

## CHAPTER 31

# Public order offences other than those related to sporting events or industrial disputes

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### BREACH OF THE PEACE p 855

The House of Lords has confirmed that the power to prevent a breach of the peace does not arise when it is believed (however reasonably) that a breach of the peace is *likely to become imminent* and that it is reasonable to take action to prevent it; it must be believed that the breach of the peace is *actually imminent* [*R (Laporte) v CC of Gloucestershire* (2007)]

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### Public or private place p 863

A police cell is not a home or other living accommodation and is therefore not a dwelling (within the Public Order Act 1986 (POA 1986), s 8) for the purposes of the exception relating to dwellings under POA 1986, ss 4(2), 4A(2) (p 866) and s 5(2) (p 866). [CF [2006] EWCA Crim 3323, [2007] Crim LR 574]

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### The separate elements: POA 1986, s 4A p 866

It has been held by a divisional court that ‘distress’ in this context requires emotional disturbance or upset. That emotional disturbance does not have to be grave but the requirement should not be trivialised. There must be something amounting to real emotional disturbance or upset. These statements are equally applicable to POA 1986, s 5. [*R(R) v DPP* (2006) 170 JP 771]

It has been held by another divisional court that, on the other hand, a person could be harassed for the purposes of ‘harassment’ in ss 4A and 5 without experiencing emotional disturbance or upset. The court added that the words or behaviour in question must be likely to cause some real, as opposed to trivial, harassment; although that harassment need not be grave it must be more than trivial. On this basis it held to be sustainable a finding by a youth court that in the circumstances the likely effect of the defendant’s abusive words directed at a police officer during an incident in which for a period he was making it impossible for the officer to detain a suspect was to cause the officer some real harassment. The Divisional Court rejected the argument that POA 1986, s 5 is not available when police officers alone are the likely audience or target. [*Southend v DPP* [2006] All ER (D) (Nov)]

A recent decision of a divisional court provides a good illustration of the operation of POA 1986, s 4A. D, aged 12 and four feet nine inches tall, had been in the company of his sister when she was arrested for criminal damage. D made masturbatory gestures and called the police officers involved ‘wankers’. P, one police officer, who

was over six feet tall and weighed over 17 stones, arrested D for an offence under s 4A. At D's trial, P stated that he was not personally annoyed by D's behaviour but that he found it distressing that a boy of D's age would be out in the early hours and acting as he did. The youth court found that P had been distressed by D's behaviour and found D guilty of an offence under s 4A. D appealed successfully to the divisional court by case stated against the finding of guilt. The Divisional Court held:

- D's behaviour was truly anti-social but there was nothing to suggest that it caused P emotional disturbance or upset and therefore the youth court could not properly conclude that P was distressed by D's behaviour;
- D had doubtless intended to insult or annoy P but there was no material upon which the youth court could have found that D had intended to cause real emotional disturbance or upset (i.e. distress) to P.

Therefore, the finding of guilt was quashed. [*R(R) v DPP* (2006) 170 JP 771]

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## **ANTI-SOCIAL BEHAVIOUR ORDERS p 872**

An authority applied for an order where a jet skier had been observed riding his jet ski at excessive speed, circling buoys and riding in the wake of a ferry. A divisional court supported the finding of a district judge that there must be evidence of harassment, alarm or distress being caused to some person before an order could be made. If there had been evidence of the presence of swimmers nearby, the district judge would have been bound to find that such persons had been caused, or were likely to cause, harassment, alarm or distress. [*R (Gosport Borough Council) v Fareham Magistrates' Court* (2006) Times, 16 December]

The first paragraph on **p 873** should be deleted. The Violent Crime Reduction Act 2006, s 59 has amended CDA 1998, s 1 so as to require that some behaviour relied on in the application for an order must have occurred within the preceding six months.

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## **POWER TO DISPERSE GROUPS IN AREAS WHERE PERSISTENT ANTI-SOCIAL BEHAVIOUR HAS OCCURRED p 876**

Such an authorisation must specify the grounds on which the authorisation was given. The words 'must specify' within the section are mandatory. [*Sierney v DPP* [2007] Crim LR 60]

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## **INDECENT OR GROSSLY OFFENSIVE COMMUNICATIONS p 887**

A divisional court has held that the words 'grossly offensive' and 'indecent' were not used in a special sense in the Malicious Communications Act 1988, s 1; communications of a political or educational nature did not fall outside the ambit of s

1 and the fact that a communication was political or educational in nature had no bearing on whether it was indecent or grossly offensive, although a person who sent an indecent or grossly offensive communication for a political or educational purpose would not be guilty of the offence unless it were proved that his purpose was also to cause distress and anxiety. The court added that it is possible to interpret s 1 in a way that is compatible with the ECHR, Arts 9 and 10 (freedom of thought, conscience and religion and freedom of expression), by giving a heightened meaning to the words grossly offensive and indecent or by reading into s 1 a provision to the effect that s 1 will not apply where to create an offence would be a breach of a person's Convention rights.

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### **Advance notice p 888**

Insert at the end of the fourth paragraph: The Court of Appeal has held that because they followed no fixed route, monthly campaigning cycle rides through central London could not be considered commonly and customarily held processions and therefore the organisers were required to give the police prior notice of the names of organisers, date and start time and intended route, [*R (Kay) v Commissioner of Police for the Metropolis* (2007) Times 13 June]

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### **Trespass on protected site: demonstrating on protected site p 902**

The Serious Organised Crime and Police Act 2005 (Designated Sites under s 128) Order 2007 designates 85 Albert Embankment; Buckingham Palace; the Ministry of Defence Main Building, Whitehall; the Old War Office Building, Whitehall; St James's Palace; Thames House, Millbank; Chequers Estate; the Downing Street Site; the GCHQ Harp Hill Site; the GCHQ Hubble Road Site; the GCHQ Scarborough Site; the GCHQ Bude Site; the Highgrove House Site; the Palace of Westminster; Sandringham House Site; and the Windsor Castle Site as protected sites. [SI 2007/930]