

## **Bairns Not Bombs Blockade 2015 - Legal Briefing**

In this briefing we are building on many years of experience of blockading and direct action at Faslane. Thousands have been arrested here (many for the first time) whilst many more have taken part without being arrested, and for the majority, it has been a positive, even liberating experience. We want to support all those who get arrested as best we can, so **we are asking anyone coming to Faslane for the action to register with the Legal Support Team**, even if you are sure you are not going to risk arrest, just in case. **This registration is separate from the accommodation registration.** You can fill out and hand in the Legal Support form at the convergence centre in Glasgow, or on the buses on the way to Faslane. The form is essential for us to be able to track you through custody and come to collect you when you are released. It will also help us follow up any further legal support you might need.

**“Bust Cards”** will also be given out to everyone on the day, which will have basic information on your rights, as well as contact numbers for the Legal Support Teams and a lawyer. These will both be available to download from the website, but please make sure the Legal Support Team have a copy of your registration form if you are arriving to take part in the blockade independently. Hand it to one of the Legal Support people at the gates (instantly recognisable in their high-vis vests!). They will make sure it gets back to Glasgow.

There will be Legal Observers at the gates who will monitor arrests. It is best if each affinity group has its own legal observer as well. The Legal Observer will note when you have been arrested and alert the Legal Support Team back in Glasgow. If you think no-one has noticed your arrest, shout out your name and that you are being arrested. Don't worry if you haven't been spotted as arrested at the gate, as you can ask the police to contact us via the number on the Bust Card.

Once arrested, it is hard to say how long the period in custody will be. At the previous big blockades the vast majority have been released the same day, or evening, or right through to the early hours of the next morning, with only a small number being held over for court the next day. Sometimes that has meant being held in the court cells all the next day and then just being released without appearing in the dock. If it is your first “offence”, it is likely that you will be released the same day with the charges dropped, but you may still be prosecuted later. Everyone will be taken to holding cells in police stations in Glasgow, possibly after a spell in a processing centre near to Faslane. In previous blockades, up to eight police stations have been used due to the sheer number of arrests, which is why it is so important that you fill out the Legal Support form. By doing so, we can track you through the police system, find out what station you have been taken to, when you will be released and arrange for someone to come and pick you up.

### **Possible Charges**

This section will cover possible charges, most of which will be worst case scenario, so please don't worry. It is likely that the vast majority of people will be charged with Breach of the Peace and /or Resisting Arrest. Most charges incurred during peaceful actions at Faslane tend to be dropped, the courts just don't have the resources or the stomach for lots of anti-Trident trials.

## **Blockading**

If you go on the road at the entrance to the base, it is likely that the police will tell you to move. If you refuse, then you may be arrested. Ironically, the most likely charge will be "Breach of the Peace"! If you do not wish to be arrested, you should move off the road and stay on the pavement.

**Breach of the Peace** is a common-law offence, (which means that it is defined by previous court judgments rather than by Act of Parliament). While the offence goes back centuries, the leading judgements (High Court rulings that define what BoP means) are fairly recent and tend to involve anti-nuclear protesters who blockaded Faslane! In theory, BoP requires conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. It should be conduct that is genuinely alarming and disturbing, in its context, to any reasonable person. While you personally may feel that your peaceful protest (against the most alarming and disturbing weapon in the world) does not fall under this definition, unfortunately, our courts usually rule that it does.

**Resisting Arrest/Obstructing a Police Officer in the Course of Their Duty:** If you are locked-on, fail to move when told to, or don't co-operate with walking to the police van, then you may get one of these charges, although it may (especially Resisting Arrest) be dropped before the case gets to court. Like BoP, these charges cover a huge range of situations but, given the non-violent and accountable nature of these actions, are towards the trivial end of the spectrum and would usually result in a small fine.

## **Other Offences**

Faslane is a "designated site" under Section 129 of the Serious Organised Crime and Police Act 2005 (SOCPA) as amended by the Terrorism Act 2006. This means that it's a potentially serious offence to be inside the fence line without 'lawful authority' (maximum penalty a year in prison). However, **this only applies if you go inside the fence line**. As long as you stay outside the fence, even if you are on Ministry of Defence (MoD) land and/or blockading the gates, then you cannot be charged with this.

It is also possible that the police may use Section 14 of the Public Order Act, (for which the likely sentence, if convicted, would be a smallish fine). This allows them to put conditions on assemblies of people in certain situations, but we may well be able to challenge any Section 14 laws if they become too restrictive. If Section 14 is imposed, the police should provide a space for us to be in, and we'll be able to advise what is likely to be do-able without risking arrest once informed of the exact terms of the order. If there were a total ban on assembly imposed then it would make life more difficult for those not wishing to risk arrest, as supporters would become potentially arrestable. This has never been done before and is not likely, but if it did happen we would challenge it and keep everyone informed. Remember that the rights to Freedom of Expression and Assembly are enshrined in the European Convention on Human Rights and in Scots Law via the Scotland Act and Human Rights Act.

At the last Big Blockade at Faslane in 2013 there were 45 arrests and only a couple of those (well known to Dumbarton Court!) were prosecuted and they were just admonished.

**For possible future consequences of convictions, please see *the Consequences Section* at the end of this section.**

## On The Day

### **Bust Cards**

Make sure you have the phone number of the Legal Support Team and of a solicitor with you. This will be provided on a Bust Card (you will get one of these at the accommodation, online or from the support at the gates). It's a good idea to write those numbers on your arm as well.

### **How will the police react?**

The good news is that the police at Faslane are very used to dealing with peace protesters and so everyone usually remains calm and relaxed and arrests are generally respectful and predictable. During the Sunday training sessions there will be experienced Faslane arrestees on hand to discuss what to expect with those coming for the first time. Generally the police know we are committed to non-violence (they will probably be given copies of this briefing pack in their own briefing!). Though if you do notice any police getting heavy handed, you should take note of their identification number and take pictures if you can and report it to Legal Observers.

If you are blockading you will usually be given the opportunity to change your mind before you are arrested. Sometimes the warning is given over a megaphone to the whole group so if you want to be on the road but avoid arrest keep alert and listen out. If you refuse to move when warned you will be informed that you are under arrest.. If you are "locked-on", often the police will then erect big blue barriers around your group, to "sterilise" the area, and allow the cutting team to safely set up the equipment they need to cut the lock-on away from your arm (if you are super-glued, they will use warm soapy water to free you). Our experiences of the cutting team have been really positive and they will go to great lengths to ensure your safety whilst they cut you out (in fact, it often seems that they enjoy the opportunity to get their tools out and appreciate a challenging "lock-on"!). Once you have been freed from the lock-on you will be arrested.

### **What happens if I am arrested?**

Firstly, you should be told that you are under arrest and what for. Then you will be asked to walk with two police officers, or, if you refuse, or "go limp", you will be carried away (by four or more police officers) to a police van. Usually we are not handcuffed but if you are then let them know if they put them on too tight. They are designed to hurt more if you struggle so keep calm. They will give you a pat down search to make sure you have no weapons on you. At this point you may be asked for your details and be photographed or they might drive you to a processing centre near the base to do this. **The only questions you have to answer are your name, address, date and place of birth and nationality.**

You will have your charge read out to you and will be asked if you understand it and if you have anything to say in reply (please note that what you do say will be read out in court if you are eventually prosecuted, so you can use this to your advantage if you have an anti-nuclear rant prepared!). You will then be put into a van and taken to a police station in Glasgow, where you will be asked the same questions again and you will be searched and your belongings will be taken off you, so don't have anything potentially incriminating or illegal with you! This includes removing any jewellery, watches, shoes, belts or clothing with cords in the waist. You should be allowed to take a paperback book (and your glasses if you need them) to the cells with you.

The desk sergeant will ask if you want anyone to be informed that you are in custody. Ask them to call the Legal Support Team number on the Bust Card. They will also ask whether you want a solicitor informed (although for most people this won't be necessary unless they are actually taken to court). If you are injured or ill ask to see a doctor. Tell the police if you have any medical or dietary requirements. If you have prescription medication that you need, you are advised to bring it in its original labelled packaging although they probably won't let you have any of it without seeing a doctor. If your clothes are wet, tell the police taking you to your cell and they will give you a paper suit to wear. You will receive regular food (they even cater for vegans!) and tea and you can ask for water any time. You will be given blankets. You can also ask for a pencil and paper which helps pass the time.

You may be taken out of the cell at some point to have your photograph, fingerprints and DNA sample taken. (DNA is simply a cotton swab in the mouth). Please do not be alarmed by this - in Scotland, they are allowed to take all three of these when you are in custody, and normally do. If you refuse, they can take them by force, so it is best to be co-operative. It is not likely, but you may be asked to do an interview. Normally this is just the police taking an opportunity to gather information for forward intelligence about activism. You don't have to say anything and if you don't want to, you can say "no comment". Talking during an interview can put you and potentially others in legal difficulty and can provide the police with evidence or intelligence that can be used to disrupt or intimidate other activists.

Now you will have a boring wait ahead of you but don't worry, legal support will be keeping track of where you are.

### **What do I do when I get released?**

If the police can confirm your details and they are satisfied that the action is over and the PF has given the go ahead you should be given your property back and released. The release process can take a long time if there are lots of people in custody, so be patient! The Legal Support Team will be tracking the progress of people in custody and should know that you're about to be released. If you are first out and no lift has arrived yet call the number on the Bust Card to let them know.

### **What happens if I am held for Court?**

If you're charged with a more serious offence, have a warrant out for your arrest, your details don't check, you are already on court bail, or the PF has decided to be difficult it is possible that you will be held overnight until the following morning. This can often be the case with internationals if they cannot provide a UK address that can be confirmed. Sometimes people are told they are being held for court and then they are released the following morning with warning letters, and the charges dropped. The decision to keep people overnight can be quite arbitrary so, if you are being held overnight, try not to worry, it doesn't necessarily mean you are in more trouble than those who are released.

### **Undertakings**

Sometimes instead of being held for court people are released after agreeing to sign an "undertaking" to appear in court anytime from the next day to several weeks later (and sometimes they receive letters dropping the charges before the court date). You might be released from police custody on an undertaking on standard bail conditions, which in Scotland tend to be agreements not to break the law again before your court date (if you do, you could get an extra charge for Breach of Bail). Sometimes the police might add extra bail conditions e.g. agreeing not to go within 200 metres of Faslane before your court

appearance. If you feel that any extra bail conditions are an infringement of your rights, you can refuse them and ask to speak to a lawyer. These police bail conditions can be challenged at your first court appearance. Bail in Scotland does not normally require money sureties.

### **After I'm released from the Police Station, will I hear any more about it?**

You may be released from custody with a letter from the Procurator Fiscal (PF), usually saying that they have decided not to prosecute you this time, but you will be prosecuted if you do this again. (Some of us have quite a collection of these letters for repeated blockades of Faslane, so this is not 100% true!). You may be released on an undertaking to come back to court on a specified day if you signed a paper agreeing to this, and you will be given a copy. If you signed the undertaking then it is an extra offence not to turn up to court on that day and a warrant may be issued. Note: you do not have to sign any undertaking – if you refuse they will either have to release you unconditionally or hold you until court the next day. If you're released without any paperwork (probably the most likely option given the numbers involved) then most people will hear nothing more about it. You may be offered a Fixed Penalty Notice which is a fine (usually about £50- £100) that you can pay without getting a criminal record. You may be cited to court. Faslane cases are heard in either the Justice of the Peace Court or the Sheriff Court in Dumbarton (the Procurator Fiscal decides)

### **Am I Guilty or Not?**

If you do get prosecuted (i.e. have upcoming court dates), we will endeavour to give you continuing support and advice. Whether you plead guilty, or not guilty, is entirely up to you, and you can ask to see a lawyer for advice. Pleading guilty means that the court case will be fairly short and will be over at your first appearance. During this, your lawyer (or you, if you want to represent yourself) will have the opportunity to explain why you acted in the way that you did. A first offence conviction for BoP at Faslane normally gets you a fine of about £50-£200. If you plead guilty the Sheriff knocks a third off. If you have nothing on your record (and appear to be sorry) you may even get an admonishment - this is a ruling of guilty but with no sentence.

Pleading not guilty will mean that you normally have to appear in court twice more. One will be an Intermediate Diet, during which you confirm your initial plea (or change it if you wish) and say if you are ready for trial and a further date for the actual trial. This can be a lengthy process, but it gives you an opportunity to argue your case for doing what you did and challenge the absurdity of a legal system that protects nuclear weapons from peaceful protesters. If you decide to plead not guilty and go to trial, there will be support for you throughout this process.

## **Consequences of a conviction**

### **Employment**

A common concern of people getting involved in this type of action is the effect that getting arrested will have on their job. In some circumstances there can be issues here, although many people find it has little or no effect at all.

## **Job Contracts**

If you have a job and are unsure of the level of support that your colleagues or bosses may give you then it might be a good idea to look at your job contract before you take action to see if there are any clauses stating that a conviction could lead to your dismissal. Bear in mind, however, that these clauses usually relate to offences of dishonesty such as theft or fraud, or to offences committed whilst at work, and may well not be applicable to arrests of this sort for non-violent actions taken in your spare time.

If your bosses are likely to be supportive then talk to them in general terms before you take action so that they are less surprised after it has happened, particularly as you may need to take time off work later to travel to court cases etc. If they are very sympathetic then you might want to ask them to take part with you or encourage other members of your work team to join in!

## **Publicity**

While there will be a general aim to get publicity for Scrap Trident, it is perfectly okay for participants who don't want to be interviewed or photographed to stay out of the limelight as much as possible. In particular, you might want to consider whether local publicity in which you are shown or named might upset your relationship with your employer. If so, ensure that your group knows that you do not want your name to be given out to the press and that you will not give press interviews. There are some professions, for example solicitors, where an arrest might be treated as 'bringing the profession into disrepute' which in extreme cases might mean that you get struck off and can no longer practice. However, for most people, this kind of penalty would be extremely unlikely, especially if you are with others of the same profession and are making a considered protest on legal and moral grounds. If you do have worries about this, then it might be worth checking with your professional body, particularly if they have a confidential phone line.

## **Job Applications**

The biggest impact of having a conviction might be when you are looking for new employment. If the job you are applying for involves working with children or vulnerable people then you will by law be required to have a Criminal Records check when you apply. In Scotland this is through Disclosure Scotland and in England & Wales through the Disclosure and Barring Service (DBS) The check discloses all convictions (including spent convictions, see later). You can't be employed where these convictions relate to children or vulnerable adults. Otherwise, it is at the discretion of the employer whether to hire you. Being involved in the Scrap Trident blockade should not affect you working with children and vulnerable adults. However, you should explain to your prospective employer before they have the CR check done, so that they know the nature and context of your convictions, as if you leave it for them to find out, you may not get the chance to explain later. For other kinds of work the job application form may have a section asking about previous convictions (see below for info about what you must disclose). If you don't answer honestly and they find out you do have convictions then this would be grounds for your dismissal.

If you do tell them, make sure you explain what the convictions are for - not simply that it was a conviction for breach of the peace, for example, but explaining why you did it, the commitment to non-violence and prevention of crimes under international law. While many will respond positively to your explanation and decide that your actions show the kind of initiative and responsibility they would welcome in the job, there is of course the risk that they may then decide that you look like trouble!

## **Spent Convictions**

Bear in mind that the majority of people taking part in the Blockade will probably not be brought to court and even if they are, we are assuming that the most likely charges will be minor, such as 'Breach of the Peace' or 'Obstruction' (see legal briefing). Such charges usually result in fines of between £50-£200. Nevertheless, it is as well to be aware of The Spent Convictions and the Rehabilitation of Offenders Act of 1974. This Act specifies that after a certain period of time (depending upon the length of the sentence) any conviction becomes 'spent' and there is no need to disclose the conviction to future employers etc. For example, a fine becomes spent after 5 years regardless of the amount of the fine. (this has been reduced to 1 year in England and Wales and is under review in Scotland) There is however a very large category of people for whom convictions can never be spent, including people working in the following professions: doctors; dentists; nurses and midwives; lawyers; opticians; teachers; police officers; and people working with children and vulnerable people.

This is why it is important to make sure that any convictions that you do get are recognised by yourselves and others as being matters of conscience proving your ethical responsibility and care for society. Over the years, many professional people have taken part in anti-nuclear direct actions and very few, if any, have suffered in their professions as a result.

If you are a student, check with your college/university Student Union whether there are any regulations which getting a conviction might breach. Ask other students at your campus who have convictions what the impact has been, if any. If you think your tutor is likely to be sympathetic, consider telling them about your intended action/conviction, as you may need to miss some course work to go on the action or go to court.

## **Travel Visas**

Depending on the charges, there are potential difficulties getting visas for some countries, including Australia, New Zealand, or the USA. Where countries have questions on the visa application form about convictions, some only want to know about certain kinds of serious crime or whether time in prison has exceeded a period of, e.g. in the case of the USA, 5 years. The requirement to disclose convictions includes spent convictions unless the country has an Act equivalent to the Rehabilitation of Offenders Act. In most cases it will be possible to answer these questions totally truthfully, since the likely conviction or penalty for a Faslane blockade would be less than the question requires. In other situations, it is up to you to decide whether you think that these acts of civil resistance are covered by these questions.

We are not aware of many activists having been refused entry to countries on the grounds of their previous convictions but then we do not know how many people filling out their visa forms answer this question fully.

## **Insurance**

It might also be useful for you to be aware that some insurance firms are now refusing to give insurance cover, be it household, business, car or other types of insurance if you have convictions. However, there are a number of good insurance firms who do cover people when the nature of the convictions is properly explained, and we have even found that the premiums are cheaper. Maybe we should just all change over to these firms and reward them for their understanding!

This briefing is not intended to cover everyone's specific needs, if you are a young person (under 16), an international, or are going to be the driver of a vehicle at Faslane, please get in touch via ***scraptrident@gmail.com*** and we will advise you as best we can.