



## Crime

# Breach of the Peace

## Unit 3 Your Notes

### Lesson Aim

To introduce you to the common law crime of Breach of the Peace and a number of statutory alternatives.

### Learning Outcomes

After this lesson you will be able to:—

- (A) Define the crime of breach of the peace and identify the essential elements.
- (B) Outline the offence of Threatening and Abusive Behaviour.
- (C) State your police powers in relation to the crime of Breach of the Peace and considerations in respect of public order.
- (D) Identify statutory alternatives to the crime.
- (E) Describe the offence of Stalking

### What is a Breach of the Peace?

Breach of the Peace is:—

- a crime at common law;
- constituted by one or more persons;
- conducting himself or themselves in a riotous or disorderly manner;
- where such conduct is severe enough to cause;
- alarm to ordinary people; **and**
- threaten serious disturbance to the community.

A



Breach of the Peace

Let's look at the essentials:—

- Breach of the peace is a common law crime.
- It can be committed by one or a number of people.
- The conduct of the person or persons must be riotous or disorderly.
- The conduct must be severe enough to cause alarm to ordinary people **and** threaten serious disturbance to the community.



The words "severe" and "serious" in the last bullet point above are indicative of the fact that Breach of the Peace is not considered a trivial crime. Whilst some Breaches of the Peace might be more "minor" in nature than others in essence they must still meet this criteria.

You will note that there is nothing in the definition that limits where the crime may be committed. It can take place **anywhere**, e.g. in a public place, within someone's house or place of employment - literally anywhere provided there is a "public element" to it. If the behaviour takes place in private, there must be a realistic risk of it being "discovered", i.e. coming to the attention of the community (see **Ferguson V. Carnochan** below and the section on **Behaviour in Private** on Page 4).

#### Case Law

*It has been held to be a breach of the peace for a man to create a disturbance by cursing, shouting and yelling in his own house in the early hours of the morning as it could be heard by witnesses out in the street. (Ferguson V. Carnochan, 26SLR 624).*

#### Effect on the Public

First we will consider the effect of the crime on members of the public.

Before the crime is complete the conduct of the accused must be severe enough to :—



Offender



Local Resident



Member of Public

- cause (or threaten to cause) at least one member of the public to be
- alarmed, **and**
- threaten serious disturbance to the community.

When deciding whether to charge someone with a breach of the peace you will have to consider the place, time and circumstance of the incident. An offensive remark shouted on a deserted beach will obviously have a negligible effect on the public whereas the same remark shouted during a performance in a theatre may cause alarm to several people.

Actual alarm is not required in order for the conduct to amount to a breach of the peace. What is required is consideration of whether in the circumstances the conduct is of such a degree that it would be genuinely alarming and disturbing in its context to any reasonable person.

### Police Witnesses

In **Smith v Donnelly 2001 SCCR 800** it was stated that any refusal to co-operate with the police, even if forcefully or truculently (argumentatively) stated, is not likely to be sufficient in itself to justify a charge of breach of the peace.

**Kinnaird v Higson 2001 SCCR 427** is an example of a case in which swearing at a police officer and attempting to walk away twice when told to remain was held *not* to constitute a breach of the peace. This was on the basis that there was no evidence that anyone was alarmed or likely to be alarmed by the conduct. In cases involving swearing at a police officer with no other associated behaviour you should carefully consider the surrounding circumstances. If there is nobody else in the vicinity who is likely to be alarmed by the conduct, it is unlikely to amount to a breach of the peace.

Where the language used is so offensive that even a police officer who is used to hearing bad language in the course of their daily employment could be alarmed by it, then a charge of breach of the peace would be justified. This may also be the case if there are threats involved which could cause you alarm.

If there are other members of the public present then you should ensure that any police report includes sufficient evidence as to the nature of the conduct and the alarm which has been caused or could potentially be caused to members of the public or the community if the conduct was allowed to continue. There must be something substantially greater than mere irritation involved.

### Types of Conduct

The definition states that the conduct of the offender must be riotous or disorderly. Let's look at what is meant by these terms.

#### Riotous Conduct

This term indicates that there is an element of noise, rowdyism, wild or violent behaviour, etc.

Some incidents that courts have held to be competent charges of breach of the peace are:—

- a person who interrupted and disturbed a Salvation Army meeting by conducting himself in a riotous and disorderly manner  
(**Hendry v Ferguson, 20 SLR 659**)
- a man who swore and made rude gestures at rival supporters at a football match  
(**Wilson v Brown, 1982, SCCR 49**)



# Unit 3 Your Notes

## Disorderly Conduct

Disorderly conduct is more difficult to define. The essence of the crime is that the actions of the perpetrator are such that an ordinary person could be placed in a state of alarm and be seriously disturbed. If the behaviour of an individual does this and that behaviour is outwith what is normal and acceptable (remember some people are more easily alarmed or disturbed than others), the crime is complete.



You will note that the above conduct does not necessarily involve any noise. In **(Raffaelli v Heatly, 1949, SLT 284)** "peeping Tom" activities were rightly labelled as breach of the peace as it was deemed not essential that the witnesses should say that they were personally alarmed or annoyed.

*Note:— The actions of a "peeping Tom" would now be dealt with as a contravention of the Sexual Offences (Scotland) Act 2009.*

## Behaviour in Private

The case of **Harris v HMA 2009** emphasises that to constitute a breach of the peace there must be a public element to the offence. It is **not** the case that a breach of the peace **cannot** take place in a private house but if the behaviour takes place in private, there must be a realistic risk of it being "discovered".

However legislation creates the offence of Threatening and Abusive Behaviour which covers situations where there is no public element, e.g. domestic abuse which falls short of assault (as in the case of **Hatcher v PF, Hamilton 2010**).

B

## Threatening and Abusive Behaviour

### Section 38 of The Criminal Justice and Licensing (Scotland) Act 2010

Creates an offence for any person to

- behave in a threatening or abusive manner
- where the behaviour is likely to cause a reasonable person to suffer fear or alarm and
- the person behaving in such a manner intends the behaviour to cause fear or alarm or
- is reckless as to whether the behaviour would cause fear or alarm.

This applies to any kind of behaviour including things said or otherwise communicated as well as things done and can also be behaviour consisting of a single act or a course of conduct, i.e. a series of repeated "associated" acts.

The offence under Section 38 is not limited by any requirement that the behaviour is capable of causing **disturbance to the community** and unlike the crime of Breach of the Peace may be committed where the behaviour is capable of causing fear or alarm to a single person only.



### Defence

A defence is available where a person charged with a Section 38 offence can show that the behaviour was reasonable in the particular circumstances. The court will decide what is "reasonable" on a case by case basis.

### Attempted Suicide

It is not an offence in Scotland to attempt to commit suicide although it may be that such an attempt in public (in exceptional circumstances) could be deemed to be a breach of the peace. However it is seldom in the public interest to prosecute in these circumstances. In such cases where you have ongoing concerns regarding an individual you should consider the powers available under the Mental Health (Care and Treatment) (Scotland) Act 2003 which apply where a person may have a mental disorder **and** the interests of that person or the protection of another person requires that they are removed to a place of safety. This legislation will be covered in more detail during Unit 4.

The exception to the general rule that attempts to commit suicide should not be charged as a breach of the peace is the situation where the individual concerned has threatened to cause injury to another person during the attempt. Such cases should be reported to the Procurator Fiscal for consideration.

### Police Powers

As Breach of the Peace is a crime at common law you have the power to arrest an offender without warrant. However, when dealing with a minor breach of the peace you should exercise this power sparingly, e.g. if the perpetrator refuses to desist, etc.

In minor cases it may be appropriate to use your discretion but you must always be able to justify your actions.

Depending on the circumstances you may:—

- warn the culprit; **or**
- issue a fixed penalty notice (see note); **or**
- report for citation; **or**
- arrest.

**Note:—Under Section 128 of the Anti Social Behaviour Etc (Scotland) Act 2004, certain crimes/offences including Breach of the Peace have been listed as being suitable for the issue of a Fixed Penalty Notice.**

**Section 129 of the Act states that a Constable who has reason to believe that a person aged 16 years or over has committed a Fixed Penalty Offence in a prescribed area may give the person a Fixed Penalty Notice in respect of the offence, except where such a person is the subject of a supervision order.**

The Criminal Justice and Licensing (Scotland) Act 2010 is silent in relation to powers of arrest for the offence under Section 38 so should it become necessary to take an offender into custody, you would have to resort to a relevant common law power of arrest. Section 38 is punishable by imprisonment so detention of suspects under Section 14 of the Criminal Procedure (Scotland) Act 1995 is available.





### Communication

*The way you communicate with a potentially volatile situation/crowd could result in resolving or escalating a situation. Providing a police presence can be an effective course of action and assist in monitoring the developing situation.*

### Additional Statutory Alternatives to Breach of the Peace

As we have seen most instances of breach of the peace are dealt with at common law but certain statutes create similar offences, e.g. Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and:—

#### 1. Civic Government (Scotland) Act 1982, Section 54

Any person who:—

- A. sounds or plays any musical instrument,
- B. sings or performs, **or**
- C. operates any radio or television receiver, record player, tape recorder or other sound producing device

so as to give any other person reasonable cause for annoyance and **fails to desist on being required to do so by a constable in uniform** shall be guilty of an offence.

Under this legislation a police officer may enter premises without warrant and seize noise-making equipment if it is reasonably suspected that an offence under the Civic Government (Scotland) Act 1982, Section 54 (above) has been committed and may use reasonable force in doing so.

This section also empowers the police to retain the equipment and hold it for 28 days whereupon the owner may reclaim the property being liable for any storage costs.

#### 2. Communications Act 2003, Section 127

A. A person is guilty of an offence if they:—

- i) send by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- ii) causes any such message or matter to be so sent.

B. A person is guilty of an offence if for the purpose of causing annoyance, inconvenience or needless anxiety to another, they:—

- i) send by means of a public communications network, a message that he knows to be false;
- ii) causes such a message to be sent; or
- iii) persistently makes use of a public electronic communications network.

### **3 Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, Section 6**

It is an offence for a person to communicate material (including anything that is capable of being read, looked at, watched or listened to) to another person by any method other than by means of unrecorded speech if **either one** of two specific “conditions” is met.

Condition A:-

- The material consists of, contains or implies a threat or an incitement to carry out a **seriously violent act** (explained below) against a person or persons of a particular description;
- The material or its communication would be likely to cause a reasonable person to suffer fear or alarm; and
- The person communicating the material:-
  - intends to cause fear and alarm by doing so, or
  - is reckless as to whether it does.

**OR**

Condition B:-

- The material is threatening; and
- The person communicating it intends to stir up hatred on religious grounds.

A **seriously violent act** is an act that would cause serious injury to or the death of a person.

**Hatred on religious grounds** means hatred against a group or an individual based on membership or presumed membership (presumed by the offender) of a religious group or association with members of such a group.

### **Police Powers**

This offence covers a wide range of offending behaviour and is intended to address threats of serious harm and threats intended to stir up religious hatred made in a variety of ways, e.g. leaflets and posters, banners and t-shirts, as well as more conventionally by mail or email or on the internet, including blogs, tweets and social networking sites such as Facebook. It does not however include verbal threats unless they have been communicated in a recording.

The Act is silent in relation to a power of arrest for this offence but an offender may be sentenced to a period of imprisonment providing the police with the power to detain a suspect under Section 14 of the Criminal Procedure (Scotland) Act 1995.

This offence can be committed outside Scotland provided the offender intends the material communicated to be read, looked at, watched or listened to primarily in Scotland. Although committed outside Scotland such an offence can competently be dealt with by Scottish courts.



*Note:-Section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is an example of a "Hate Crime". Hate Crime is covered as a lesson later in the Crime Unit. The term "religious group" will be explained at that time.*

*Section 1, which relates to offences committed in relation to football will be covered in the lesson Sporting Events - Legislation during Unit 4.*

### Stalking

Section 39 of The Criminal Justice and Licensing (Scotland) Act 2010 creates the offence of "stalking." This section provides that an offence is committed where a person engages in a **course of conduct** (i.e. conduct on at least two occasions) which causes another to suffer fear or alarm.

For the purpose of the offence "conduct" means;-

- following the victim or any other person
- contacting or attempting to contact the victim or any other person by any means
- publishing any statement or other material relating or purporting to relate to the victim or to any other person or purporting to originate from the victim or from any other person
- monitoring the use by the victim or by any other person of the internet, email or any other form of electronic communication
- entering any premises
- loitering in any place (whether public or private)
- interfering with any property in the possession of the victim or of any other person
- giving anything to the victim or to any other person or leaving anything where it may be found by, given to or brought to the attention of the victim or any other person
- watching or spying on the victim or any other person or
- acting in any other way that a reasonable person would expect would cause the victim to suffer fear or alarm.

### Defence

It is a defence for a person charged with this offence if they can show that the course of conduct was reasonable in the circumstances. Again the court will decide what is "reasonable" on a case by case basis.

### Police Powers

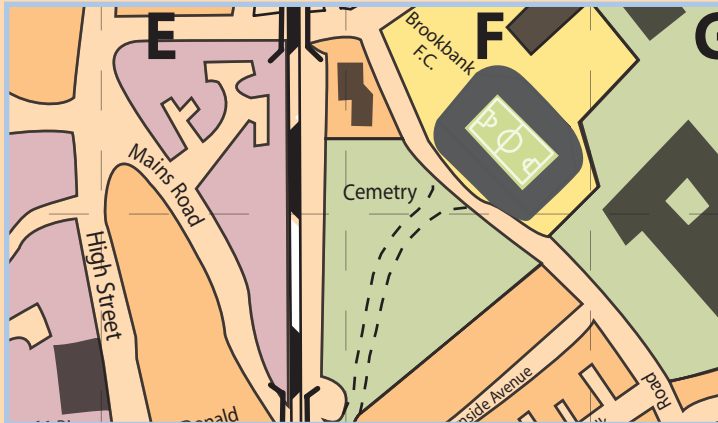
The Criminal Justice and Licensing (Scotland) Act 2010 is silent in relation to the offence under Section 39 so should it become necessary to take an offender into custody, you would have to resort to a relevant common law power of arrest. Section 39 is punishable by imprisonment so detention of suspects under Section 14 of the Criminal Procedure (Scotland) Act 1995 is available.



## Activity 1

Read the scenarios and discuss the following in your groups.

- Was the action taken by you appropriate?
- What alternative actions could you have taken?



### Scenario 1

You are on duty at a football match. During the game you become aware of three football fans nearby shouting and swearing at the referee's decision.

You decide to arrest the three fans for a breach of the peace.

As a result of your actions the surrounding crowd surge onto the pitch trying to free the individuals you have arrested.

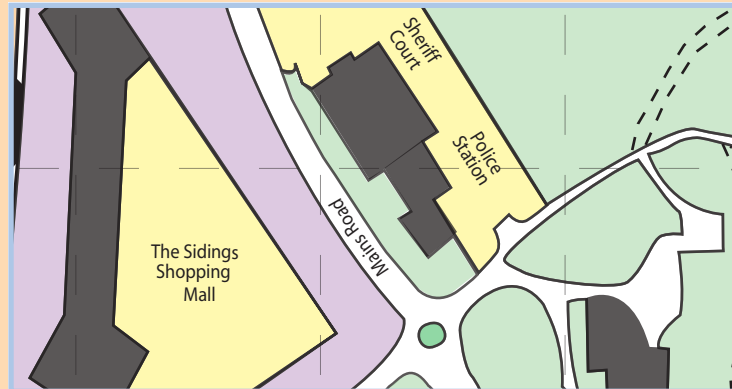


# Unit 3

Your Notes

## Activity 1 continued

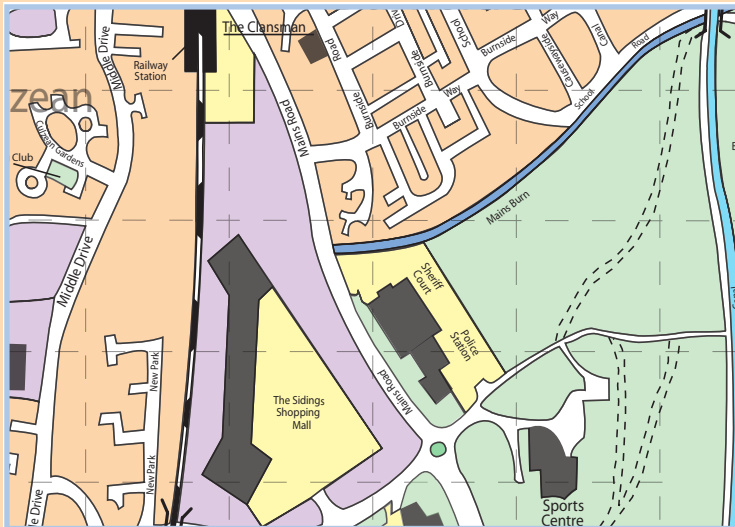
### Scenario 2



A local resident arrives at the police station and asks you for advice. He tells you that he has been separated from his wife for two months. Since the separation his estranged wife has been following him in her car and he has seen her parked outside his house for long periods of time. He has also received numerous phone-calls, several during the night pleading for a reconciliation. He is looking for a resolution.

Your advice is for him to call at his wife's house and ask her to stop following and watching him. You tell him to come back to see you if the situation persists.



**Activity 1 continued****Scenario 3**

You are on foot patrol with your colleague in a busy shopping centre. As you walk past a group of youths one of them blocks your path, challenges you and shouts abuse at you.

You arrest this youth for a breach of the peace.



### Feedback 1

There is no feedback for this Activity. Please refer to your lesson notes and discuss with your class instructor.



#### *Further Information*

*For further information see:—*

- ***PINS—SCL 20: Criminal Law: Terrorism and Public Order***
- ***PINS—SCL 11: Criminal Law: Crimes Against the Person***