

CENTRE X
DEVELOPING POLICING EXCELLENCE



National Public Order Legislation Guide

April 2004

National Crime and Operations Faculty

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Thames Valley Police

Staffordshire Police

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Any comments. Queries or suggestions about this guide should be directed to National Crime and Operations Faculty Public Order Team on 01256 602698.

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INTRODUCTION

This Public Order Legislation Guide has been prepared as an aide-memoire to assist you. Its contents have been drawn from several sources and condensed into a single point of reference for the offences you are most likely to encounter whilst engaged on Public Order related duties.

The booklet summarises the key offences, their main evidential elements and the powers available to you. Where applicable, suggested warnings are included. These will make sure that certain defences can be negated and a consistent approach maintained. However at all times officers should remember that in everything they do they should be:

- Lawful
- Reasonable
- Necessary
- Proportionate

It is essential that you familiarise yourself with the necessary legislation and are conversant with the appropriate powers provided. If there is any doubt consideration should be given to contacting your own forces legal sections.

Public Order policing is a high profile duty, which will attract widespread attention. Be mindful when exercising any powers that your actions must be justified and may be subject to very close scrutiny. You should exercise your powers in a fair and non-discriminatory manner, at all times treating people with courtesy, decency and respect.

Remember:

- This guide does not dictate the offences officers should use or limit them in the full performance of their duty. Officers should take full responsibility for their actions.
- Where practicable: -
 - ◇ Use your Evidence Gathering Team;
 - ◇ Keep it simple;
 - ◇ Make a record of your decisions and actions.

It is intended that this aide memoire will be updated regularly with any changes in legislation. However it is up to the individual officer to ensure that they are aware of the legislation that is available and the implications of using it. For confirmation of any of the legislation consideration should be given to contacting your own force legal sections or checking the Police National Legal Database.

If you have any suggestions or queries contact the Public Order Team at the National Crime and Operations Faculty at Bramshill on 01256 602698.

Legal Status

As the title of this guide suggests it exists' for the guidance of all police officers involved in the policing of public order events to assist them in carrying out their duty and provide appropriate policies, training, planning and advice. Such guidance is required by the Police Service to ensure appropriate and proportionate response to Public Order Incidents as part of their operational duties.

The variable nature of public order policing is so diverse that it will never be possible to document guidance to cover every circumstance or eventuality. For this reason, there will always be occasions when individual officers need to be aware of any changes in legislation in order to be effective in the workplace.

In such circumstances, the actions of the officer will not necessarily be wrong or unlawful, provided that they acted reasonably and within the law. The organisation and individual(s) concerned must be prepared to account for their decisions and to show that they were justified in doing what they did. Similarly, Chief Officers may be required to justify any decision(s) or action(s) taken, when facing legal proceedings.

Human Rights Statement

In the application of any policies, strategy, tactics or operations contained within this Guide, the police service will not discriminate against any persons regardless of sex, race, colour, language, religion, political, or other opinion, national or social origin, association with national minority, property, birth or other status as defined under Article 14 European Convention on Human Rights (ECHR).

Strategies and policies contained within this Guide which could interfere with an individual's rights, have been identified as necessary for the following reasons: - preventing crime and disorder, public safety; and protecting the rights and freedoms of others.

It is inherent within this Guide that there is potential to engage Articles 1, 2, 3, 5, 6, 8, 10 and 11 of the Human Rights Act 1998, thus interference with an individual's rights.

In each and every case where a recommendation has been made or good practice given, it is made with the strongest legal basis, with actions being proportionate, with the least intrusive and the least damaging option chosen.

Phrases and Caution

There are certain pieces of legislation that necessitate warnings to be given prior to arrest (e.g. Section 5 Public Order Act 1986). Where practicable, it is also considered good practice that additional warnings are given prior to any action being taken. Below is a phrase that could be used to fulfil this criteria:

Before Caution (where practicable):

“Is there anything I can reasonably say or do which would make you comply with my request to?”

Caution:

“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”

Health & Safety / Risk Assessment

Officers should be aware of the generic risk assessments relating to the particular activity in which they are engaged. In addition, the following guidance should be followed:

Protective Clothing and Equipment:	Wear when instructed
Personal Hygiene:	Wash hands before eating
Accidents / Injuries:	To be reported before the end of duty
Cuts, open wounds:	To be covered with a plaster
Site safety (where appropriate):	Enter only when authorised

Use of CS Spray

It must be remembered that CS spray is not a crowd control agent or technique.

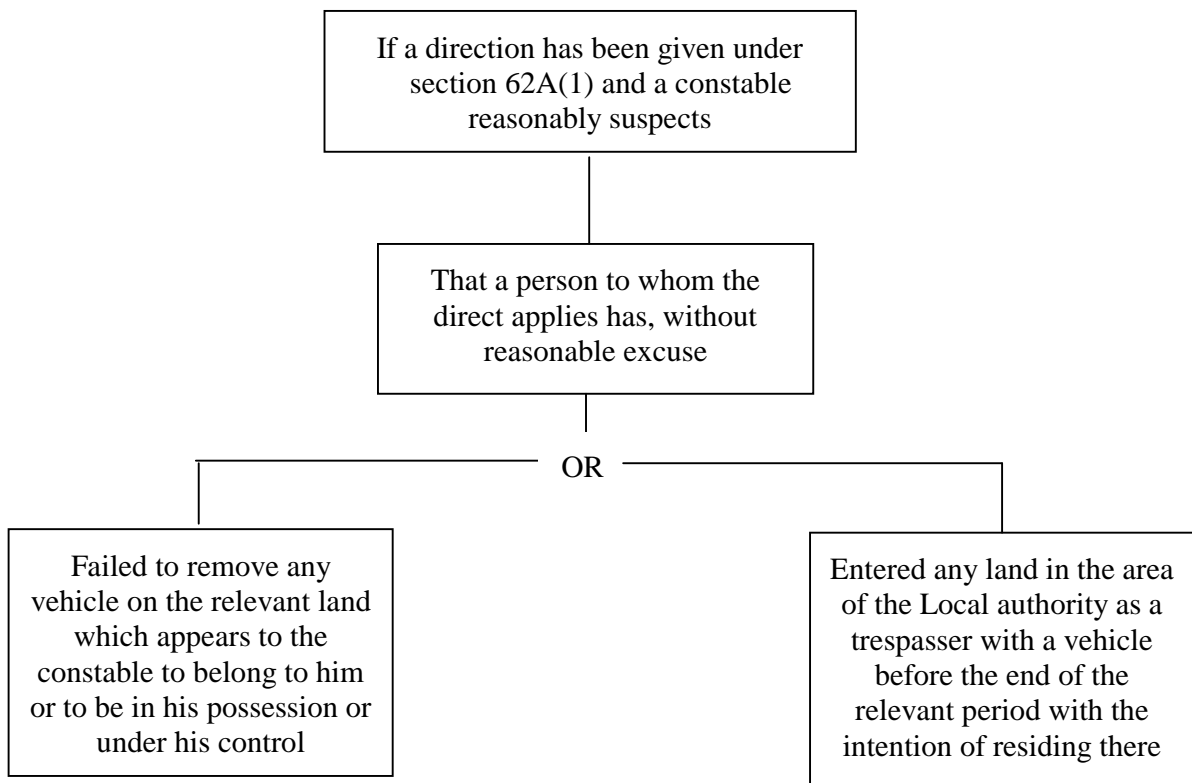
At all times consideration should be given to the perceived threat, the environment in which officers and colleagues are deployed and the limitations of the spray.

You will be briefed specifically on this issue.

Many protesters know the law and will test your resolve!

FAILURE TO COMPLY WITH DIRECTION UNDER 62 A: SEIZURE

Section 62C Criminal Justice and Public Order Act 1994

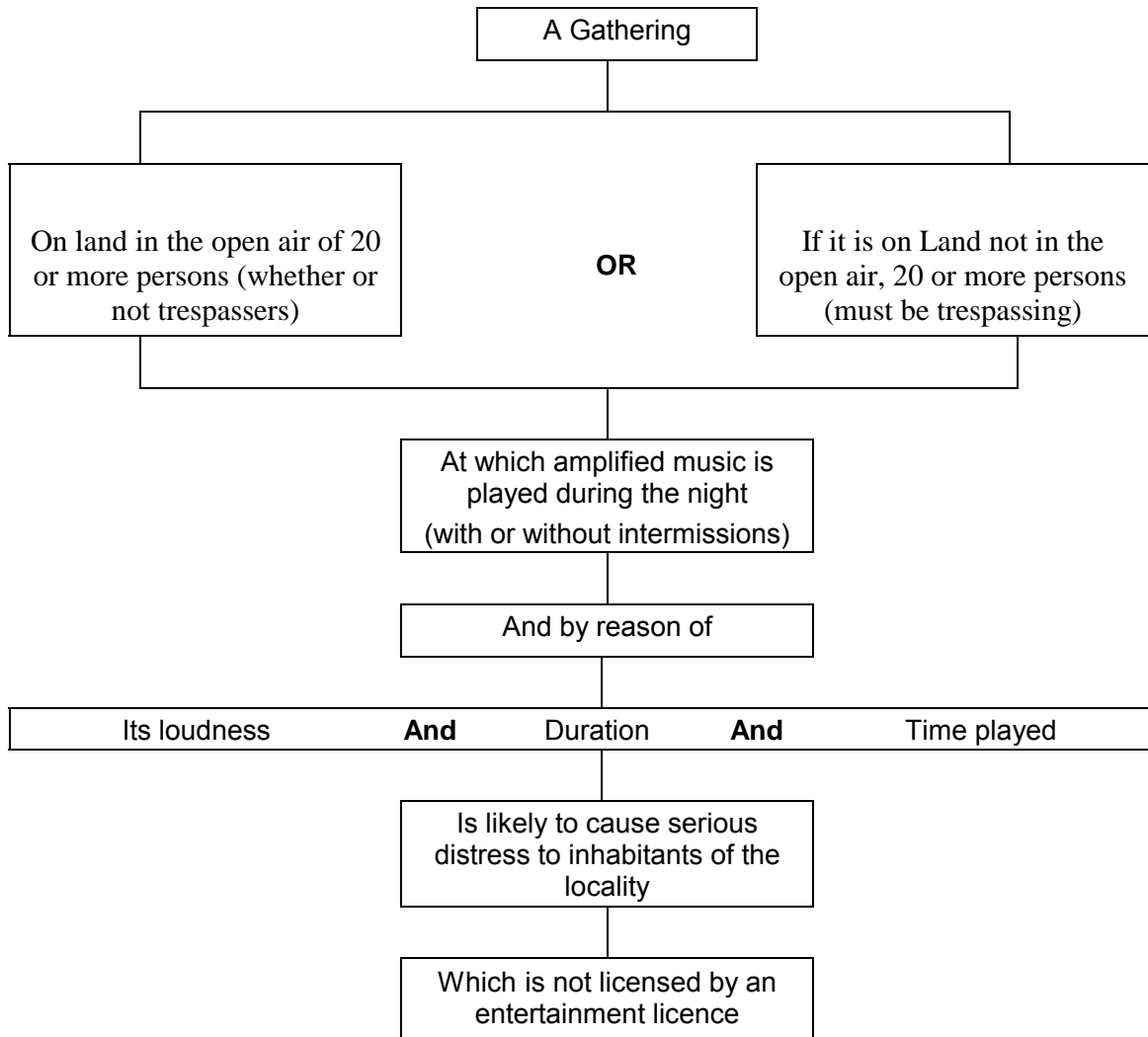


1, The relevant period is 3 months starting from the day on which the direction was given.

RAVES

Section 63, Criminal Justice and Public Order Act 1994

DEFINITION

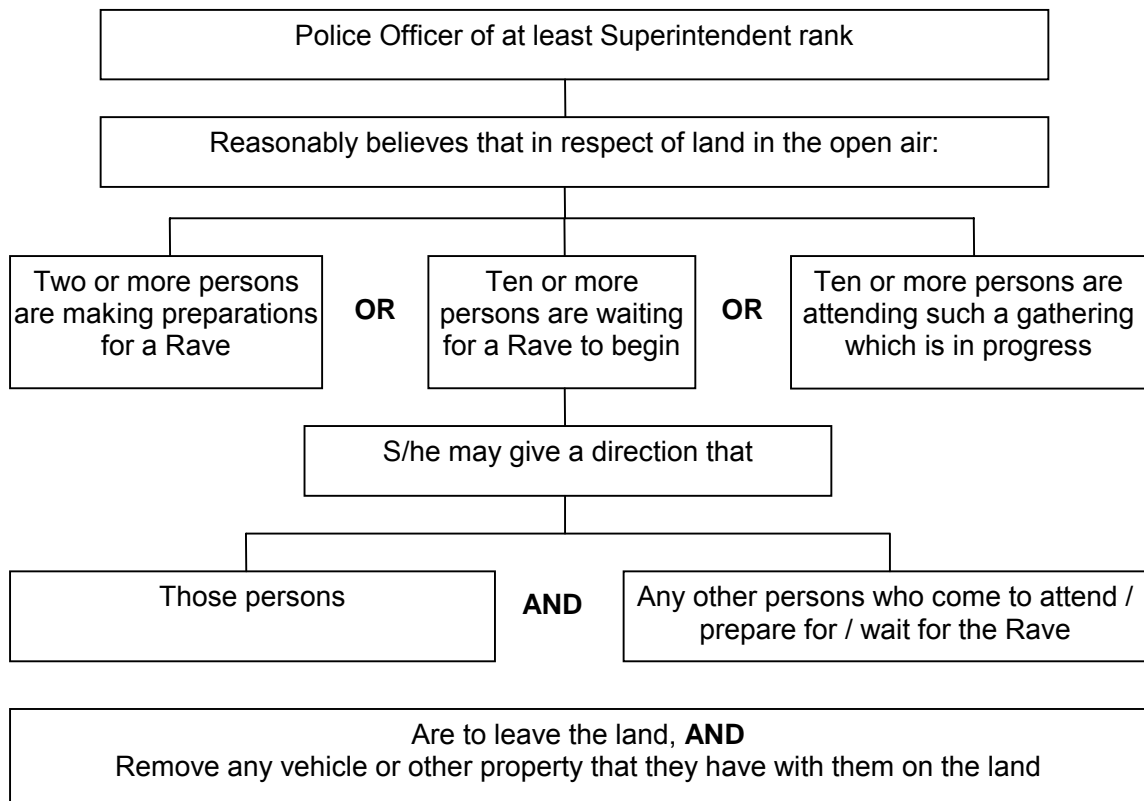


N.B.

Music is defined as sounds wholly or predominantly characterised by the emission of a succession of repetitive beats.

RAVES DIRECTION TO LEAVE

Section 63(2), CJPO Act 1994



POWER OF ARREST

Section 63(8) Constable, in uniform who reasonably suspects that a person is committing an offence under this Section may arrest without warrant.

N.B.

Any constable can communicate the direction. Persons shall be treated as having had the direction communicated to them if reasonable steps have been taken to bring it to their attention. Officer does not have to be in uniform.

If possible the direction should be given verbally and in writing.

Defence if accused to show that s/he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, for re-entering the land.

Occupier, member of his/her family or any employee/agent of him/her, and any person whose home is situated on land exempt from direction.

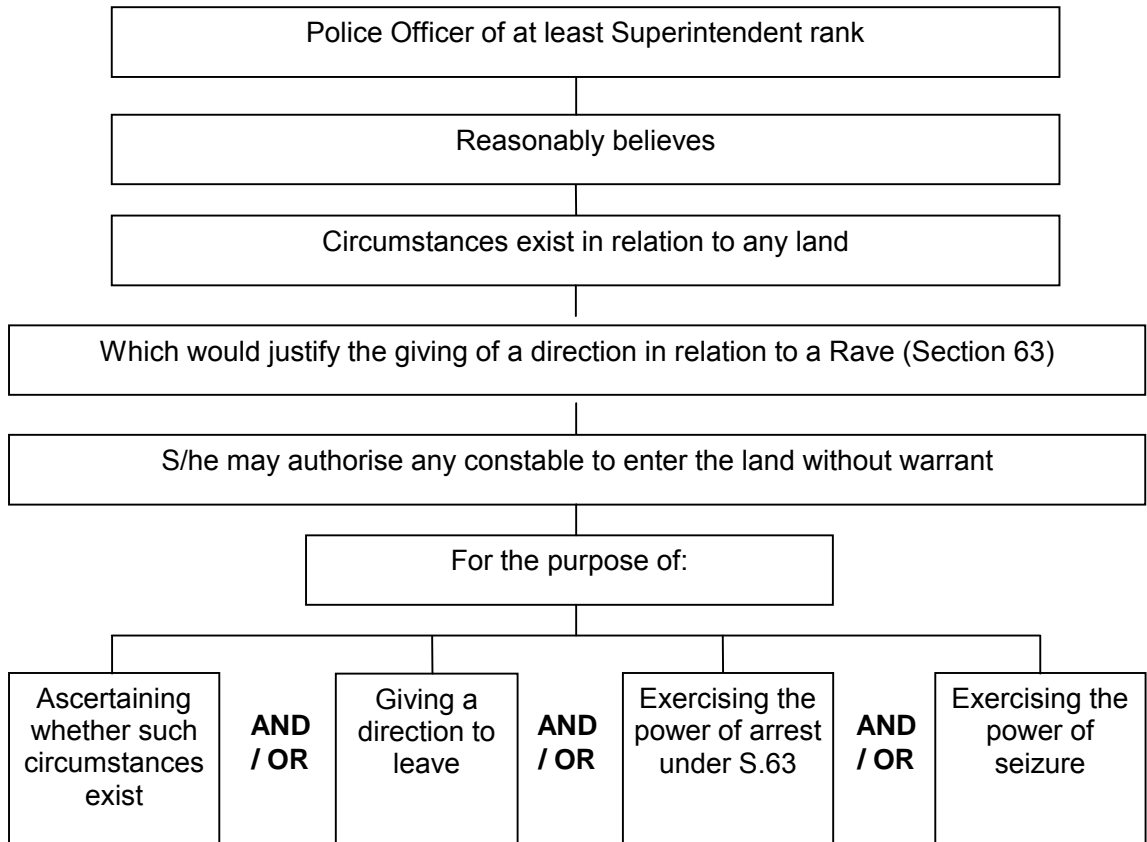
Offence: Section 63(6)

A person knowing that a direction has been given to him / her either:

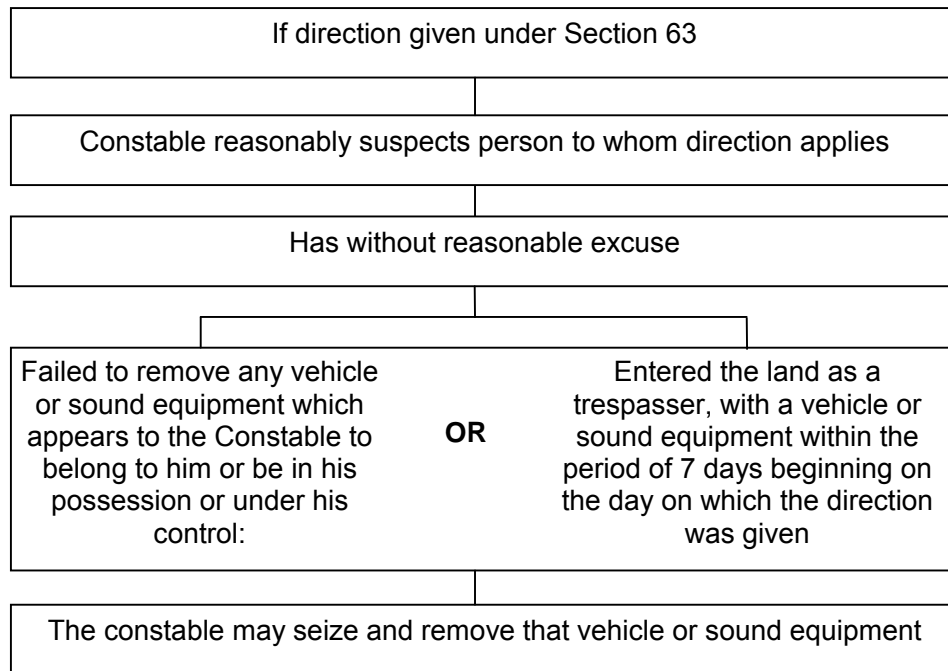
- Fails to leave the land as soon as reasonably practicable, or
- Having left again enters the land within the period of seven days beginning on the day on which the direction was given.

RAVES POWER TO ENTER LAND

Section 64(1) - (3)



Section 64(4), Raves Power of Seizure



N.B.

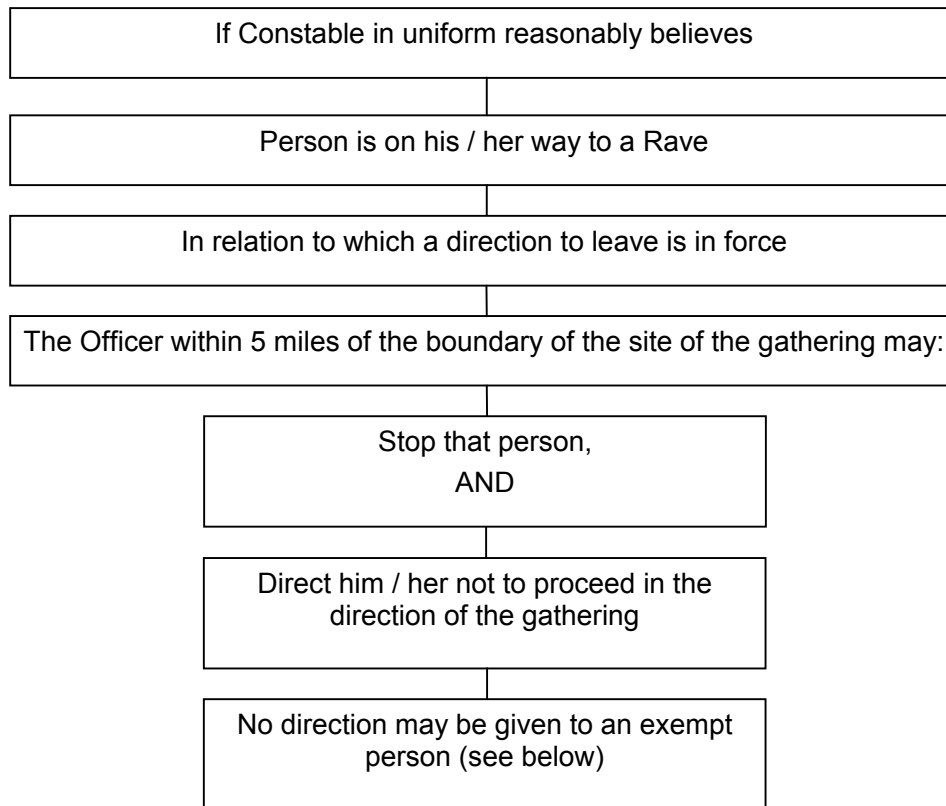
Consideration should be given regarding storage of equipment.

No power to seize equipment or vehicles from an exempt person even if that person is involved in the organisation of the rave.

Sound equipment is defined as equipment designed or adapted for amplifying music and any equipment suitable for use with such equipment.

POWER TO DIRECT PERSONS AWAY FROM RAVES - 5 MILE RADIUS

Section 65, CJPO 1994



POWER OF ARREST

Constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest without warrant. Section 65(5)

Offence

If a person knowing that a direction has been given fails to comply s/he commits a summary offence. Section 65(4)

Considerations

A decision to direct persons should take into account the safety and welfare of persons in that vicinity.

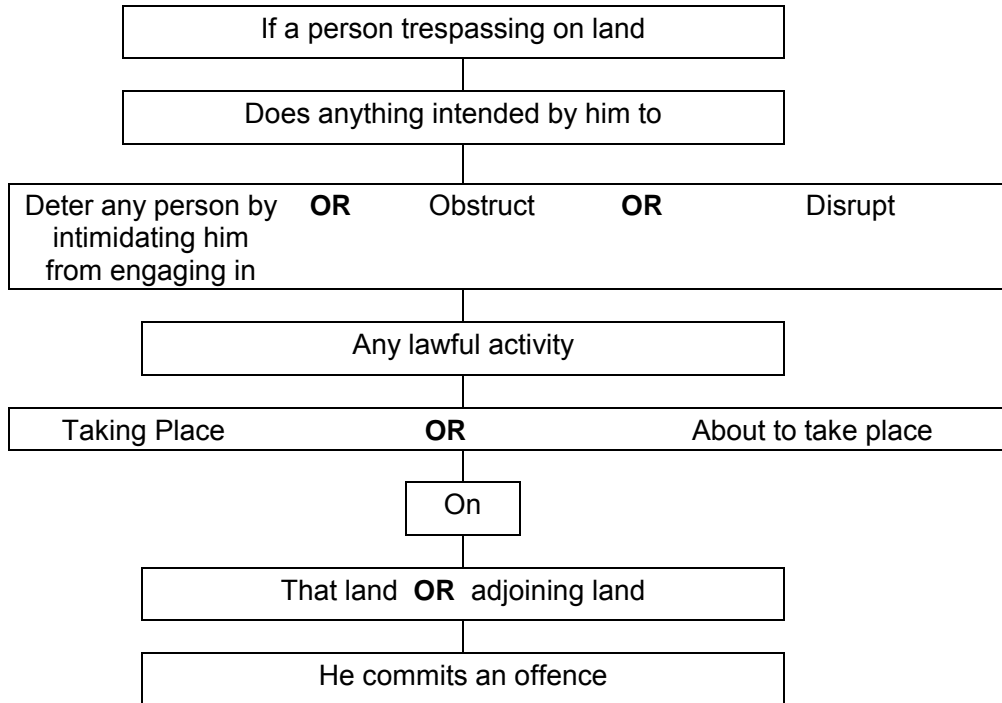
Exempt Persons

These are:

- the occupier,
- any member of his/her family,
- any employee/agent of his/hers, and
- any person whose home is situated on the land.

AGGRAVATED TRESPASS

Section 68, Criminal Justice & Public Order Act 1994



POWER OF ARREST

A Constable in uniform may arrest any person he reasonably suspects is committing an offence.

Explanatory Notes Section 68

The following are notes provided for guidance in respect of Section 68, but please also refer to Section 69 on the following pages:

General Request for Protesters to Leave Land

“You are now a trespasser on this land. I believe that your actions of (*name the actions*) are intended to intimidate, obstruct or disrupt any persons engaged in a lawful activity on this or adjoining land. If you do not leave this land you may be arrested for aggravated trespass.”

Arresting Officer to Individual

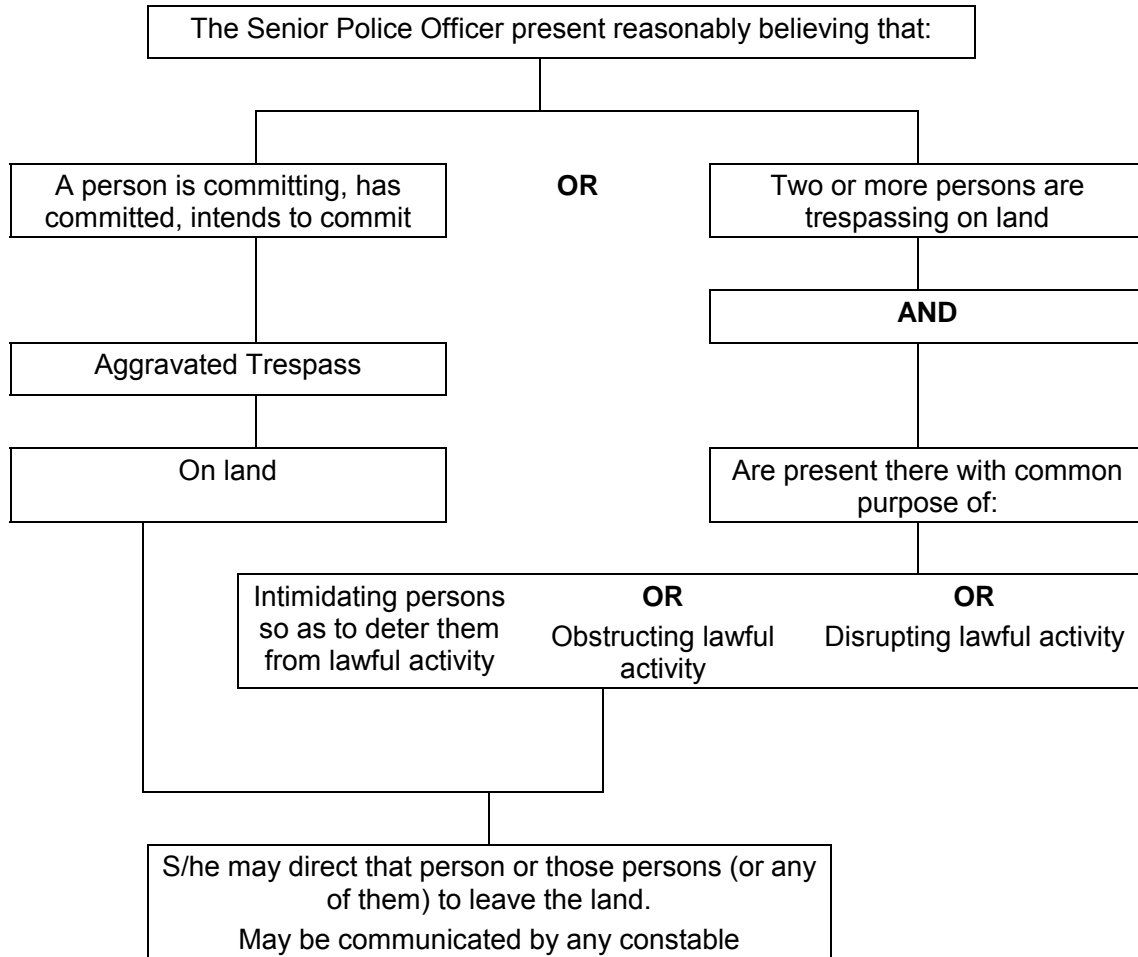
“You have been requested to leave this area, is there anything I can reasonably say or do that will make you comply with the direction for you to leave?”

Leave A Short Time, Depending on Circumstances

“I am arresting you for aggravated trespass.” CAUTION

DIRECTION TO LEAVE LAND

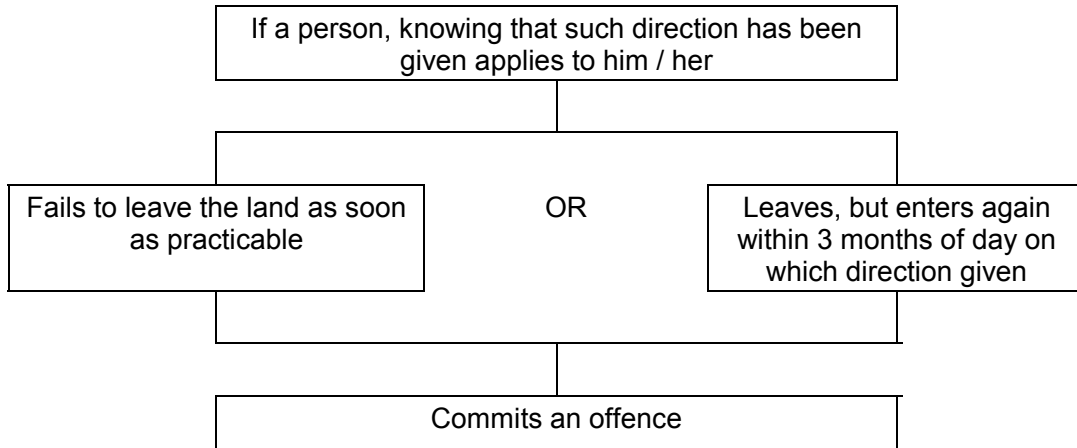
Section 69, Criminal Justice & Public Order Act 1994



- NB (i) An offence of Aggravated Trespass need not have been committed yet.
- (ii) Following Changes to the legislation in January 2004, Aggravated Trespass can now be committed in Buildings and/or land in the open air.

OFFENCE OF FAILING TO COMPLY WITH DIRECTION TO LEAVE

Section 69(3) Criminal Justice & Public Order Act 1994



POWER OF ARREST

A constable in uniform may arrest without warrant on reasonable suspicion that a person is committing this offence.

Variations on form of words to use:

“I am the Senior Police Officer here. I believe that you are committing / have committed or intend to commit an offence of Aggravated Trespass (one person) OR (two or more persons) trespassing with the common purpose of deterring/obstructing/disrupting lawful activity and I require you to leave immediately. Failure to obey my direction may render you liable to arrest. Having left the land if you return on to it as a trespasser within 3 months you will also commit an offence for which you may be arrested.”

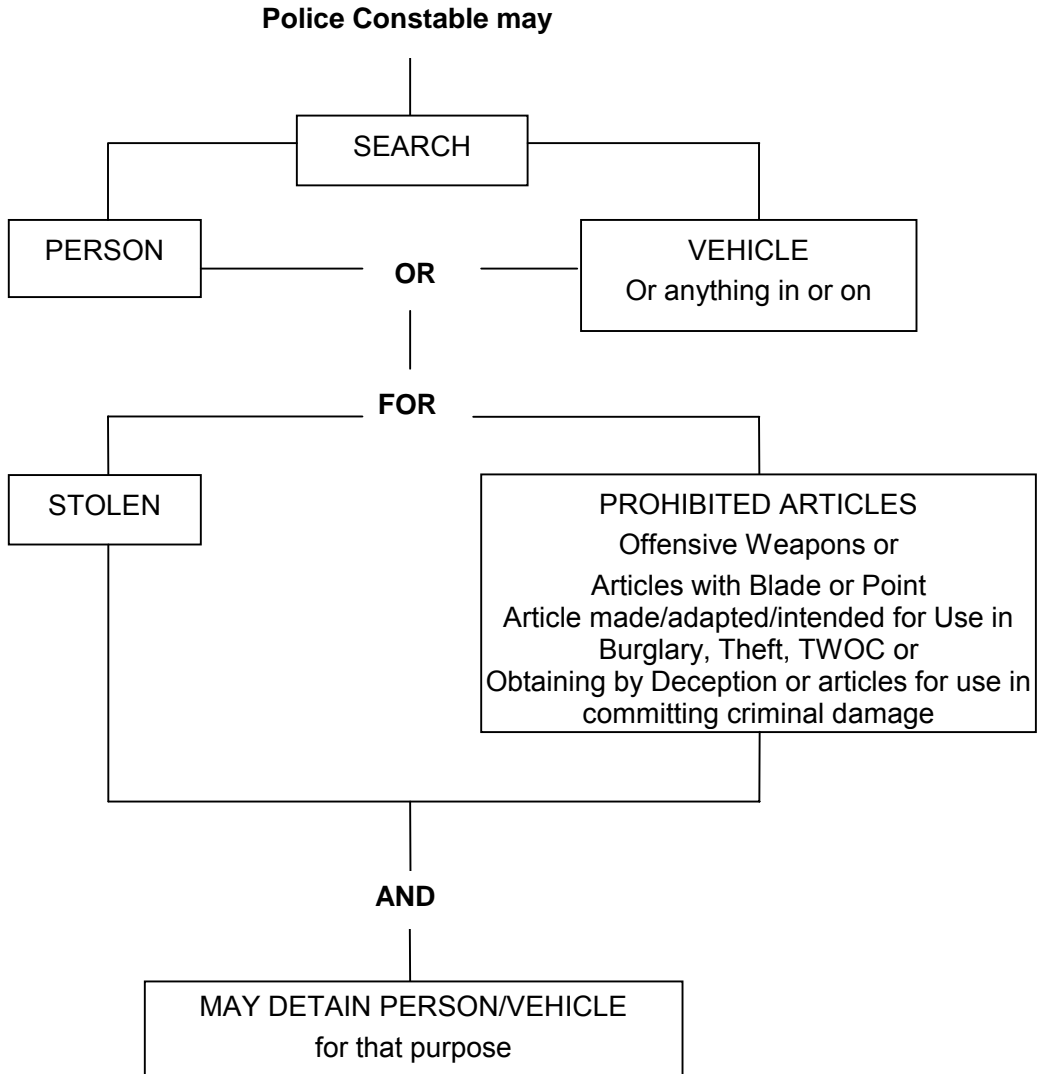
“The senior police officer present believes that you are committing an offence of Aggravated Trespass and has directed that you leave immediately. Failure to obey this instruction may make you liable to arrest. Having left this land, if you return within 3 months you will also commit an offence for which you may be arrested. Is there anything that I can reasonably say or do that will make you comply with that direction given for you to leave?”

Give a short time, depending on the circumstances to allow the person the opportunity to leave the land as soon as practicable.

“I am arresting you for failing to leave the land as soon as reasonably practicable having been directed to do so.” CAUTION

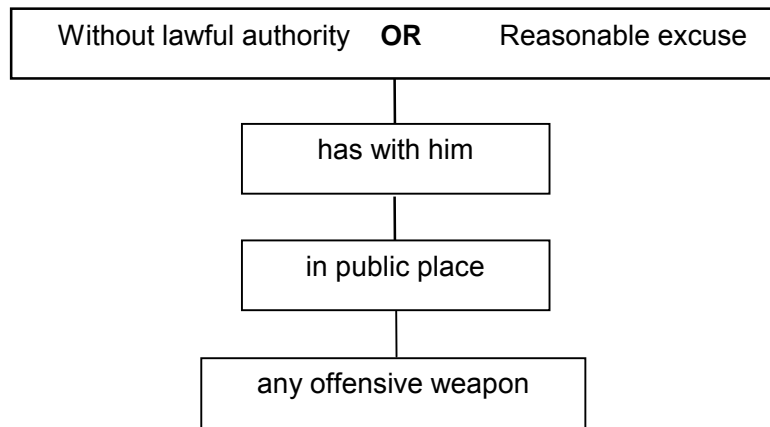
STOP AND SEARCH

Section 1, Police and Criminal Evidence Act 1984



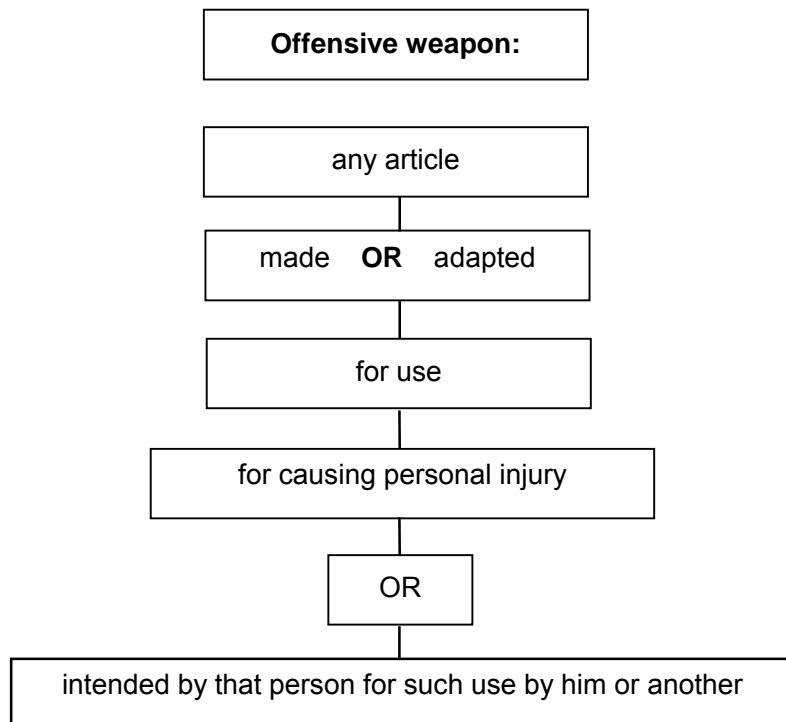
OFFENSIVE WEAPONS

Section 1, Prevention of Crime Act 1953



POWER OF ARREST

ARRESTABLE OFFENCE

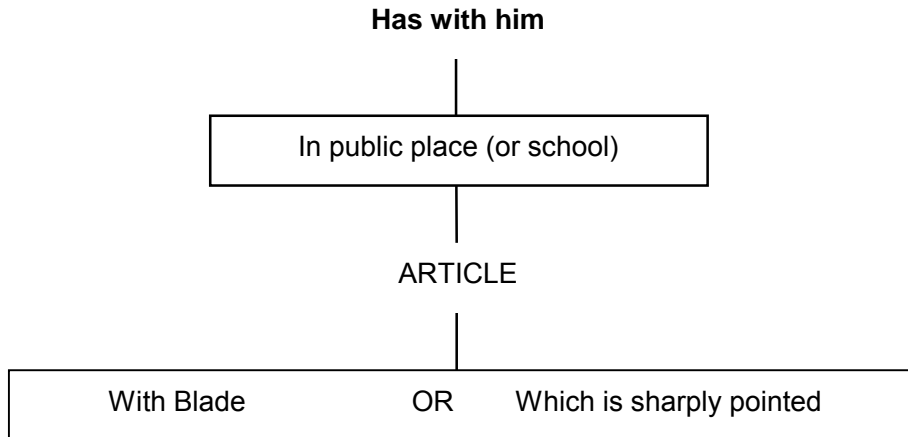


N.B.

Articles e.g. fireworks should only be regarded as offensive weapons where an officer has a reasonable belief they are intended for causing personal harm.

BLADE OR SHARPLY POINTED ARTICLE

Section 139, Criminal Justice Act 1988



POWER OF ARREST

ARRESTABLE OFFENCE

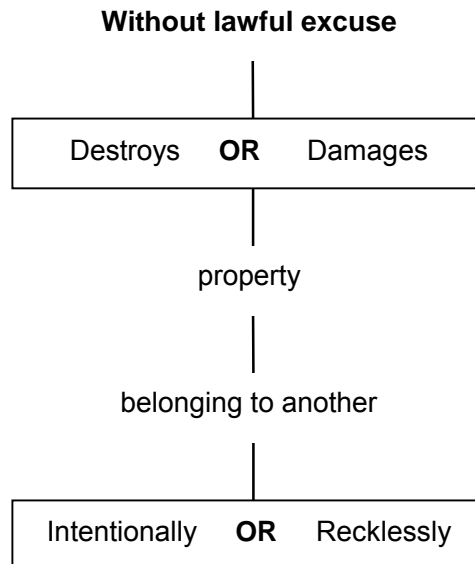
N.B.

- 1) DEFENCES:
 - (a) Lawful authority/reasonable excuse
 - (b) For use at work
 - (c) For religious reasons
 - (d) Part of a national costume
 - (e) For educational purposes.

Does not include blades - 3" (7.62 cm) or less - of a folding pocket knife

CRIMINAL DAMAGE

Section 1, Criminal Damage Act 1971



POWER OF ARREST

ARRESTABLE OFFENCE

N.B.

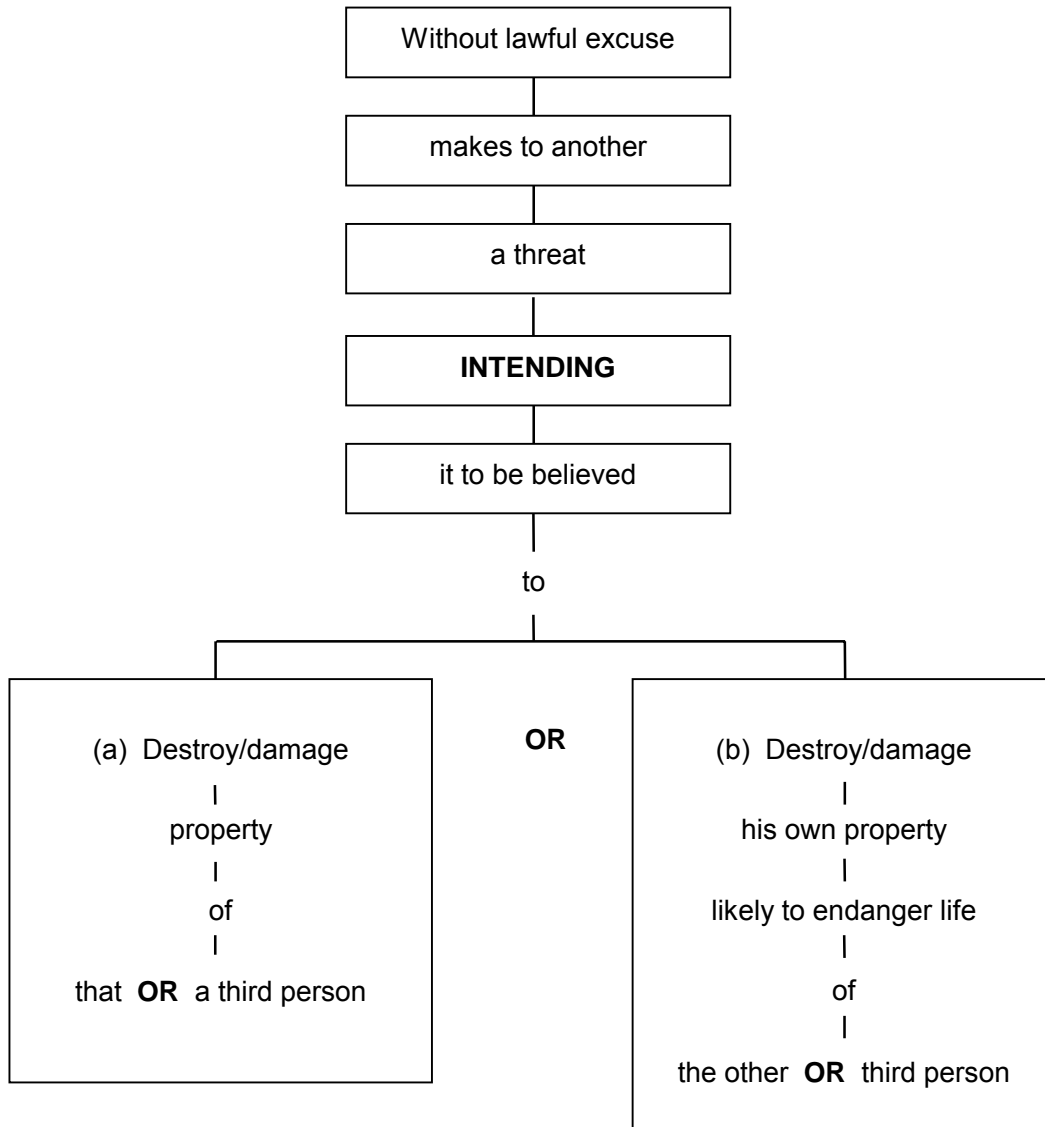
- (1) To damage or destroy any property (his own or another's) with intent to:-

Endanger **OR** Reckless of danger to life of another
Aggravated offence (life imprisonment)

- (2) Property includes land and things growing on it - trees (but **not** flowers, fruit or foliage or mushrooms).

THREATS TO DAMAGE / DESTROY

Section 2, Criminal Damage Act 1971



POWER OF ARREST

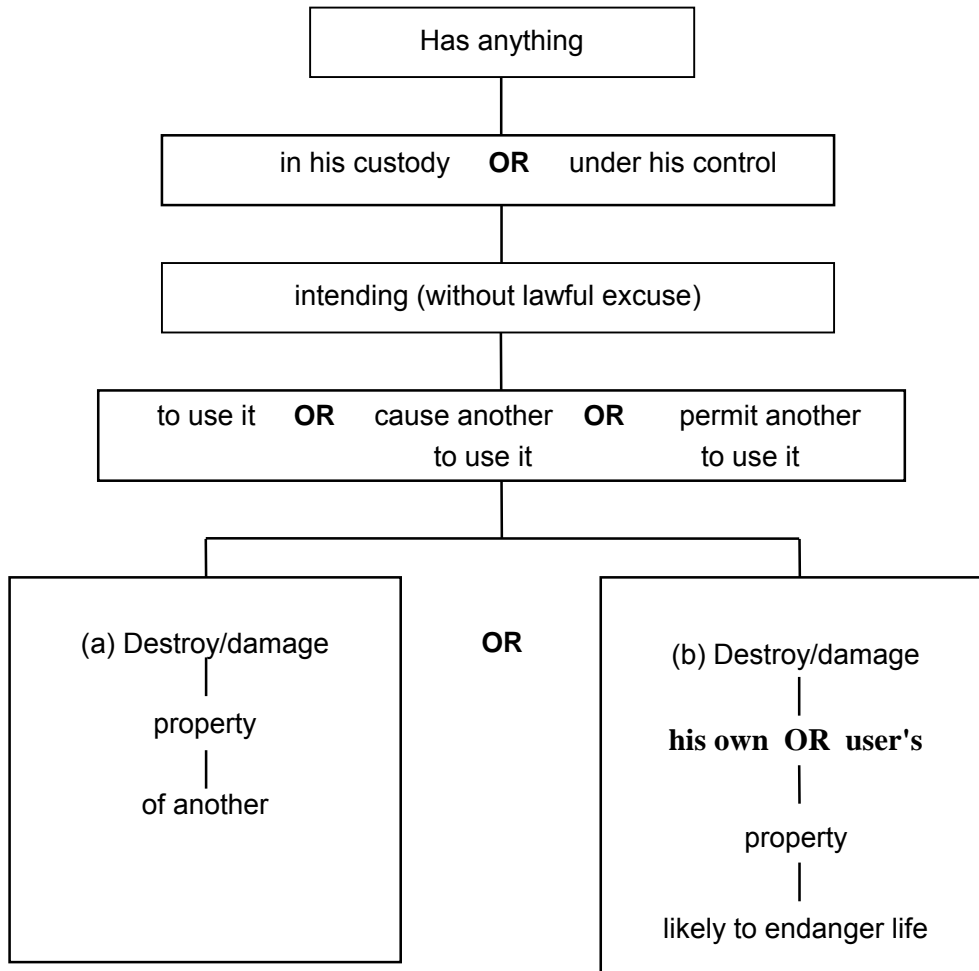
ARRESTABLE OFFENCE

N.B.

It matters not whether the threat is believed or not - the intent is the important part.

POSSESSION WITH INTENT TO CAUSE CRIMINAL DAMAGE

Section 3, Criminal Damage Act 1971

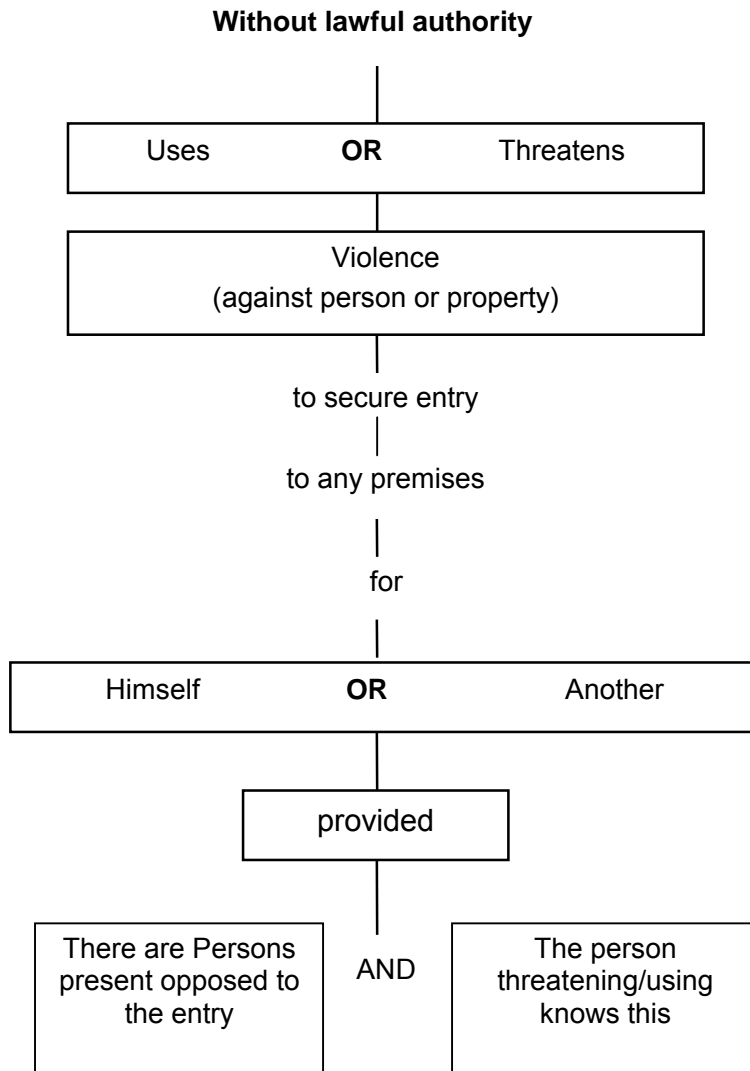


POWER OF ARREST

ARRESTABLE OFFENCE

VIOLENCE TO SECURE ENTRY

Section 6, Criminal Law Act 1977



POWER OF ARREST

PC in uniform may arrest person who is or whom he reasonably suspects to be committing.

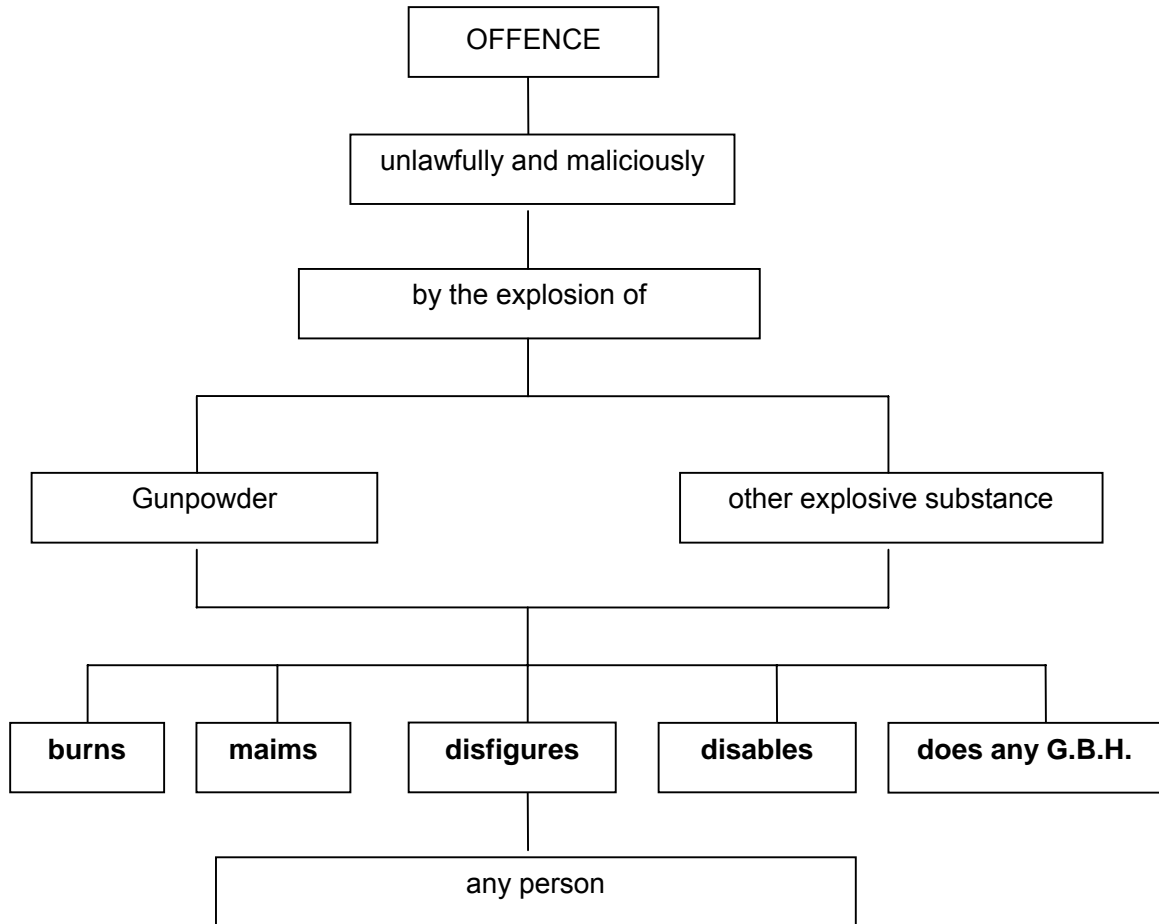
N.B.

Premises could include a bender, tree house, etc.

ERGO: Lawful authority is required.

MAIM / INJURY BY EXPLOSION

Section 28, Offences Against The Person Act 1861

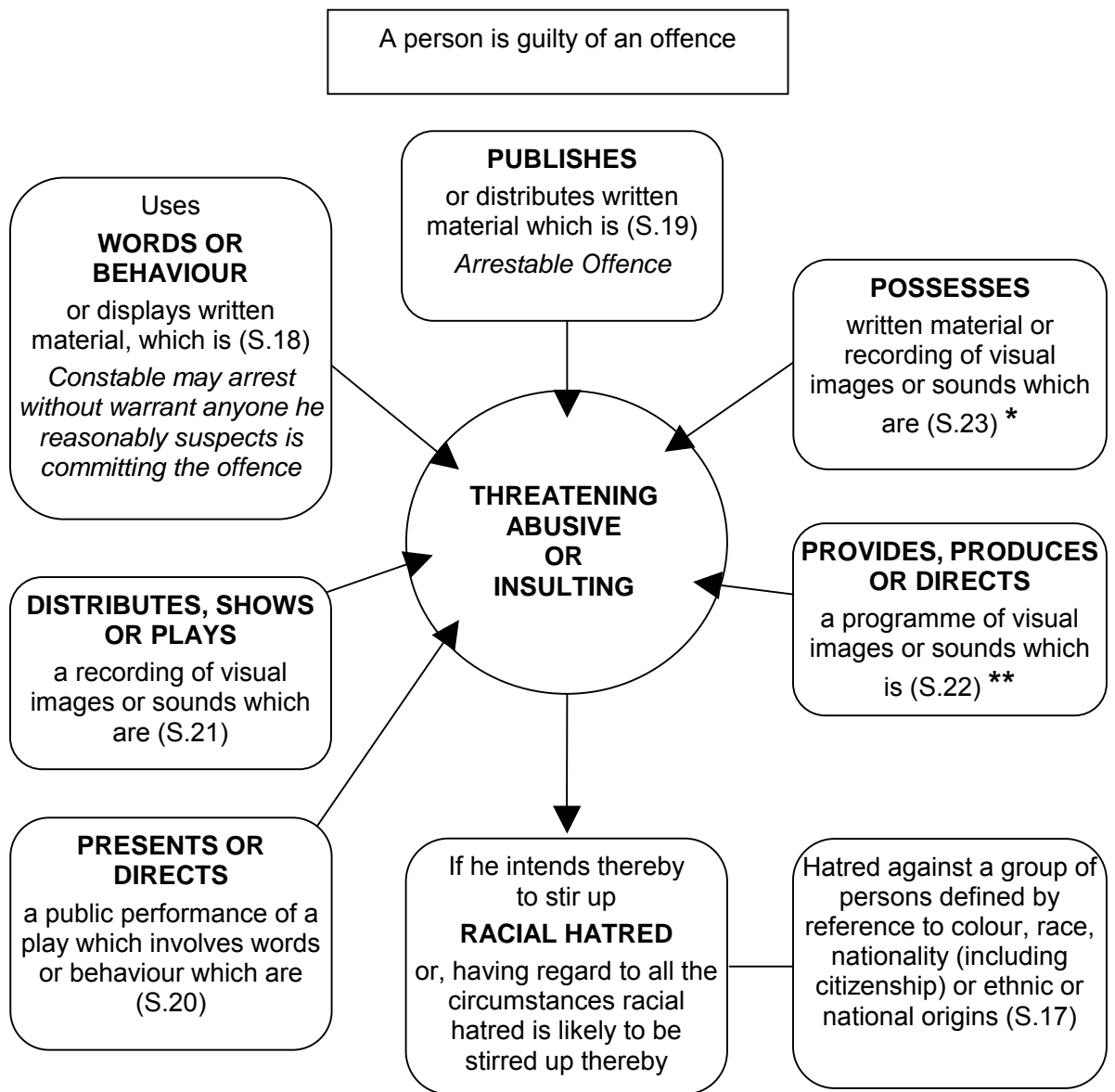


POWER OF ARREST

ARRESTABLE OFFENCE

RACIAL HATRED

Sections 17 - 23, Public Order Act 1986



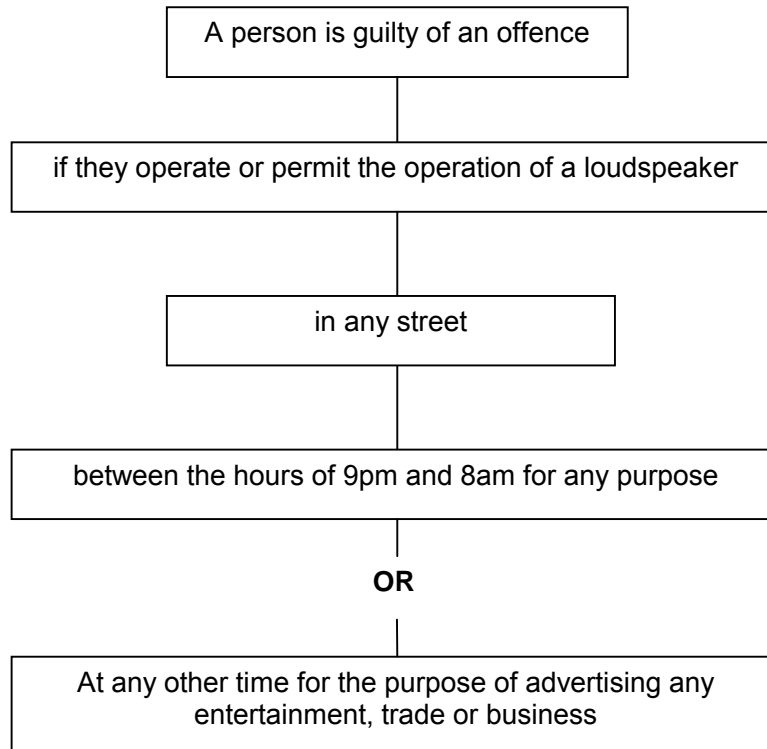
* Section 23(1)(a) & (b): Possession has to be with a view to displaying / distributing / showing / playing etc by self or another.

** Section 22: The persons who can commit this offence are -

- (a) the person providing the programme services,
- (b) any person by whom the programme is produced or directed, and
- (c) any person by whom offending words or behaviour are used.

LOUDSPEAKERS

Section 62, Control of Pollution Act 1974



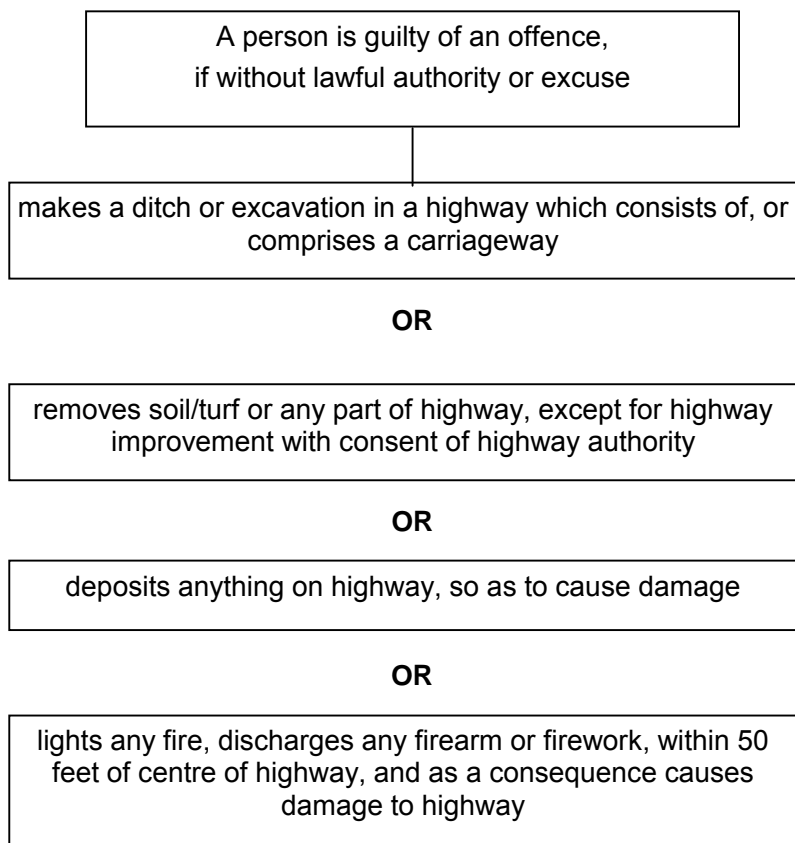
No POA - Section 25 PACE may apply.

N.B.

Ice cream vehicle or vehicle used for conveyance of perishable goods exempt between 12 noon and 7pm.

Exemptions, police, fire, ambulance, local authority, Environment Agency, showmen at pleasure fair etc.

DAMAGING HIGHWAY
Section 131, Highways Act 1980



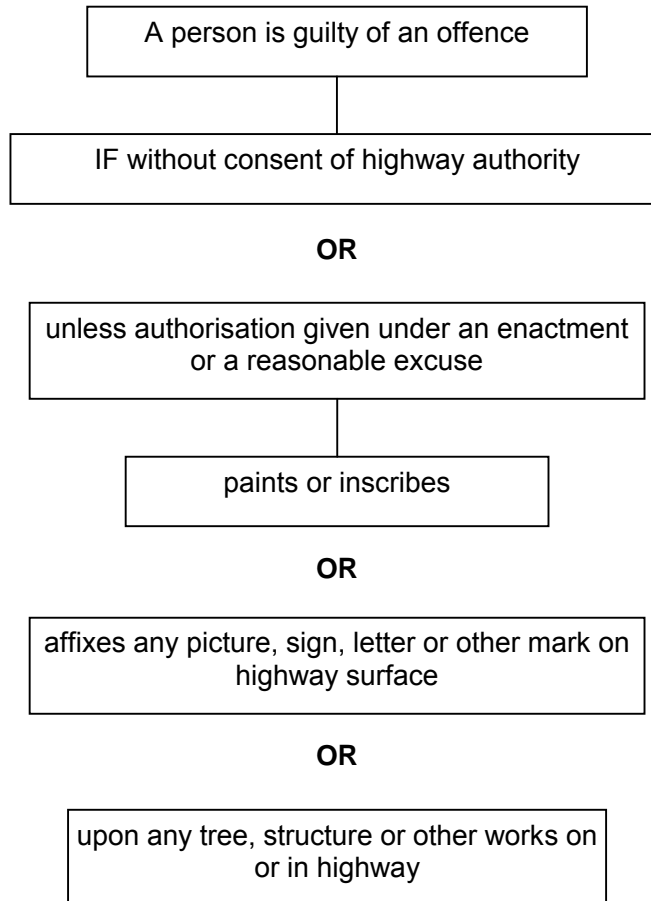
No POA - Section 25 PACE may apply.

N.B.

This also applies to the pulling down or obliterating a traffic sign on or over the highway or any milestone or direction post placed upon the highway.

UNAUTHORISED SIGNS

Section 132, Highways Act 1980



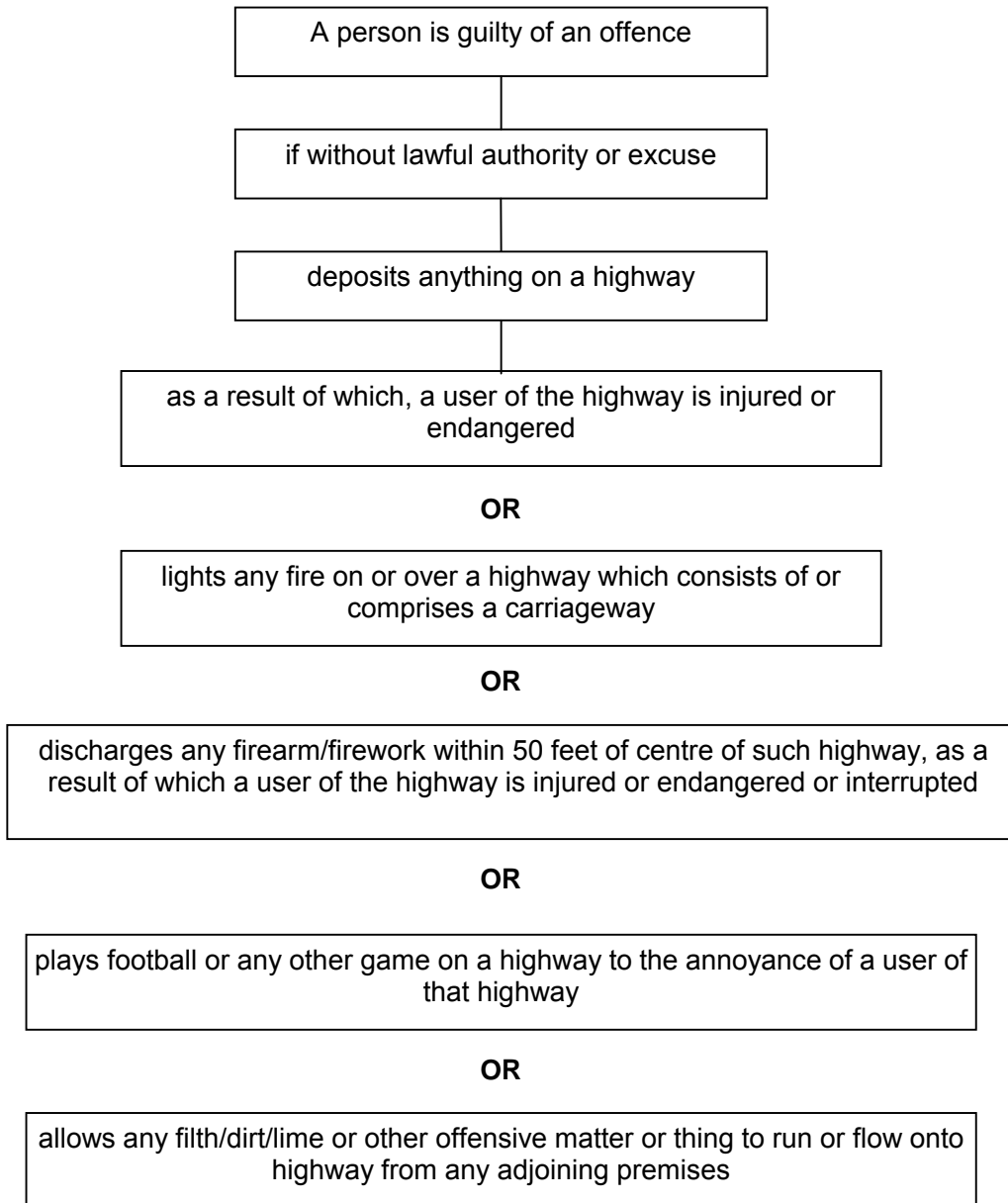
No POA - Section 25 PACE may apply.

N.B.

Also applies to banners fixed on or to hedgerows or road signs.

FIRE, FIREWORKS AND GAMES ON HIGHWAY

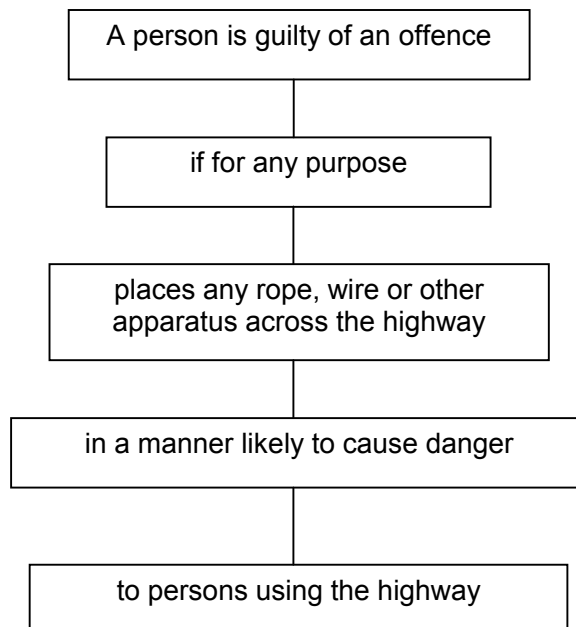
Section 161, Highways Act 1980



No POA - Section 25 PACE may apply.

ROPE ETC. ACROSS HIGHWAY

Section 162, Highways Act 1980



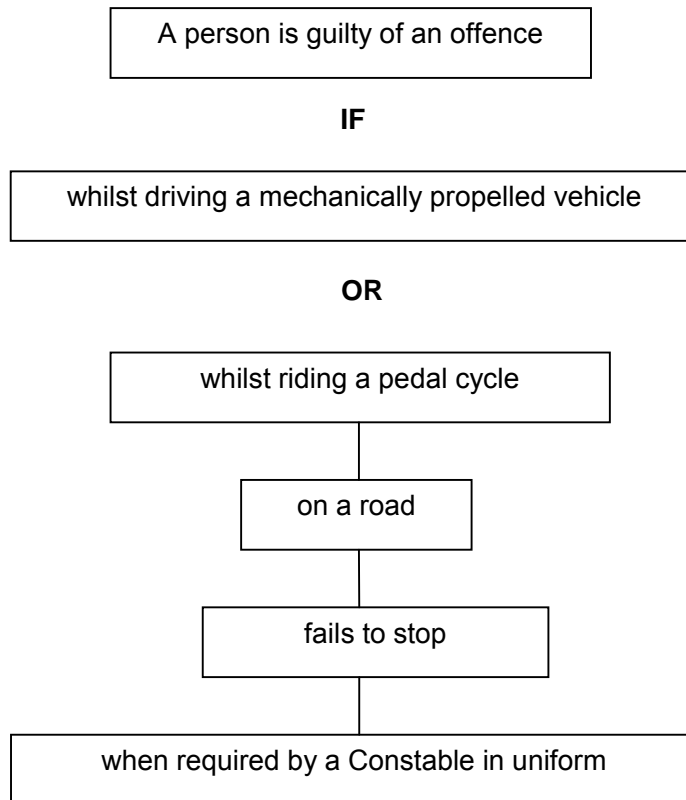
No POA - Section 25 PACE may apply.

NB.

The onus is upon the defendant to prove that he had taken all necessary means to give adequate warning of the danger.

STOP VEHICLE / CYCLE

Section 163, Road Traffic Act 1988

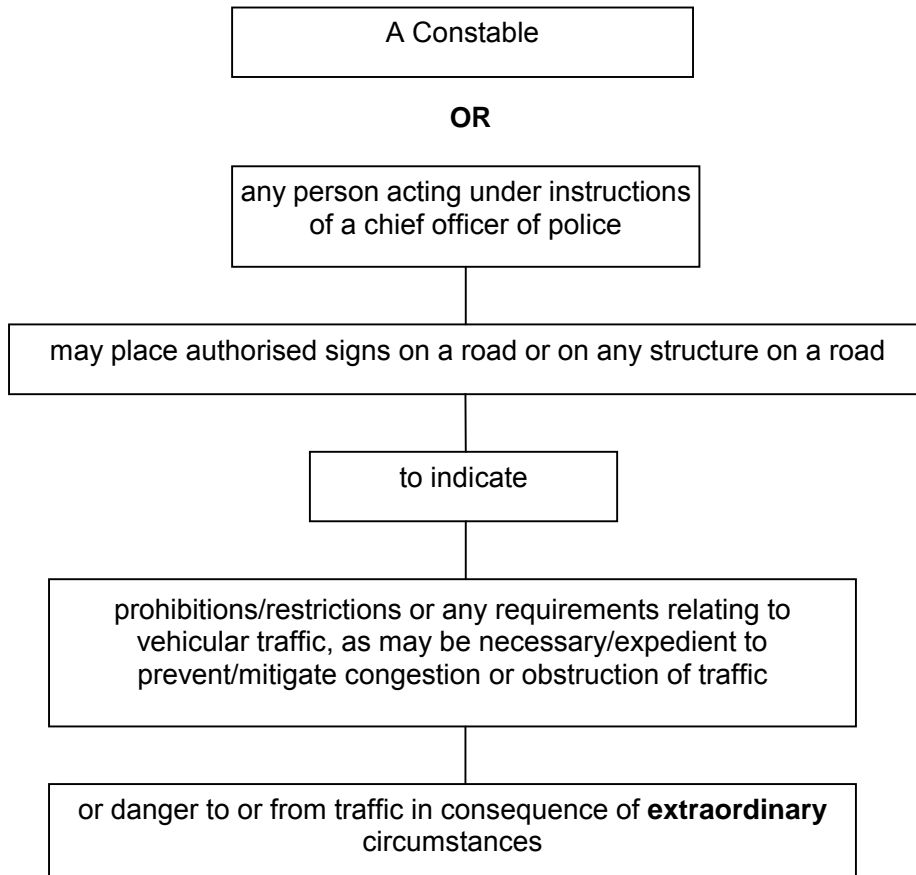


POWER OF ARREST

A Constable in uniform may arrest without warrant if he has reasonable cause to suspect the person has committed an offence under this section (S.163[4] inserted by Police Reform Act 2002.)

POLICE SIGNS

Section 67, Road Traffic Regulation Act 1984



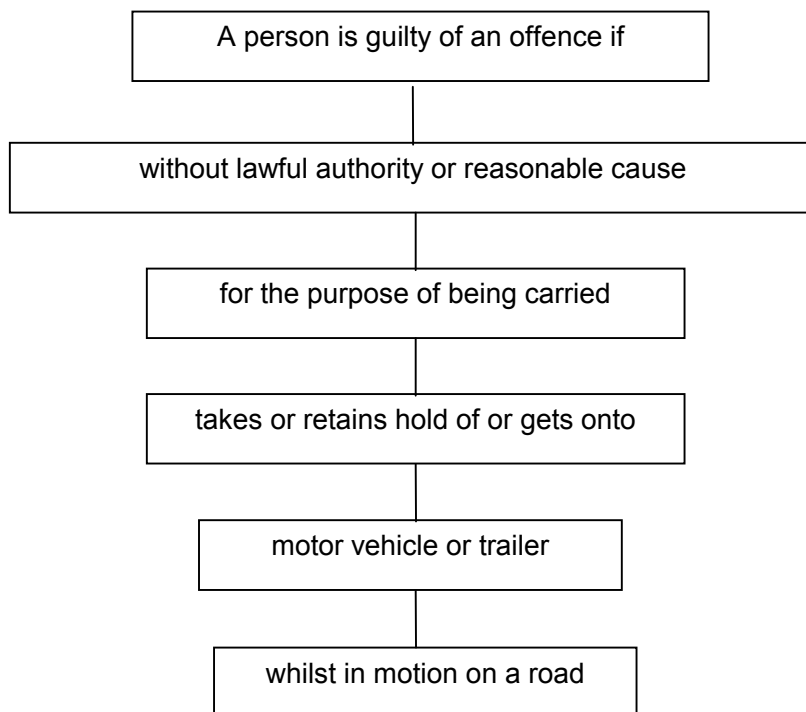
N.B.

Signs may be maintained for a maximum period of 7 days.

Drivers must comply with such signs (S.36 RTA 1988 applies).

HOLDING OR GETTING ON TO VEHICLE IN MOTION

Section 26, Road Traffic Act 1988

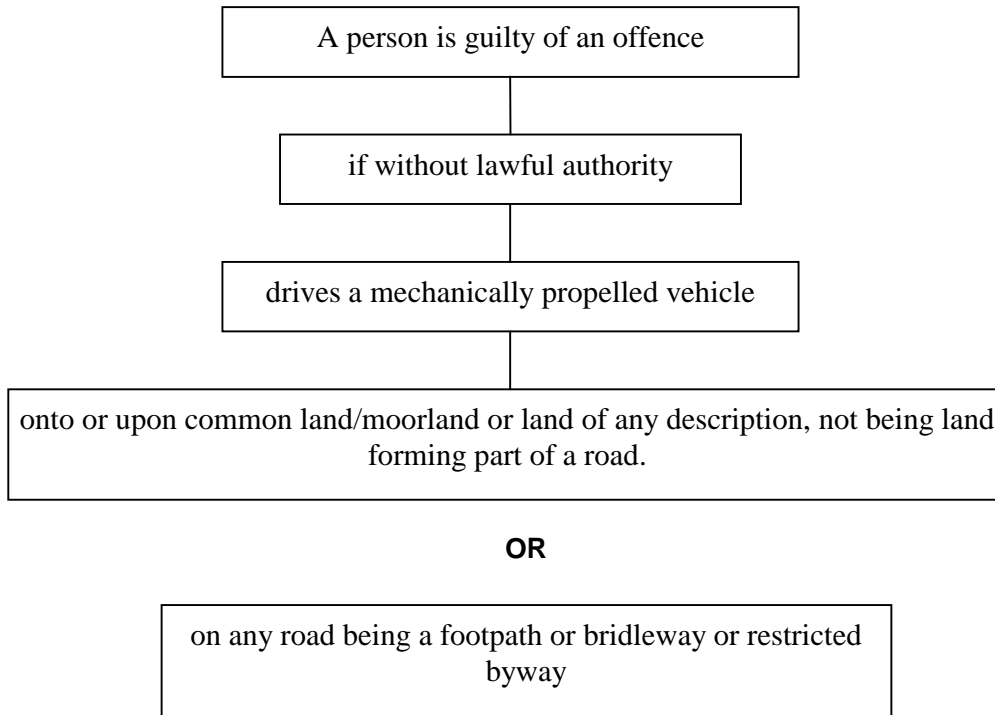


No POA - Section 25 PACE may apply.

N.B.

Offence is complete even if person obtains consent from driver drawing vehicle.

DRIVING OFF-ROAD
Section 34, Road Traffic Act 1988



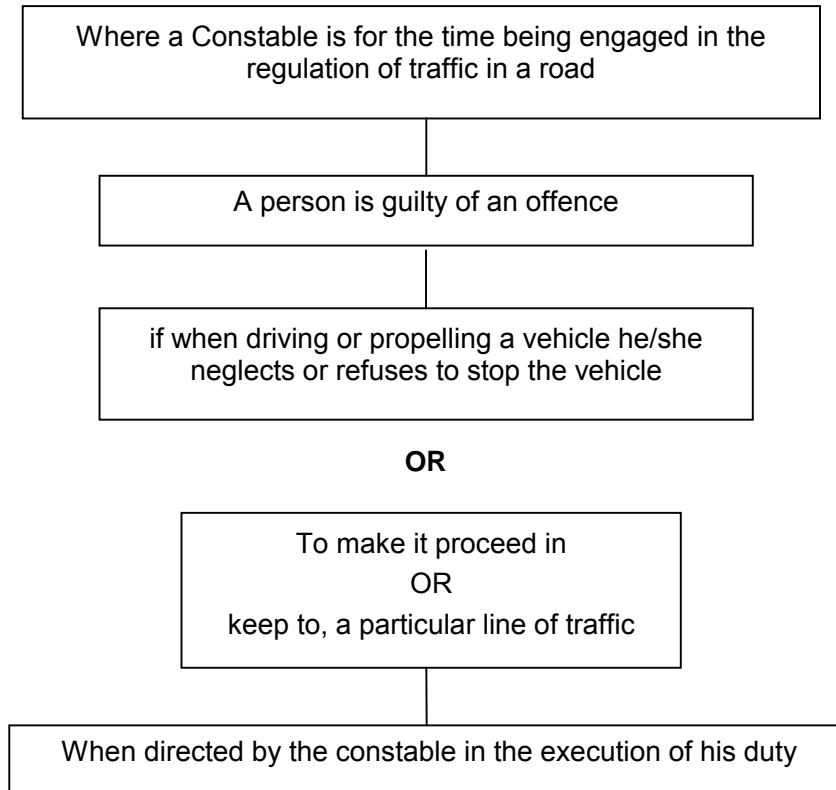
No POA - Section 25 PACE may apply.

N.B.

Not an offence if within 15 yards of road (being a road on which a motor vehicle may lawfully be driven), for the purpose of parking, or for the purpose of saving life, extinguishing fire, or other like emergency, or where certain bye-laws may apply.

COMPLYING WITH DIRECTIONS OF A CONSTABLE

Section 35, Road Traffic Act 1988



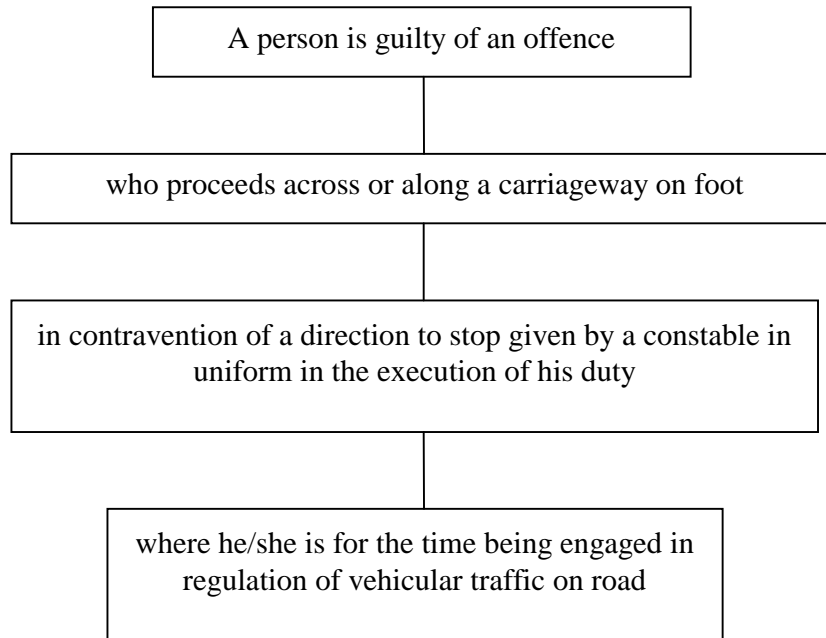
No POA - Section 25 PACE may apply.

N.B.

Does not have to be mechanically propelled vehicles.

STOP PEDESTRIANS

Section 37, Road Traffic Act 1988



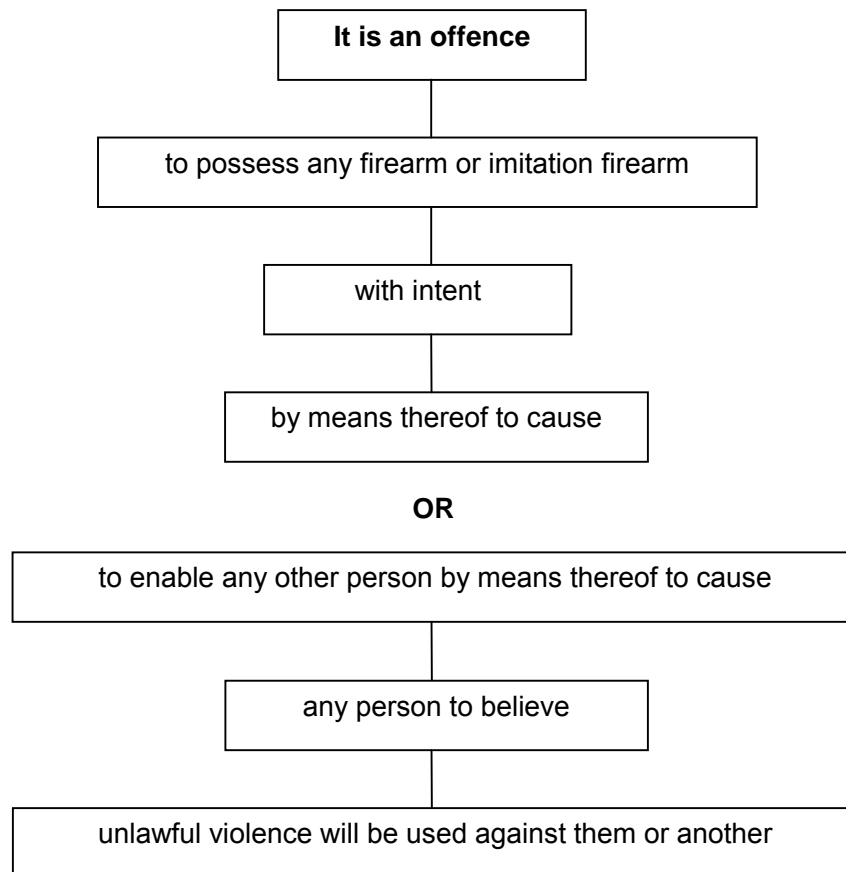
No POA - Section 25 PACE may apply.

NOTE

Direction to stop can have been given either to persons on foot, or to persons on foot and other traffic.

POSSESSION OF FIREARM / IMITATION WITH INTENT TO CAUSE FEAR OF VIOLENCE

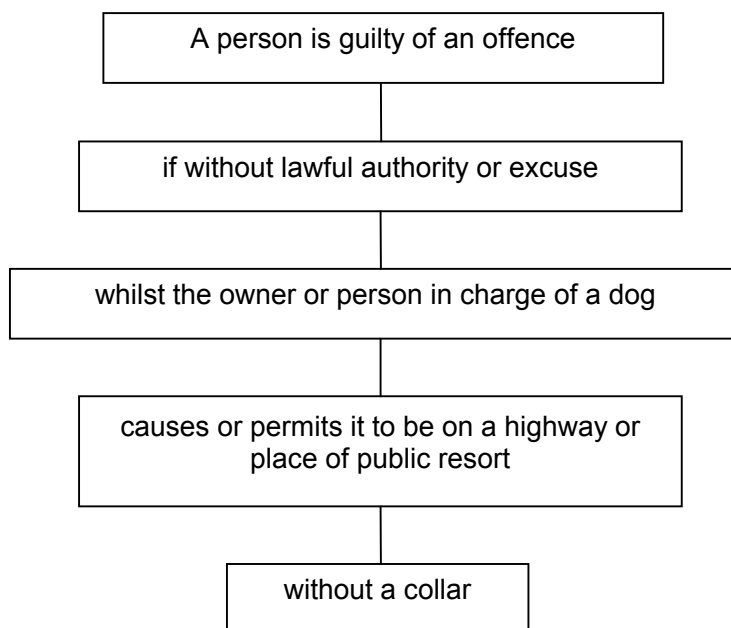
Section 16A, Firearms Act 1968



POWER OF ARREST

ARRESTABLE OFFENCE

CONTROL OF DOGS ORDER 1992 & ANIMAL HEALTH ACT 1981



No POA - Section 25 PACE may apply.

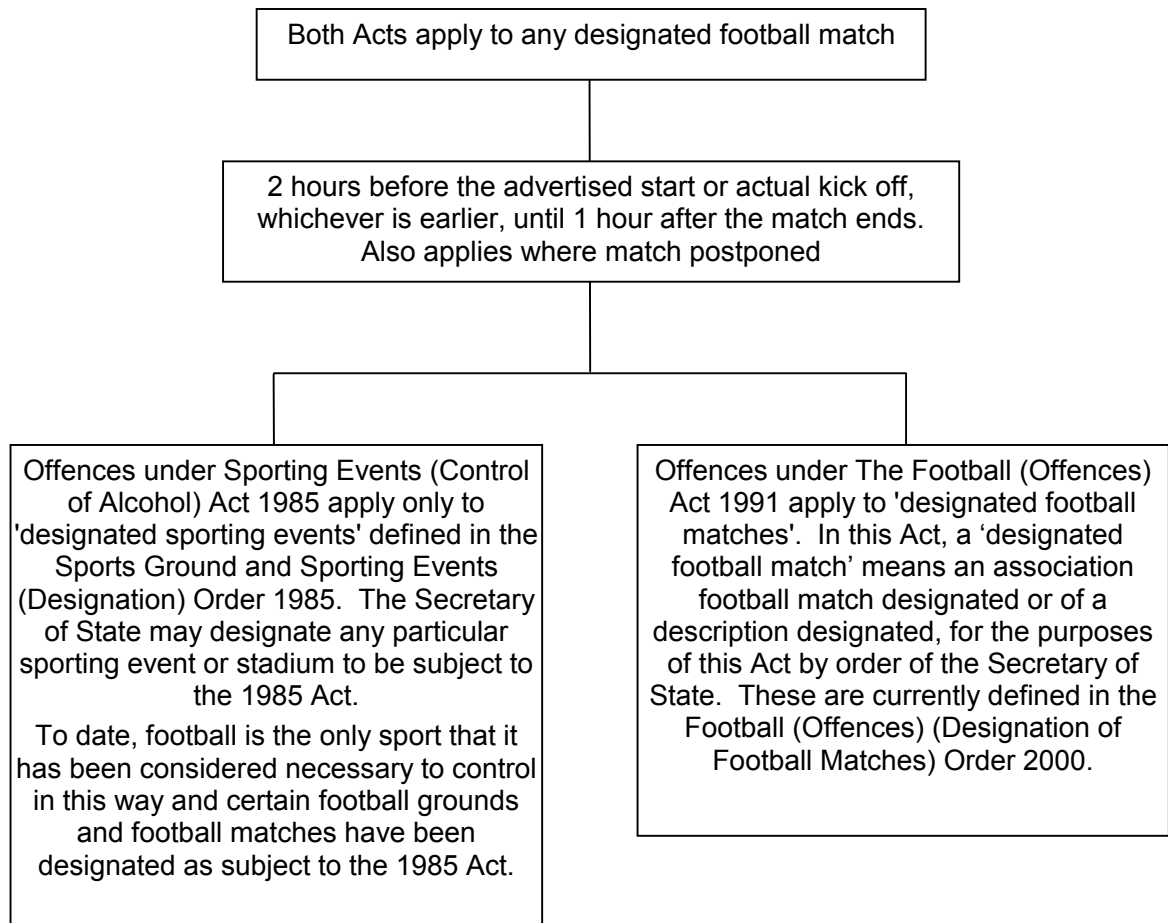
N.B.

Collar must have details of owners name and address upon it.

Exemptions -

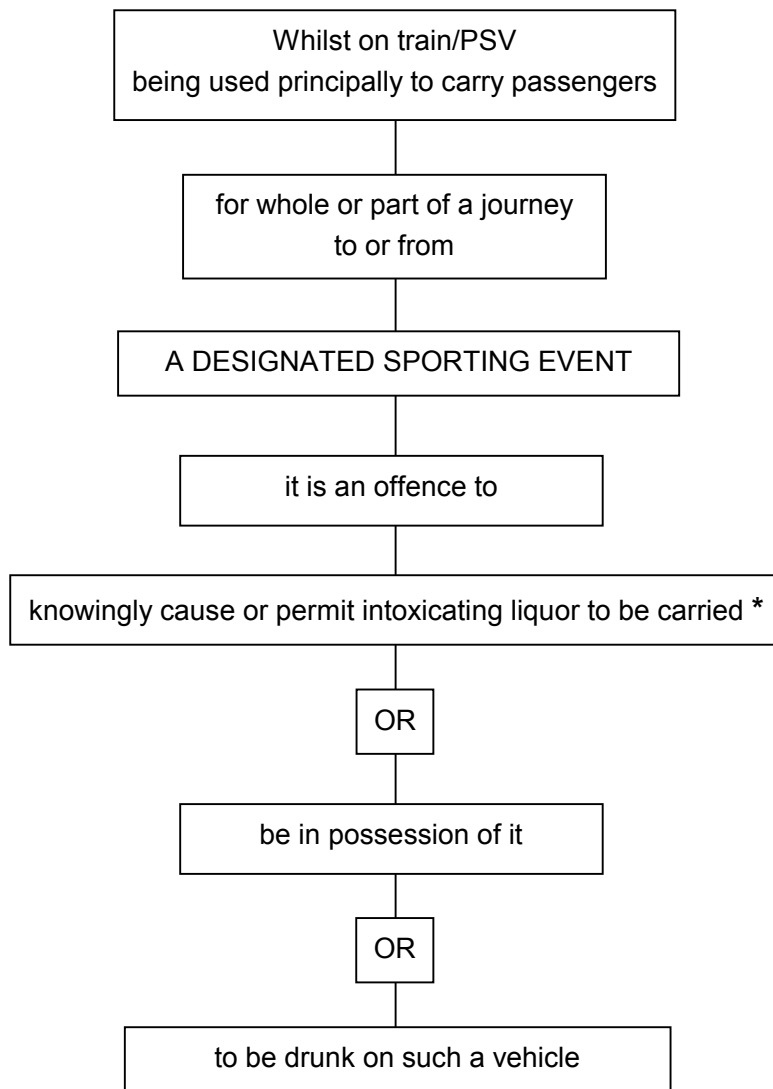
- ◇ a pack of hounds,
- ◇ any dog whilst being used for sporting purposes, or for the capture or destruction of vermin or for driving/tending of cattle/sheep,
- ◇ Guide Dogs for the Blind Association registered dog.
- ◇ dogs used on official duties by members of armed forces, Customs & Excise of police
- ◇ dogs being used in rescue work..

SPORTING EVENTS (CONTROL OF ALCOHOL ETC) ACT 1985 THE FOOTBALL (OFFENCES) ACT 1991



ALCOHOL ON SUPPORTERS VEHICLES

Section 1, Sporting Events (Control of Alcohol etc) Act 1985



POWER OF ARREST

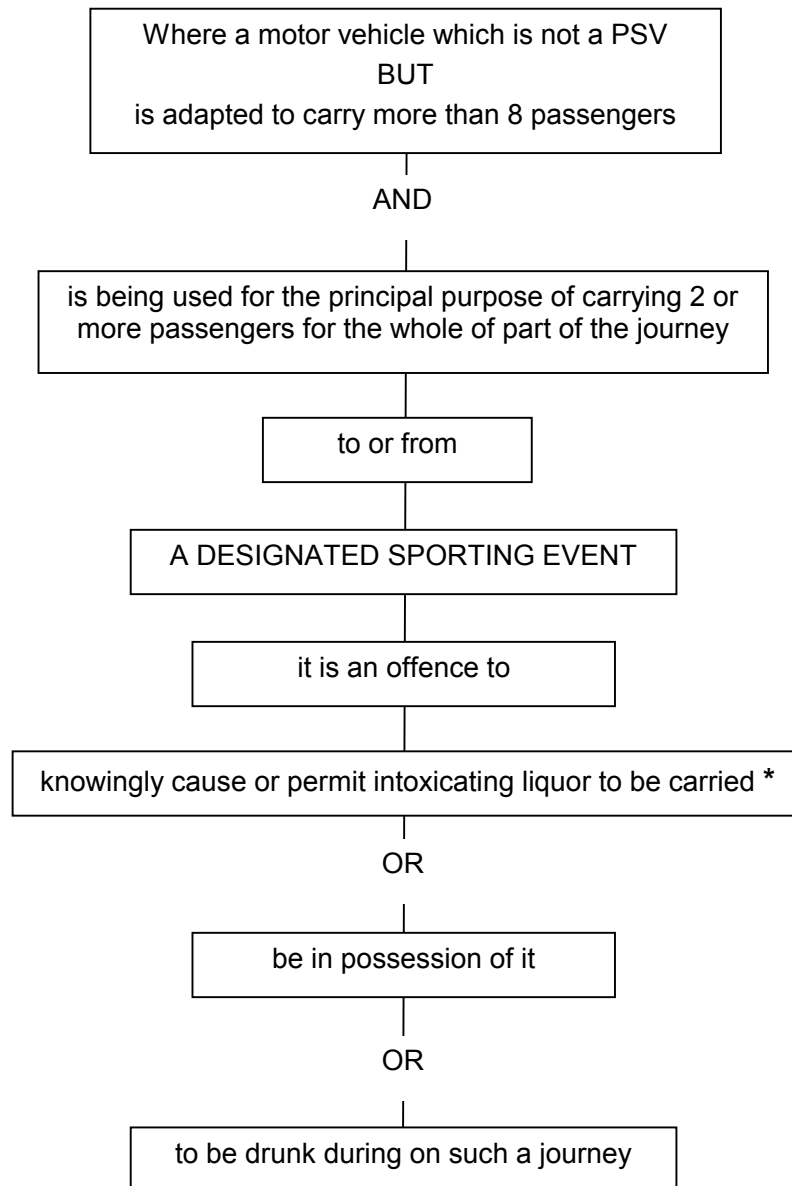
Constable may arrest any person he/she reasonably suspects has/is committing.

* If a PSV this element can be committed by the operator[♦] / servant or agent of operator.
If a hired vehicle - committed by person to whom it is hired or their servant / agent.

[♦] (operator = driver)

ALCOHOL ON CERTAIN OTHER VEHICLES

Section 1A, Sporting Events (Control of Alcohol etc) Act 1985



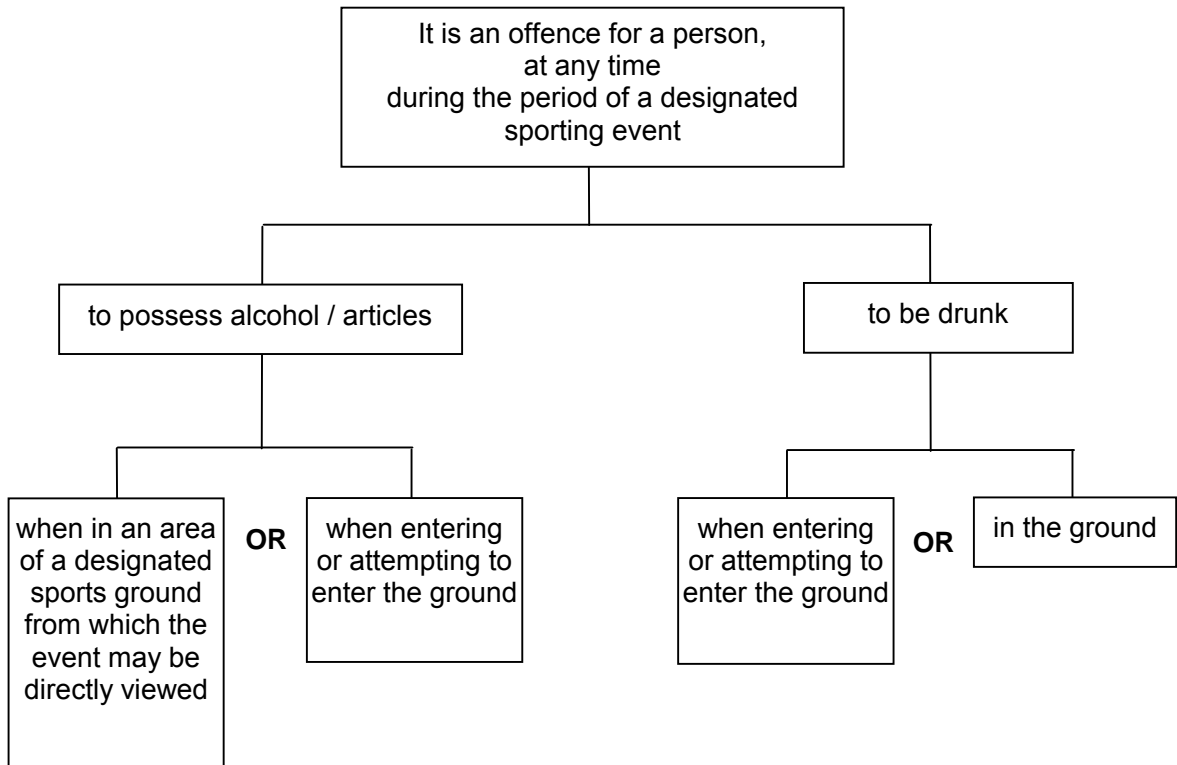
* This can be committed by the driver or if he is not the driver, the keeper / servant / agent, person to whom it is hired, loaned or otherwise made available by its keeper / servant / agent or the servant / agent of a person to whom it is so made available.

POWER OF ARREST

Constable may arrest any person he/she reasonably suspects has/is committing.

DRUNK AT FOOTBALL GROUNDS

Section 2, Sporting Events (Control of Alcohol etc) Act 1985



POWER OF ARREST

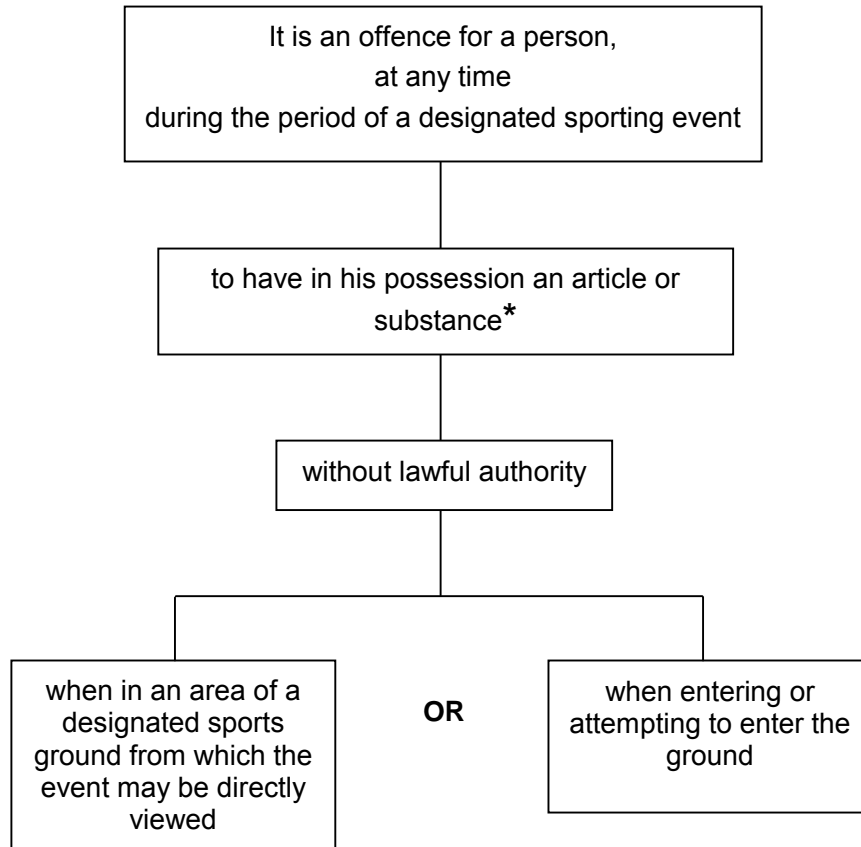
Constable may arrest any person he/she reasonably suspects has/is committing.

N.B.

'Article' includes bottles and cans for holding drink even if damaged or crushed (excludes medicine bottles).

FIREWORKS ETC

Section 2A, Sporting Events (Control of Alcohol etc) Act 1985



* Article or Substance

This section applies to any article whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas; and in particular it applies to distress flares, fog signals, and pellets, and capsules intended to be used as fumigators or for testing pipes, but not to matches, cigarette lighters or heaters.

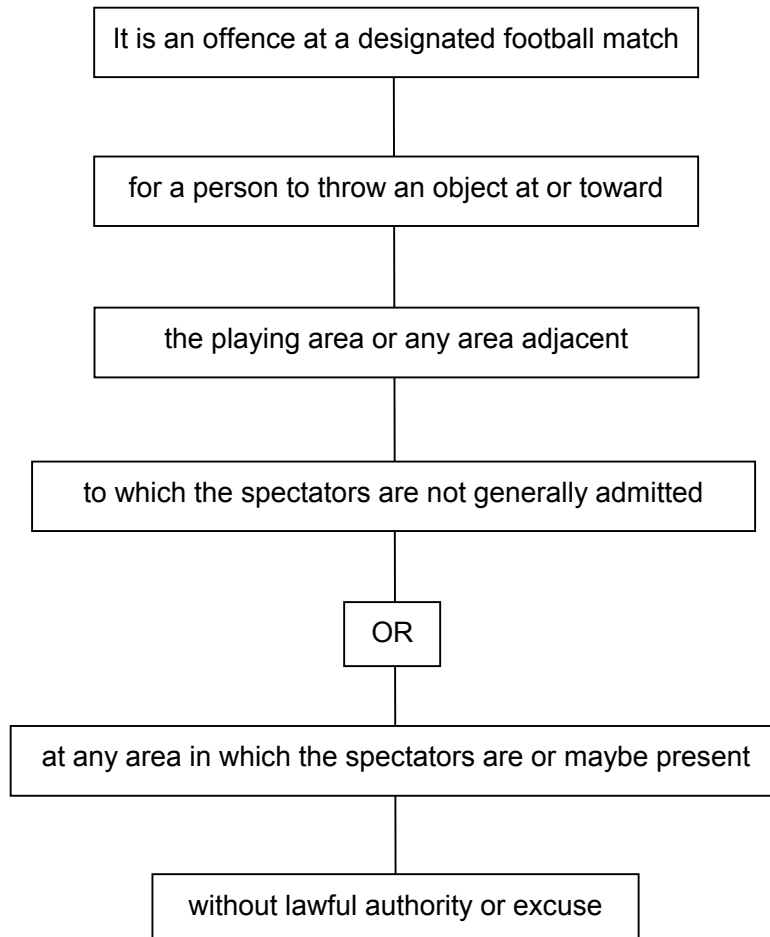
Also applies to any article which is a firework.

POWER OF ARREST

Constable may arrest any person he/she reasonably suspects has/is committing.

THROWING OBJECTS

Section 2, Football (Offences) Act 1991

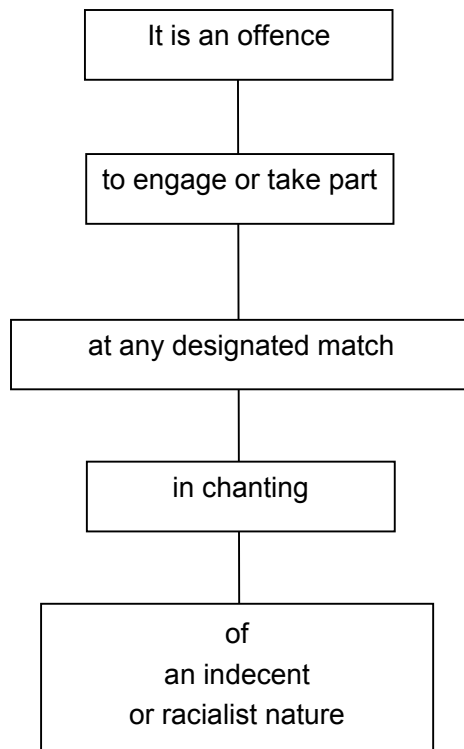


POWER OF ARREST

ARRESTABLE OFFENCE

RACIAL CHANTS (SPORTING EVENTS)

Section 3, Football (Offences) Act 1991 as amended by the Football (Offences & Disorder) Act 1999



POWER OF ARREST

ARRESTABLE OFFENCE

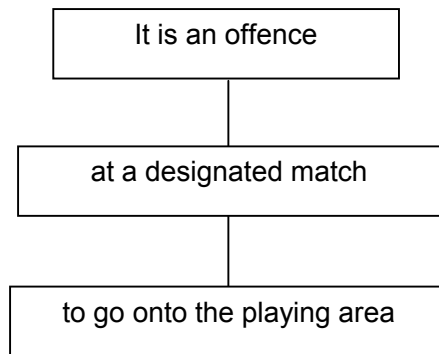
N.B.

'Chanting' means repeated uttering of any words or sounds whether alone or in concert with one or more others.

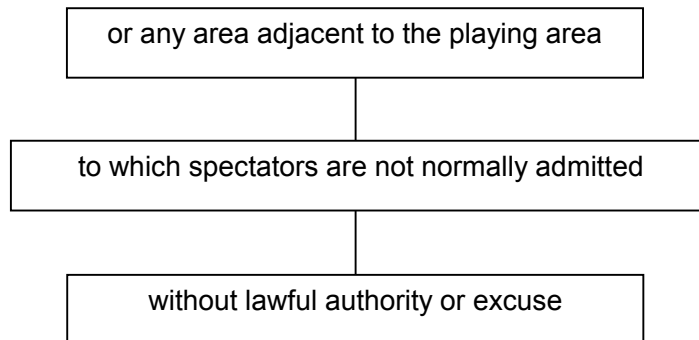
'Of a racist nature' means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.

GOING ONTO THE PITCH (SPORTING EVENTS)

Section 4, Football (Offences) Act 1991



OR

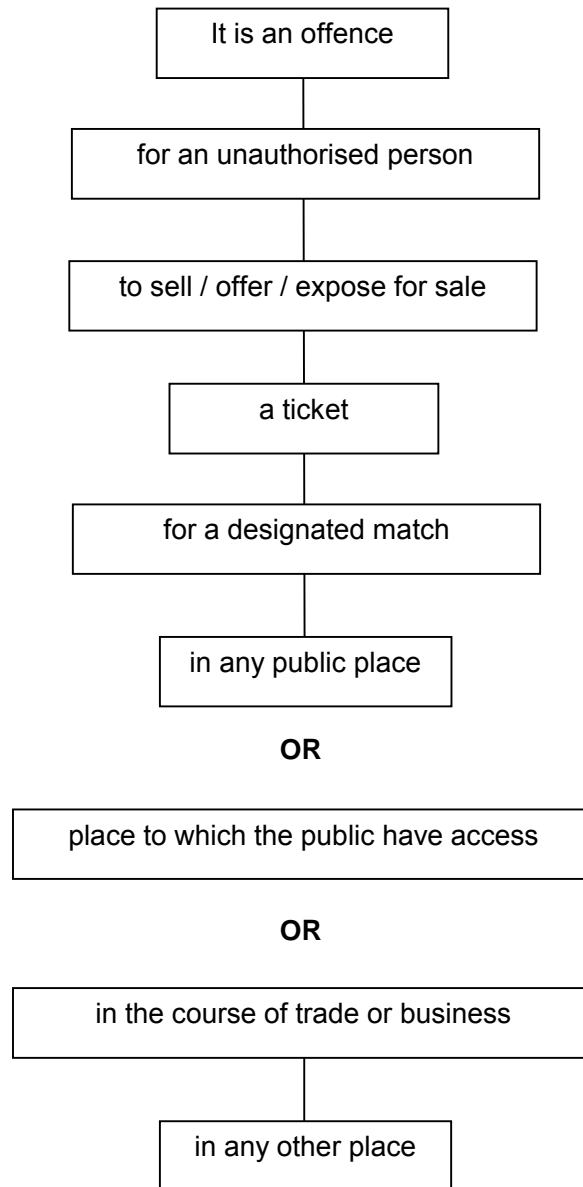


POWER OF ARREST

ARRESTABLE OFFENCE

TICKET TOUTS

Section 166, Criminal Justice and Public Order Act 1994



POWER OF ARREST

ARRESTABLE OFFENCE

N.B.

A person is unauthorised unless they have an authority in writing from the home club or the match organisers.