

Additional Material for Chapter 36 – The right to take photographs, film and record

Section numbers from the book are used where relevant. Its content provides fuller explanations and context.

36.2.3 Public order and 'obstruction' offences

If police threaten a photographer or video-journalist with arrest, or arrest her or him, it may be for an alleged public order or 'obstruction' offence. See 36.2.3 in *McNae's*. An arrest may not lead to a charge or the person may be acquitted.

Case study: Wiltshire police paid compensation to photo-journalist Robert Naylor after an incident in 2009 when he went to a canal to report on a death in a boat fire. A police sergeant told him he could not take photos because of 'respect for deceased'. Soon afterwards, as he started back to his car, he was dragged to the ground, arrested and handcuffed for allegedly 'breaching the peace'. Wiltshire police later accepted he was unlawfully detained and apologised (*Media Lawyer*, 30 March 2011).

Case study: A freelance photographer was arrested in 2007 as he tried to take pictures of a man threatening to jump from the Tyne Bridge in Newcastle. The photographer was later charged with obstructing the police. A district judge at the city's magistrates' courts acquitted him, saying he had acted 'professionally' (*Media Lawyer*, 15 October 2007).

36.3 Trespass and by-laws

As stated in 36.3 in *McNae's*, trespass is not a criminal offence in most locations. But it could be prosecuted as a criminal offence if the trespass is at a place listed as a 'protected site' in statutory instruments supplementing the Serious Organised Crime and Police Act 2005, which created this offence. See Useful Websites, below, for the lists. This law was primarily created to counter trespass by terrorists. Such sites include Ministry of Defence locations, GCHQ in Cheltenham, the Palace of Westminster, Buckingham Palace, some other Royal sites and nuclear ones, including nuclear power stations.

For official secrets law on 'prohibited places', see 33.3 in *McNae's*.

Aggravated trespass

Section 68 of the Criminal Justice and Public Order Act 1994 created the offence of aggravated trespass. It has been used against protesters such as those who, demonstrating over alleged tax evasion by the rich, occupied the Fortnum and Mason store in London in 2011. A journalist covering an 'occupation' or trespass which is protest could be accused of the offence. A person commits aggravated trespass if he/she trespasses and, in relation to any lawful activity which other persons are engaged in on that or adjoining property, does anything intended to have the effect of:

- intimidating any of them so as to deter them from engaging in that activity; or
- obstructing that activity; or
- disrupting that activity.

The penalty for aggravated trespass is up to three months' imprisonment or a fine.

Section 69 of the Act says a senior police officer present at the scene has power to order any person believed to be involved in aggravated trespass to leave the property. Failure to leave, or returning within three months, is an offence. A journalist who fails to leave may have a defence under the Act that he/she had 'a reasonable excuse' to stay.

Useful Websites

<https://www.cps.gov.uk/legal-guidance/trespass-and-nuisance-land>

Crown Prosecution Service legal guidance on the aggravated trespass offence

<https://www.gov.uk/government/publications/trespass-on-protected-sites-sections-128-131-of-the-serious-organised-crime-and-police-act-2005>

Government information on what are 'protected sites' under sections 128-131 of the Serious Organised Crime and Police Act 2005