Contents

Objectives ........................................................................................................... 3

Power of Arrest and Entry ............................................................................. 4

Structure of offences .....................................................................................4

S5 Harassment, Alarm and Distress ......................................................... 5

S4A Intentional Harassment ...................................................................... 8

S4 Fear or Provocation of Violence ............................................................... 10

S3 Affray ........................................................................................................ 13

Location of Incident ...................................................................................... 15

Sec1 & Sec2 Public Order .......................................................................... 16
Objectives

After you have studied and understood this written lesson, you should be able to:

1. Recognise the conduct which would be an offence under each section.

2. Explain what the intent must be for each offence.

3. Summarise, in each case, the outcome that must result from the conduct.

4. State the definition of “Dwelling.”
Public order offences are principally preventative legislation. This should be remembered when dealing with any of the following sections. It is still best practice to warn prior to exercising the power of arrest when dealing with Sect. 5.

**Power of Arrest**

The power of arrest for Sec 3, 4, 4a and 5 of the Public Order Act is provided by Sec 24 of PACE as long as one of the ID COP PLAN conditions apply.

**Power of Entry**

Section 17 Police and Criminal Evidence Act 1984 gives a power of entry in order to arrest for an indictable offence.

**Now pay attention !**

**Section 3** is a triable either way offence.  
**Section 4** is a summary offence. However, Sec 17 gives you a specific power of entry.  
**Section 4a** is a summary offence. However if it is Racially or Religiously Aggravated it becomes triable either way. (Crime and Disorder Act 98)  
**Section 5** is a summary offence only even if it is Racially or Religiously Aggravated.

**Structure of the basic offences**

Imagine an argument is taking place in the street between two rival football fans. The shouting is disturbing passing shoppers. In order to decide if an offence is taking place you need to consider three things:-

- What the people arguing are doing
- What intention did the people using the behaviour have
- What effect it is having on other people

These aspects can be called:

- **Conduct**
- **Intention**
- **Outcome**

You will examine each offence in these terms beginning with the lowest public order offence, Sec 5.
S5 Harassment, Alarm and Distress

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

Use words or behaviour, or displays any writing, sign or visible representation that is threatening, abusive or insulting or uses disorderly behaviour

within the sight or hearing of a person likely to be caused harassment, alarm or distress thereby.

In order to decide whether a person has used the conduct defined as an offence you need to look at two things:

the actions of the person

the nature of the actions

So, the definition of conduct can be split in the following way:

Conduct

Uses words or behaviour, or displays any writing, sign or visible representation that is threatening, abusive or insulting or uses disorderly behaviour

Nature of the conduct

Uses words or behaviour, or displays any writing, sign or visible representation that is threatening, abusive or insulting or uses disorderly behaviour
Here are some examples:-

Shouting and swearing  (Threatening words)

Someone exposing their buttocks from a car window (Insulting behaviour)

Making a “masturbation” like gesture (Insulting or abusive behaviour)

The term disorderly behaviour is added to the definition to cover behaviour which is not specifically insulting etc. but No intention to commit this offence is needed, There only needs to be the likelihood of a person being alarmed, distressed or harassed.

---

<table>
<thead>
<tr>
<th>Conduct</th>
<th>Intention</th>
<th>Outcome</th>
</tr>
</thead>
</table>

**Intention**

The person using the conduct defined in this offence does not need to intend any specific outcome. If there is a likelihood of a person seeing or hearing the conduct and being alarmed, harassed or distressed the offence is complete. However, although no outcome is needed for a person to be guilty of the offence he must at least be aware that his conduct may cause H.A.D. to another.

**Outcome**

For Sec 5 what needs to be proved is that there was a potential outcome. There must be a likelihood of a person who sees or hears the conduct being harassed, alarmed or distressed by it.
Harassment alarm or distress.

These words all have their commonly understood meaning. To prove the offence you need to prove that someone was likely to be upset by the conduct that was taking place.

Someone might be upset or alarmed by what they see or hear. They might be caused harassment by the conduct, eg, by finding their path blocked by abusive youths or taking the abuse personally. A person could be distressed by seeing an offensive slogan on a placard.

Anyone can be harasssed, alarmed or distressed by a person’s conduct, including a police officer.

Defences

For this offence there are three statutory defences which a person charged with the offence may use at Court.

(i) He had no reason to believe that a person likely to be caused harassment, alarm or distress was within hearing or sight.

Two people might be arguing, using abusive language that they both accept, without realising that anybody else would be present who would find the language distressing.

or

(ii) The offender was inside a dwelling and had no reason to believe his words, behaviour, writing, etc, would be seen or heard by a person outside a dwelling.

Maybe a window was open or a visitor had arrived at the door during an argument.

or

(iii) The conduct was reasonable.

A person might be displaying a sign with a slogan with which they thought other people would agree, not realising that some people would find it distressing.
S 4A Intentional Harassment, Alarm or Distress

A person is guilty of this offence if they

Use words or behaviour or displays any writing, sign or visible representation that is threatening, abusive or insulting or uses disorderly behaviour

with intent to cause a person harassment, alarm or distress.

and wherby a person is caused harassment, alarm or distress.

Conduct

The conduct is the same for this offence as it is for S5. It doesn’t have to be directed at a particular person. Any act which would fit the S5 offence would fit S4A if the next two elements were present.
You will have to prove that the person intended to cause harassment, alarm or distress.

It may be that the words or behaviour, and the circumstances they were used in, are enough to prove that the person intended to be insulting. A person who shouts abuse at another intends to be threatening and abusive and to cause distress.

Proving that a person had intent might also be helped by showing that the conduct was premeditated or there had been similar problems in the past. You don’t have to prove that a person’s behaviour was persistent. Of course if it was, that might be evidence of their intent.

Outcome

Someone needs to be caused harassment, alarm or distress

It doesn’t have to be the person to whom the conduct, words or behaviour, etc, are directed, as long as someone has been affected.

As you can see 4a could easily have been labelled 5a with a few subtle differences.

- An intention is required to complete the offence.
- A target is needed to prove the intent.
- An actual outcome is required.

Defences

The defences are similar to that of Sec 5 except for the defence that no one was likely to see or hear the behaviour which does not apply to this section.

So the accused can use the defence that;

i) he was inside a dwelling and had no reason to believe that the words or behaviour or written sign, or other visible representation displayed would be heard by or seen by a person outside that or any other dwelling or

ii) his conduct was reasonable.
**S4 Fear or Provocation of Violence**

A person is guilty of an offence who:

- uses towards another person words or behaviour
- or displays or distributes any writing, sign or other visible representation,
  - that are threatening abusive or insulting

  **with intent** to cause that person to believe immediate unlawful violence will be used against them, or another, by any person
  - or
  **with intent** to provoke the immediate use of unlawful violence by that person or another

  **or**

  whereby that person is **likely to believe** that immediate unlawful violence will be used
  - or
  it is **likely** that such violence will be provoked
Disorderly conduct is not part of this offence. S.4 is a fairly serious offence, so behaviour which is merely disorderly should be dealt with using S4A or S5.

Distributing material is also included in this offence in addition to displaying it. So, handing out material which is abusive or insulting may be an offence, provided that the other aspects of the offence are present.

Whether the conduct is words, behaviour or a visible representation, it must be directed towards someone. So, if a person is distributing material, it must be handed to someone and not just left in a place where they might find it.

Unlike S4A, intent does not need to be proved in all cases. What is important is that the conduct results in the outcome detailed above. So, in relation to intent, the person using the conduct must either intend to provoke violence or cause fear of violence. Even without having a specific intent a person commits the offence if their conduct is likely to result in fear or provocation of immediate unlawful violence.

Violence means any violent conduct towards people.

The term ‘violence’ is not restricted to conduct causing or intended to cause injury, but includes any other violent conduct, for example, throwing a missile capable of causing injury at or towards a person, which does not hit or falls short.

The word ‘immediate’ is also used to describe the outcome, or likely outcome. The person must fear that violence is going to take place straight after the conduct; or they are provoked, or are likely to be provoked, into using unlawful violence immediately.
The conduct must have one of two effects on the person it is directed at; either:

i) they are put in fear of violence being used against them, or someone else, or this is a likely result of the conduct

or

ii) the conduct provokes, or is likely to provoke, any person into using violence themselves.
S3 Affray

A person is guilty of an offence who:-

uses or threatens unlawful violence towards another

and his conduct is such as would cause a person of reasonable firmness, present at the scene, to fear for his personal safety.

Uses or threatens

Uses will be shown by actual assaults.

Threatens applies to conduct which does not amount to use. Words alone are not sufficient to amount to a threat, some gestures or physical actions must also take place.

Unlawful violence

Unlawful is used to ensure that lawful violence, i.e. a person acting in self-defence or a police officer making a lawful arrest, is not caught up in the following definition of violence.

Violence means "any violent conduct". The courts will decide if the conduct amounts to violence. It is not restricted to conduct which can be proved to be intended to cause injury but includes any other violent conduct to persons.

Towards another

The violence must be directed towards a person not property.

And his conduct is such

This offence can be committed by a person acting alone or by a number of people together. If more than one person is involved, the combined actions of all must be taken into account.
There is no specific intention required for this offence.

The outcome of the conduct is that it would cause a person of reasonable firmness present at the scene to fear for his personal safety.

The violence may be witnessed by other people, but in some cases it may not, i.e. two gangs fighting in an empty warehouse.

At court, a "hypothetical bystander" is used as the person of reasonable firmness to provide the test to measure the level of violence. Therefore it is not necessary to prove that such a person was present at the scene, evidence only needs to show that if he was, he would have feared for his personal safety.

Do not forget that Section 4, 4a and 5 of the Public Order Act can be racially or religiously motivated. If you are unsure about this, check lesson note on 'Hate Crime'.

Location of the incident

Public or Private place

Section 3, 4, 4A and 5 offences can be committed anywhere, ie, in a public place or a private place, including dwellings. However, there is an exception in respect of dwellings in that the offence is not committed if both parties - the “abuser” and “victim” - are in a dwelling. This is to exclude family disputes from the offence. This exception does not apply to Section 3.

It is not necessary for the parties to be in the same dwelling for this exception to apply. A woman shouting insulting words from her bedroom window to a man in the bedroom of the house opposite does not commit an offence. If however, he was outside in the street, then the woman would commit an offence.

Dwelling

Dwelling means any structure or part of a structure occupied as a person’s home or living accommodation (whether the occupation is separate or shared with others).

This includes a tent, caravan, vehicle, vessel or other temporary or movable structure. But it does not include parts of the structure not occupied as a person’s home or living accommodation. Gardens are not included as a dwelling but fall under the heading of a private place.

Drunkenness or drugs

Intoxication (by any means) is not a defence to any charge under this Act. This means that glue sniffers, drug users and drunks cannot use the fact that they were under the influence of a substance as an excuse for their behaviour.

The only exception is if the person can prove that their intoxication was not self induced, ie, their drinks were “spiked” or they were on medication.
There are two more-serious public order act offences, Sec 1 and 2.

**Sec 2 Violent Disorder**

This offence is intended to deal with groups of people participating in public disorder whose conduct has gone beyond the stage of mere insults or abuse and amount to threats or use of violence. It differs from affray in that violent disorder can be directed towards property as well as people. It can only be committed by a group not an individual.

**Sec 1 Riot**

This is the most serious public order offence. It involves a large group of people taking part in concerted unlawful acts of violence for a common purpose.

You will not be tested on these offences at this time.

Remember a police officer could be a victim regarding Sect 5 public order. However, courts have held that due to the nature of the job police officers should be more robust than an ordinary member of the public!