

# Breach of the peace in scottish law



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The crime of breach of the peace in Scottish criminal law will be explained and it will be shown why the crime has been redefined in recent years. In doing so, various case law and academic opinion will be assessed and it will be shown whether there is a clear definition of such crime or whether it is rather confusing and difficult to establish because of the array of case law that has attempted to define such activity. It will be shown that the law in this area is somewhat ambiguous and produces many problems because of the broad definition of breach of the peace; however it is apparent that much of the case law has attempted to define such activity. Nevertheless, because of the differing decisions which have been produced finding that the offence has been committed it is somewhat difficult to identify whether a particular activity is a breach of the peace or not. Thus, it is apparent that more is needed so as to elaborate on the current definitions stating what should and should not amount to such a crime.

Scotland's criminal law relies heavily upon the common law, including the public order offence of breach of the peace. This offence was created in order to remove violent offenders immediately from a scene so as to ensure that they keep the peace. It has been noted by Christie that; " so far as offences against society are concerned, breach of the peace is perhaps the most broadly defined and frequently used" and that " it covers almost any kind of anti-social behaviour, so long as it is likely to create fear, alarm, annoyance or upset among the general public." Nevertheless, such a broad definition of breach of the peace causes many problems and difficulties within this area of the law and it is uncertain whether a particular activity will be an offence or not, thus the person who is committing such an offence may

not be aware that they are doing so. This evidentially causes much ambiguity and creates harsh debates on this topic.

In accordance, it seems that in many instances the offence of breach of the peace contravenes with ones Human rights under article 6 of the European Convention on Human Rights. Thus, it is provided in this article that the accused must be “ informed, promptly, in detail and in language which he understands of the precise nature of the charge against him.” Yet, because of the broadness of the offence it is questionable whether art 6 can be ascertained. Nevertheless, it was argued in the leading case of

***Smith v Donnelly***

that the offence was also a breach of article 7 which provides that “ no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law.” However it was held in this case that the offence of breach of the peace did not in fact contravene with this article. Here it was stated by Lord Coulsfield that; “ there are many ways of committing breach of the peace and it is neither possible nor desirable to derive a comprehensive definition, yet the accused must be shown to have engaged in conduct serious enough to alarm ordinary people and threatened to cause serious disturbance in the community.”

Still, it is apparent that regardless of the attempts which are made to define the offence, because of the wide ranging scope, it is clear that there will be some uncertainty and confusion in this area. What’s more, it is questionable how a person can be guilty of such an offence where they are not aware of

doing so. However, the extensive case law over the years have gave some inclination of what kind of activity would amount to breach of the peace which gives some sort of idea what it shall consist of. In

***Saltman v Allan***

it became understandable that swearing and shouting would amount to such an offence as also in the case of

***McMillan v Normand.***

Yet, in

***Rafaelli v Heatly***

peering in at lighted windows was found to be an offence and in

***Wyness v Lockhart***

stopping people in the street and asking for money was. Arguably, it does however seem that the extensive array of cases do not exactly give a definition per se as it seems that any type of behaviour can amount to breach of the peace. What's more, begging in the street is not an offence, yet asking for money is which is rather absurd and creates further uncertainty.

Still, it is felt by many that the offence of breach of the peace is essential in ensuring that there is adequate protection available for the public. This was exemplified by Black who argued that; " private rights are balanced against the general interest of the public since there would be chaos if individuals were allowed to do what they pleased." Yet it was also said that; " these breach of the peace decisions illustrate that various public rights affect the privately owned solum of roads." In effect, this suggests that although it is

vital that the public are protected by having breach of the peace offence, it must also be ensured that individual's rights are protected who are in their own private areas. Whether this is effectuated however remains doubtful and it seems that any activity can amount to breach of the peace and it seems to be a matter for the courts to decide upon by a case by case basis.

Nevertheless, the law in this area is certainly better than it was previously and it seems that there has been a redefining of the definition over the years. Whether this has in fact worsened things, nonetheless is arguable since it seems to have caused much confusion and uncertainty. Historically it was apparent, however that for an offence of breach of the peace " it was not necessary to be alarmed in the sense of personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace" as in

***Ferguson v Carnochan.***

Accordingly, it is evident that the definition of breach of the peace has changed over the years, yet it is also apparent that the law still produces uncertainty. What's more, it is somewhat difficult for the mens rea element in this offence to be established and in many instances it cannot be. This is because persons may not have believed that they were committing an offence because of the wide scope of its application and so the mens rea may not be present, yet they can still be convicted of the offences. Thus, it has been noted by Bonnington that; " Many academic commentators doubt if there is any need for proof of mens rea in a prosecution for breach of the peace. The normal approach of the Scottish courts is that mens rea can be inferred from all the facts of the case. There need not be specific proof about

the accused's motives or intentions." This does not however seem plausible and unless there is a clear definition of what will and will not amount to a breach of the peace, there will continue to be ambiguity and uncertainty produced in this area of the law.

Overall, it is apparent that the crime of breach of the peace has been redefined over recent years, yet it seems that the law in this area is still in a state of disarray. This is because it is unclear whether a particular form of activity will be an offence of breach of the peace or not. As such, it seems rather unconscionable in situations where a person is lacking the mens reas because of the fact that they were not aware that they were committing an offence, yet they are criminally liable. In effect, it seems that more definition is needed on this offence so persons can have a greater idea of what will constitute the offence. Although, the case law gives some inclination, it seems far too wide ranging to give an adequate view and as such it seems that much is needed so as to ensure clarity and certainty within this area of the law.

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## Cases

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