

Trident Ploughshares Legal Briefing Coulport Camp 2017

This is a short guide for anyone thinking about taking nonviolent direct action during the camp. This is not a legal document. If you need legal advice, please ask a lawyer.

See separate briefing for Internationals.

Trident Ploughshares has been taking nonviolent action at Faslane & Coulport since 1998 and we have plenty of experience of both the Ministry of Defence Police who guard the bases and the civilian Police as well as the Scottish Court system. However, some things have changed since our last camp in 2011. The civilian police have been reorganised from regions into one force, Police Scotland, and they now have a separate custody division to deal with anyone arrested across the country. They can also now release people directly from the police station with bail conditions. The nearest courts, both Justice of the Peace and Sheriff courts, are now in Dumbarton which is 25 miles from the camp. We have already had a meeting with Police Scotland and the MOD police and are being updated by them on how they expect to respond to our actions. The MOD police will not be putting protesters in their holding cells but will transfer them to Police Scotland. This briefing is as accurate as we can make it but things may change during the camp.

- **Please fill in a Legal support form when you get to the camp. This gives us important information to enable us to look out for you if you are arrested.**
- **Bust cards will be available with the legal support and solicitors phone numbers.**
- **Separate briefings and workshops will equip people to be Legal Observers for a group taking action.**

Protests and Vigils

You are allowed to stand on the pavement near to the gates of Faslane & Coulport with banners. Sometimes we tie banners to the fences and barriers and whether that is tolerated depends on which police are on duty. The MOD police will often arrive to talk to you and ask your name. You do not have to give this or any other information.

Blockading

If you block the entrance to Faslane or Coulport or a public road the police will ask you to move and if you don't it is likely that you will be arrested. The charge will be *Breach of the Peace*. This is a criminal charge in Scotland. The actual wording of the charge you are brought to court on is decided by the Procurator Fiscal (the prosecutor in Scotland) and often includes elements like '*obstructing the free flow of traffic*' and '*refusing to desist*'. If you have been locked-on and refused to release yourself and/or refused to walk to the police van you may also be charged with "*Resisting Arrest/Obstructing a Police Officer in the Course of Their Duty*". These cases usually go to the lowest court, the Justice of the Peace Court (JP Court) in Dumbarton and convictions result in a fine.

Cutting Fences

If the police know or think that you have cut the fence they will charge you with either '*malicious mischief*' or the lesser charge of '*vandalism*'. Everyone present could be charged with this even if only one person was cutting. The bolt cutters will be kept and used as evidence in court. They also can use video footage taken by the security cameras. There may also be photographs of the damage. If people are found inside the base with no cutters and no one saw how they got in then usually they are not charged with damaging the fence. If no one saw the hole being cut then often the police will interview you. It's your choice whether to be fully accountable or to give a 'no comment' interview. Discuss this with others in your group before the action. If it comes to court then if you give evidence yourself you will be asked on oath whether you cut the fence. If you are found guilty sometimes the court considers making a compensation order- this is like a fine but the court will hand the money on to the MOD.

Being Inside The Bases

If caught inside Faslane or Coulport base you could be charged under the Military Byelaws or the Serious Organised Crime and Police Act (SOCPA) or both. If they don't know where you have been you might be held for some time while they investigate to see if any damage has been done or anything is missing etc. The MOD police are not going to hold people in custody so if you are found inside one of the bases you will be handed over to Police Scotland.

SOCPA Criminal Trespass Charge

Faslane and Coulport are both Protected Sites under s129 of the Serious Organised Crime and Police Act 2005 (as amended by the Terrorism Act 2006). This means it is an offence to "*enter or be on*" the site "*without lawful authority*". The maximum possible penalty is a year in prison and/or a £5,000 fine, but in reality the few people who have been convicted of this have had at most a small fine.

The area covered by the power is anywhere inside the fence. Where the base meets the loch, the boundary of the designated area runs "*along the edge of the man-made quay so that any wharf, jetty or structure that projects into the sea is included within the designated site*". This means the jetties, the Ship-Lift and the Explosives Handling Jetty at Coulport are included but, as far as we can tell (and according to the MoD's maps) the floating boom and the water inside it at Faslane are **not** covered.

Faslane, Coulport and Rhu Narrows Byelaws 1986

These are military byelaws brought in under the Military Lands Act of 1892! They are a very long winded way of saying that you are not allowed to go into the Faslane and Coulport, and that you have to leave certain land around Coulport when told, and that you can't be in the channel at Rhu when a submarine is coming or the water around both bases anytime.

You can get a copy of the byelaws from Trident Ploughshares legal support. There are also copies on signs around the base if you can still read any of them.

The map is awful and police witnesses in court are often unable to make any sense of it. Also a lot of things have changed since 1986 and there is land inside the base which is not covered by the byelaws. Similarly land outside the base which doesn't even belong to the MOD anymore still is covered by the byelaws.

There are three different kinds of areas covered by the byelaws;

- **Protected Areas** at Faslane and Coulport covering most of the land inside the perimeter or in the water around either base at any time.
- **Military Lands** outside the perimeter fence at Coulport which covers an area twice as big as Coulport itself and is mostly rough hillside and forest.
- **The Protected Channel** at the Rhu Narrows which is enforced only when a nuclear vessel is moving through it (both Trident and hunter-killers).

The bits of the byelaws which really affect us are:

- **‘Byelaw 2 (1) a** *“enter....the Protected Area by land except by way of an authorised entrance”*
- **Byelaw 2 (1) b** *“enterthe Protected Areawithout authority”*. These are used against people found within the bases.
- **Byelaw 3 (1)** *“No person shall remain on the Military Lands after having been warned off”*. This is used to get people to leave the land around Coulport. Of course they have to catch you first! If you refuse to leave you could be arrested. It’s a matter of debate whether having been told to leave you or the police get to choose the route although some negotiation is usually possible.

For an understanding of how the Byelaws apply to the water around the bases and the Rhu Narrows it is best to talk to someone with experience. There have been some **very** long court cases contesting these byelaws and we haven’t won yet! There is still scope for challenging them. Ask legal support about who to talk to about this.

Painting things

The usual charge is Malicious Mischief. Someone was charged under the Roads Traffic Act Section 100(b) for painting footprints on the road at the North Gate. Photographs of the painting are usually produced in court so you can link your defence to the message you painted. Compensation orders are sometimes given if proper bills for the paint to be cleaned off are provided to the court.

Getting Arrested

If you are taken into custody by the MOD police you will be handed over to the civilian police. Police Scotland will take you to a Police Office, probably in Clydebank or possibly Greenock or elsewhere.

At the police station

- You will be searched and your possessions taken away. Check your pockets **BEFORE** the action to make sure you do not have anything in them you do not want the police to see and that you do **not** have any knives with you (even camping knives!).
- The police will ask your details and whether you want someone told that you are in custody and a solicitor informed as well. Ask them to contact the Trident Ploughshares Legal Support Team on the number given on the bust card. You have the right to see a lawyer after being arrested and to have one informed if you are detained for questioning (which is different from actually being arrested and can only last for a maximum of twelve hours). You only really need to see a solicitor if you are being held for court or have some complications. If you need one, ask to see the ‘Trident Ploughshares Solicitor’, named on the Bust Card.

- The police will ask your name, address and date and place of birth which you have to give. They will also ask you lots of other questions but you DO NOT have to give them any further information. Tell them if you are vegan or vegetarian or have other dietary needs or need medication.
- If you are ill or injured you have the right to see a doctor and insist on seeing one at the earliest opportunity.
- The police can photograph and fingerprint you if they want. The Police use an electronic fingerprint machine that is linked to the national computer. You can also have swabs taken from the inside of your cheeks for DNA tests. The police can do this using 'reasonable' force.
- If the police ask you to strip for a search (which is rare), ask them why and explain that complaints about previous strip searches have been upheld. If they insist on a strip search it is up to you whether you co-operate, but they can use reasonable force. Ask the names of the police officers and make a complaint as soon as you are released and let Legal Support know.

Getting Released

In the past if the police could verify your name and address you would have just been released and received a letter from the Procurator Fiscal later.

Then the police started holding people until the following day where they spent many hours in the court cells before often being released without appearing in court. If people were arrested more than once they did make it to court where they were released "on bail".

The police can release you on an "undertaking" to turn up to court on a specific date and the law has now changed and they can also include other conditions. The police have told us that during the camp this will include restrictions on going near to the bases and they will have a map showing the areas you can't enter. You have a choice about whether to accept and sign this undertaking. If you accept the undertaking and then breach it by not turning up to court or breaking any of the conditions that is a separate criminal offence and a warrant for your arrest could be issued.

If you refuse to sign it the police will either have to release you without conditions or hold you for court.

So if the date they want you to return is not possible for you and you want to avoid a warrant consider not signing it. If the restrictions on where you are allowed to go are not acceptable to you then consider not signing. If you are then taken to court you will be able to argue these issues in front of the judge.

Non-CoOperation

Non-co-operation can include declining to walk anywhere once arrested, refusing to co-operate with finger-printing and photographing and refusing to give any personal details. It is up to you what degree you co-operate with the police and we will do our best to support you whatever you decide to do. Non-co-operation however may result in the police using force to make you co-operate, you may be held overnight for court and if the police cannot verify your details you may be remanded in prison by the court until your trial. If you decide to not cooperate with the police talk with the Legal Support Team before the action. They can keep checking with the police about you (but probably won't be told

much) and will keep the solicitors informed. They will not give any of your details to the police. Make sure other members of your affinity group and the people you have been arrested with know so they can try to support you in the police station.

What Happens if I am Held for Court?

If you are charged with a serious offence, your details don't check out, you are already on bail, there is a warrant out for your arrest or you refuse to sign an undertaking you may be held and taken to court the following day. If you are arrested after midnight this could mean being held all the next day and through another night. If it's a week-end it will be until the Monday. You can ask a solicitor to represent you or to just give you advice. At court several things will be decided and if you are not attentive decisions will be made without you really being aware of them. This is where you are asked if you plead guilty or not guilty and where the dates for your court appearances will be decided. (Court dates in Scottish courts are called diets ...but don't worry – you don't have to lose weight!)

If you plead NOT GUILTY the Trial Diet (date of the actual trial) when you will have to attend in person will be set. Make sure the date is convenient for you, and if not, argue for another date. The court will also set an Intermediate Diet (a court appearance to explore whether you and the PF are ready for trial or not). If you have to travel some distance you could ask if you can write to the court about your readiness for trial rather than coming in person but they might not grant this.

Most people are offered bail with standard conditions that include things such as turning up for court, not interfering with witnesses and not committing an offence. The special bail conditions of not going with a certain area around the bases may be proposed. If these make it impossible to exercise your right to protest you may want to contest this.

Decide beforehand whether you will accept the bail conditions or not - we will support you whatever your decision. If you do not, then you are likely to be held on remand until your trial date.

If you plead GUILTY your case will be heard right then. The PF will say what you did (from a report from the police). You or your solicitor have a chance to speak. You can disagree with the PF's version but if you challenge it too much the court will decide you should be pleading not guilty and set a trial diet. If the Justice of the Peace (JP - judge) decides on a fine you can ask for time to pay it and will be free to go. The JP could defer sentence for a period of time to see if you commit any other offences and give you a date to come back and put you on bail until then.

If I am Released from the Police Station Will I Hear Any More About It?

If you are simply released from the police station and this is your first arrest you may not hear any more or you might be sent a letter saying "don't do it again". You might also get a letter offering you the chance to pay a fixed penalty which will not lead to you getting a criminal record. You can pay this or refuse to pay. You may receive a citation in the post (possibly some months later). The citation informs you of the charge against you, gives a court date for the hearing of your plea, but gives you an opportunity of pleading by post so that you do not have to travel to court just to put your plea in. If you wish to be represented by a lawyer at court this is the time to arrange legal representation. When you do receive a citation please contact the Legal Support so that they can help with more updated advice and court support.