

## Legal

# Dealing with disruptive trespassers

by Richard Atkins of Knights Solicitors

WHEREVER SHOOTING TAKES PLACE, THERE is potential for problems from people who may have different interests, hold opposing views or misunderstand what is happening. These include not just committed animal rights activists, but anyone else who is on the land without lawful authority. These could be people walking their dogs, birdwatchers, members of local badger watch groups, as well as RSPB and RSPCA employees.

None of these have any rights on private land where there is no legal access. In these cases it is the gamekeeper who should be asking questions: “Who are you?”, “What do you want?”, “Are you aware that this is private land and

not open to the public?” He should politely and calmly obtain information, not provide it.

Trespassing itself was historically not a criminal matter, and where no offence has yet been committed and there are insufficient grounds to believe there will be a breach of the peace, the police may be unwilling to assist. In that case, the exercise of common law powers may be the only option. However, extreme caution is necessary.

If a trespasser peaceably enters or is on land, the landholder – the person who is in or entitled to possession – may request him to leave and, if he refuses, the landholder or his gamekeeper or

other representative may remove him from the land using no more force than is reasonably necessary. If a trespasser enters with a threat or use of force, the landholder may remove him without a previous request to depart. As with the citizen’s arrest, explained below, the use of such common law powers requires great care because, if the force used in turning out a trespasser is found to be ‘unreasonable’, this will amount to trespass upon the person of the trespasser, as well as a criminal assault irrespective of what the trespasser may be doing.

If it is not possible to wait for the

**CONTINUED ON PAGE 48**

Wherever shooting takes place there is potential for problems caused by those who have different interests.



**CONTINUED FROM PAGE 47**

police, then in certain circumstances there is a power available to every member of the public make a citizen's arrest. Under section 24A of the Police & Criminal Evidence Act 2004, any person other than a constable may arrest anyone whom there are reasonable grounds to suspect is committing or has committed an indictable offence. Not all offences are indictable, only those that could be dealt with at a Crown Court. The power may only be exercised where it is necessary to prevent physical injury to himself or others, loss or damage to property or making off before the police arrive and where it is not reasonably practicable for the police to make the arrest.

In respect of what are known as summary offences, which include verbal abuse, minor assaults where no injury is caused, minor criminal damage and minor Public Order offences, these are no longer covered by a 'citizen's power of arrest' but 'reasonable' steps may be taken to prevent such behaviour, but only in the last resort.

Some of you will possibly have heard of 'gamekeepers' powers' in relation to confiscating poaching equipment.

However, these require Special Appointment for the gamekeepers who wish to be empowered to use them. These powers under the Game Act 1831 require registration with a local authority. Also, note that there is no power to seize firearms, which must be left to the police for obvious reasons.

## *The police and courts do not like self-help measures.*

Any citizen may also arrest at common law where: (a) a breach of the peace (ie. actual violence) has occurred in the presence of the person making the arrest; (b) the arrestor reasonably believes that such a breach will be committed in the immediate future by the person arrested; or (c) a breach of the peace has been committed and it is reasonably believed that a renewal of it is threatened.

In making a citizen's arrest only reasonable force may be used. Excessive force would itself be an assault or a Public Order Act offence, which could lead to prosecution, as well as a claim for damages for trespass to the person and false imprisonment. The police and

the courts do not like the use of self-help measures. Any use of force must always be reasonable, and self-help is best regarded as a measure of last resort.

An aggravated trespass under Criminal Justice & Public Order Act 1994 section 68 is a trespass where a person enters private land without authority (eg.

saboteurs) and engages in conduct intended to disrupt or obstruct a lawful activity. This is only committed where persons engaging or are about to engage in the lawful activity

are physically present on the land at the time of the trespass, such as a shoot.

### **PART V OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 SECTION 68: OFFENCE OF AGGRAVATED TRESPASS**

This is an offence committed on lands in the open air with the intention of disrupting or obstructing a lawful activity or intimidating another person so as to deter him from engaging in a lawful activity. It can result in fines of up £2,500 or imprisonment for up to three months. Section 69 gives the police powers to remove persons committing or participating in aggravated trespass. An aggravated trespasser can be directed

## **NOTE IT!**

### **KNIGHTS SOLICITORS**

Richard Atkins is a Partner at Knights Solicitors. Tel: 01892 537311, [www.knights-solicitors.co.uk](http://www.knights-solicitors.co.uk). Ask for Matthew Knight, Richard Atkins, Peter Burfoot or Joshua Quinn.

### **GRC BAILIFFS**

GRC Bailiffs have been involved in dealing with the various forms of unwanted guests, unauthorised encampments, fly grazed horses, etc, for 25 years. They are happy to offer advice on dealing with any issues you may encounter and discuss your options. In addition to carrying out around 200 hundred Common Law Evictions each year, GRC can also supply specialist security services and close protection officers for events including shoots. GRC can also provide other security measures to deter trespass such as static guards, security dog handlers, concrete barriers and temporary fencing. GRC can be contacted during normal office hours on their main number 0845 6014307. Out of hours an answering service will take any messages and a member of staff will usually respond within a short period of time.

### **NGO FREE LEGAL HELPLINE**

NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins, Peter Burfoot and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:  
Michael Kenyon, Solicitor (Macclesfield),  
01625 422275 or 07798 636460.



by a constable in uniform to leave land. Failure to comply would be an offence. The powers enable the police to take pre-emptive action. Failure to comply may result in a fine of up to £2,500 or imprisonment for up to three months.

Points to note:

- Aggravated trespass can be committed on footpaths, bridleways or byways, but not on public roads. It cannot be committed in buildings but it can be committed on ponds, lakes, rivers, streams and other waterways. It can be committed in public open spaces where the public merely have rights of access for air and exercise such as the New Forest or open access land under the Countryside & Rights of Way Act 2000.
- The landholder does not have to be present for the offence to be committed or for the police to take action, but either he or his representative will have to give evidence that the disruptive activity took place without his permission, that the offenders were trespassers and that the disrupted activity was there with his blessing.
- The lawful activity does not actually

have to be disrupted. It is enough that trespassers intend disruption. Saboteurs carrying hunting horns, staves, whips, etc, will be good evidence of such an intention as would previous disruptive behaviour by the defendants.

- Only a police officer in uniform can arrest suspects under these provisions and only the police can direct trespassers to leave the land under them, but the police do not have to be present for the aggravated trespass (under Section 68) to be committed. If good evidence is collected, prosecutions can still follow, whether the police were present at the incident or not.
- The penalties for committing the offence are a maximum fine of £2,500 and/or up to three months' imprisonment. As it is concerned with criminalising matters which were previously exclusively civil issues, the 1994 Act is of interest to shooting and to landholders and their representatives but its operation is in the hands of the police and the Crown Prosecution Service. However, the intended consequence of Section 68 and 69 of the Act was to swing the policing

of the disruptive trespass issue decisively in favour of the landholder and to add criminal law sanctions to civil damages and injunctions and common law self-help remedies.

Sadly, one note of caution on the exercise of these powers relates to firearms. Attempts to exercise any powers at a time that one is in possession of a firearm is likely to cause complaints of intimidation with a firearm leading to seizure, if not revocation, and possible prosecution under the Firearms Act 1968. Firearms should be stored securely away at any relevant time an attempt is made to move trespassers on or to arrest them. Likewise, given the severe penalties for knives, no knife should ever be carried or displayed when exercising these powers.

As soon as possible after such an incident, make sure that a proper record in writing or recording (video recording by mobile phone) is kept at the time or made immediately afterwards. These are as good as a policeman's notebook from a gamekeeper's point of view.

## Ad 20.5 half - MacFarlane Pheasants