offensive weapon. In certain circumstances you could have the film from your camera removed and developed by the police, so make sure there are no incriminating pictures on it.

**We have tried to be as accurate as possible. However, it would be impossible to include every point and issue in a short briefing like this. If you are in any doubt about a point, please ask us, and if we can't answer your question we will try to refer you to someone who can.**

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