

# PROTESTING DURING A PANDEMIC: WHAT ARE YOUR RIGHTS?

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## Protesting and human rights

1. The general rule is that everyone has the right to associate with others and to gather together for a common purpose. Article 11 of the ECHR safeguards our right to peaceful assembly and is one of the foundations of a democratic society. This means that the State cannot interfere with your right to join a peaceful assembly and protest, even if the protest is against the State itself, or simply because the protest might cause inconvenience or lead to heated debate and tension. Article 11 does not safeguard intentionally violent protests; the State can interfere where a protest turns violent.
2. The right to protest and associate with others is a qualified right. This means that it can be limited in certain circumstances. Any limitations must be legal, necessary, and proportionate. In addition, any limitation to the rights under article 11 ECHR must pursue one of the following aims:
  - (i) The interest of national security and/or public safety;
  - (ii) The protection of health and morals;
  - (iii) The prevention of disorder or crime; and
  - (iv) The protection of others' rights and freedoms.
3. During a global pandemic, the State can limit your rights to associate with others and assemble, as it has a positive obligation to safeguard the health of the nation. This means the introduction of measures that limit your movements, how much time you spend outside, who you see, and how many people you see at one time, could be a legal and legitimate way of curbing the spread of the disease. The government has introduced emergency legislation to this effect; the Coronavirus Act 2020 and related regulations limit your right to assemble and associate with others.

## Can I participate in a protest?

4. Technically no. The government passed its latest round of regulations on 1<sup>st</sup> June 2020, following a review of the previous lockdown measures. Section 7 of the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020 makes it illegal to participate in an outdoor gathering that consists of more than 6 people who are not from the same household. Although the Regulations provide for some exceptions, assembling for the purposes of protesting is not on the list of exceptions. This means that joining a protest is currently illegal. Theoretically, the only way to legally participate in the protest is in small clusters of six persons in a big outdoor space, with the appropriate social distancing measures in place. In practice, this is unlikely to happen. Thus, a large protest attracting hundreds or thousands of people potentially participating in illegal activity, will require police involvement.
5. In addition, the government has the power to issue a direction prohibiting the holding of an event or gathering.<sup>1</sup> The direction can only be issued against the owner or occupier of the premises, the organiser of the event, or anyone else involved in holding such an event or gathering. This means that where a protest is held on private property, or where it is organised by an individual or organisation, a direction could be issued against them ordering them to cancel the event or gathering. Such a direction cannot be issued against someone whose only involvement in the event or gathering is by attending the event or gathering. However, if you are attending a gathering, you can still be fined by the police, or even arrested in some circumstances.

## Fines and penalties

The government has now introduced higher penalties for those who break lockdown rules. If the police believe that you have broken the law or fail to comply with instructions aimed at enforcing the rules, you could be fined up to £100 for a first offence, with subsequent offences attracting higher penalties; the maximum penalty is £3,200. For more information on penalties and fines see [here](#).

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<sup>1</sup> s.5, Schedule 22, Coronavirus Act 2020

## Could the police arrest me for protesting?

6. You can be arrested if you are in the process of committing an offence, you are about to commit an offence, or if the police officer carrying out the arrest has reasonable grounds to suspect that one of the above is true. In the context of a protest this is important, as you may find yourself in a situation with other people around you that could prompt a police officer to arrest you, even when you haven't committed a crime.
  
7. An arrest is not lawful unless the following criteria is met:
  - The officer has reasonable grounds to believe that an offence has been committed or is about to be committed.
  - The arrest is necessary.
  
8. An arrest is necessary only if the objective cannot be met by some other means, such as the imposition of a fine, or by giving a warning. The arrest must be necessary for one of the following reasons:
  - To enable the name or address of the person in question to be ascertained;
  - To prevent the person in question from causing or suffering physical injury, loss or damage to property, committing an offence against public decency, or causing an unlawful obstruction of the highway.
  - To protect a child or other vulnerable person from the person in question,
  - To enable the investigation of the offence or the conduct of the person in question.
  - To prevent any prosecution for the offence.
  
9. The above list is exhaustive; where none of the above conditions is met, a suspect must not be arrested. You should not be arrested simply because you have breached the lockdown rules by failing to maintain social distancing, or by participating in a gathering in a manner that is contrary to the regulations. You could, however, receive a fine, or be asked to leave the gathering. An arrest could become necessary if you refuse to comply with directions, you use force, commit another offence, or fail to provide your name or address when asked by the police.

## What if I end up being arrested?

10. If you are arrested, do not use force to resist the arrest. The police can use reasonable force to effect an arrest, and this can cause friction. The force used by the police must be necessary and proportionate. The arrest will be unlawful unless the person arrested is informed of the reason for the arrest at the time of the arrest, or as soon as practicable after. Where a person is arrested by a constable, this requirement applies even if the reason for arrest is obvious.<sup>2</sup> A suspect must be cautioned upon arrest, unless it is impracticable to do so because of their condition at the time.
11. What is meant by 'cautioned' is that the police should inform you that you do not have to say anything, but it may harm your defence if you do not mention something which you later rely on in court, and that anything you do say may be given in evidence. This will be read out to you in most situations. Police officers usually have a pocket book with them, which they should have on them at all times. The arresting officer is required to record a number of things in their pocket book at the time of arrest, including:
- The nature and circumstances of the offence leading to the arrest.
  - The reasons why the arrest was deemed necessary.
  - The giving of the caution.
  - Anything said by the relevant person at the time of arrest.
12. If you are taken to a police station, the custody officer must inform you of your rights while in custody. A decision to be detained for the purposes of further investigation must be made by a custody officer, not the arresting officer, and it has to be necessary for the purposes of the investigation. When at the police station, you are entitled to the following:
- Free legal advice. Ask to speak to a duty solicitor.
  - The right to tell someone where you are. This could be a family member or friend.
  - A written note explaining your rights while in custody. You are entitled to regular breaks for food and water, as well as toilet breaks. If you do not speak English, you are entitled to the written notice in your language.

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<sup>2</sup> S.28 (3) and 94), PACE 1984.

13. If the police question you, you do not have to say anything. The police will have to caution you again and explain the effects of not answering any questions. You can just say 'no comment'. If you are in this situation, it is advisable to seek free legal representation. See [here](#) for the rules the police must follow.

### **Can the police stop and search me?**

14. The police can stop and question you at any time, no reason is required. You do not have to stop or answer any questions, and this cannot be used as a reason on its own to search you. The general rule is that the police can stop and search you if the officer in question has reasonable grounds to suspect that you may be carrying a weapon, illegal drugs, stolen property, or something which could facilitate the commission of a crime.
15. You can be stopped and searched with no reasonable grounds only with the approval of a senior officer. This could happen where there is a risk of serious violence, you are carrying a weapon or have been seen to use one, or you are in a specific location or area. It is possible to be stopped and searched without reasonable grounds if you are in an area where a violent protest is taking place.
16. Before searching you, a police officer must identify him/herself by giving you their name and police station. You should also be informed about what the police officer is expecting to find and the reason why you are being searched, as well as the legal reason the police is entitled to search you (i.e. because you are in the immediate vicinity of a violent protest or a dangerous area or location). Finally, you should be informed that you are entitled to a written record of the search and how you can obtain one.
17. The police officer conducting the search can ask you to remove your jacket, a hat, or your gloves, if you are wearing gloves. This also applies to any part of your clothing which you might be wearing for religious reasons, such as a turban, and has to be done in private. If you are required to take off additional clothing, the police officer conducting the search should be the same sex as you.
18. More information on police powers to stop and search is available [here](#) and [here](#).

## REMEMBER

- Even though you have a right to protest, these are unusual times. At the time of writing, over 37,000 people have passed away with Covid-19, and the rate of infection is still high in the UK. Even though injustice should not be allowed to prevail, and protesting against it is a sign of a healthy democracy, you need to be responsible. Use common sense and try to abide by the regulations and social distancing rules, to avoid or minimise the risk of spreading the disease.
- Do not carry weapons or items that could be used as a weapon. Do not use force, do not threaten the police, and do not engage in violent activity. The beautiful thing about peaceful protesting is that it can be impactful without leading to unrest. Be responsible.
- If you do get arrested, make sure that you know what your rights are and speak to a solicitor once you arrive at the station. Don't forget to ask for free legal advice, you are entitled to it, and you should be informed of that by the custody officer. A recent report by Transform Justice outlines that the police have been using the power to detain too freely (read more about it [here](#)). Knowing when to challenge it and how, is important. Seeking legal advice early is crucial.

**This document should not be used as a substitute for obtaining legal advice. To discuss this article further with the author, or to instruct one of our barristers for advice on this or any other matter, please contact Tom Cox on [tom.cox@3pb.co.uk](mailto:tom.cox@3pb.co.uk).**

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