

Brownlie's Law of Public Order and National Security

Second edition

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Preface

More than a decade has passed since the publication of Brownlie's *Law Relating to Public Order*. During that time there has scarcely been a day when the media has not reported some incident of public disorder. Considerable changes in the law of public order have taken place and further important developments can be expected in the years ahead. A completely revised and expanded treatment of the subject was therefore necessary for the second edition. This undertaking, in consequence of Professor Brownlie's commitments, within the ambit of public international law and at his suggestion, has been given to a new author.

The structure of the present book differs markedly from that of its predecessor. The principal concern of the first edition was with order in the streets and in other public places, and that remains the concern of the first part (chapters 1 to 9) of this book. The second part of this edition (chapters 10 to 13) is concerned with national security and incorporates those topics relating to the security of the state included by Professor Brownlie in the first edition, i.e. treason, sedition and cognate offences, assaults on the Sovereign, and emergency powers. To these I have added reference to the Prevention of Terrorism (Temporary Provisions) Act 1976 (chapter 10), the Official Secrets Acts 1911-1939 in a general chapter on disclosure of information in the context of the national security interest (chapter 12), and other matters which affect the security of the state: in particular, the areas of aliens and deportation, security procedures in the public service, the interception of communications, and the Security Service itself (chapter 13). It is the aim of this book to provide a comprehensive treatment of the law of public order and national security, the various aspects of which have tended until now to have been dealt with separately in works concerned with constitutional or criminal law.

Developments in the area of the law of public order have necessitated considerable expansion and revision of the original text. New material has been added and subjects, such as affray and unlawful assembly, have been given new life. Legislation has been significant in this area of the law. In particular, there has been the Firearms Act 1968, the Prevention of Terrorism (Temporary Provisions) Act 1976 and the Race Relations Act 1976. In addition there have been a number of decisions of the courts. Pride of place must go to the House of Lords decision in *Brutus v Cozens*. Picketing, which has grown in importance as a weapon in industrial disputes, is considered for the first time (chapter 3). I have also added a new chapter on freedom of expression in public places and freedom of assembly in the United States (chapter 4). Frequent mention of Commonwealth cases and legislation was made in the original text and I have accordingly continued the practice of illustrating areas of common concern in this edition. Similarly, I have taken the view that a study of the law of public order in the United States is of considerable interest when viewing the law in the

United Kingdom from a critical standpoint. In the United Kingdom problems of freedom of expression in public places and freedom of assembly have too often received scant attention from busy magistrates and only occasionally from the Divisional Court or the Court of Appeal. Very rarely have they received the scrutiny of the House of Lords. By contrast, in the United States this area of the law has constantly been under review by the Supreme Court. Furthermore, the existence of the European Convention on Human Rights and Fundamental Freedoms (see appendix 8) makes it essential that our freedoms of speech and assembly, which it protects, are subjected to proper examination. The Convention has already made its impact on English law and it will continue to do so. Indeed, it cannot be long before the restrictions on freedom of expression in public places and freedom of assembly are subjected to the scrutiny of the European Commission or the European Court of Human Rights. If, as is possible, the Convention is incorporated directly into English law or the United Kingdom adopts its own Bill of Rights (see chapter 15) then the experience of the United States in dealing with the positive rights of speech and assembly will be of even greater relevance.

In the discussion of national security consideration has been mainly given to United Kingdom law but reference has been made to developments in the Commonwealth and the United States when this would assist. In particular it is of interest to compare the different approaches to disclosure of information in the United Kingdom and the United States (chapter 12).

In addition to changes of substance, there have been changes of order and emphasis in this edition. The original chapter on common concepts is now included in the body of the text and the chapter on order in special places has been excluded, though obviously reference to certain public places has been made where appropriate. Reference to possession of drugs has been omitted as have some of the topics in the original chapter on miscellaneous offences. The chapter on 'Justifications for the use or threat of force' has also been omitted though some of the topics have been included in the new chapter on remedies and further legal controls (chapter 14).

Greater emphasis in both depth and space have, on the other hand, been given to subjects of particular concern to the practitioner. I have dealt with sentencing when examining the individual substantive offences and I have also considered such problems as joinder of offences in the indictment. Remedies and further legal controls relating both to public order and national security are looked at in detail. There is an enlarged section on the 'power to bind over' which has been more frequently used in recent years. A collection of the principal documents in the field of public order and national security are set out as appendices.

I have endeavoured to provide a detailed exposition of the law relating to public order and national security catering both for the needs of the practitioner and the student. I hope that the book may also be of assistance to all those interested in or concerned with this area of the law.

Finally, my thanks are due to many persons who have given me the benefit of their time and assistance on both sides of the Atlantic. In particular, I am indebted to Professor Ian Brownlie GC, DCL, FBA for his valuable advice and kindly criticism; to Professor Gerald Gunther of Stanford Law School who first introduced me to the joys of American constitutional law; and to Harvard Law School where I completed the final version of this book as a Visiting Scholar during the academic year 1979-80. The help and co-operation that I received

there could not have been bettered. Last, but not least, I am grateful to my publishers, Butterworths, for the consideration and patience that they have shown during the time it has taken for this edition to come to fruition and for revising the tables of statutes and cases and for preparing the index.

I have attempted to present the law as at 1 April 1981.

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Table of statutes

References in this Table to *Statutes* are to Halsburys Statutes of England (Third Edition) showing the volume and page at which the annotated text of the Act will be found. Page references printed in bold type indicate where the Act is set out in part or in full.

	PAGE		PAGE
Administration of Justice Act		Cardiff Corporation Act 1961	
1960	129	s 57 (1)	39
Air Force Act 1955 (29 <i>Statutes</i> 335)	240, 378	Children and Young Persons Act 1933 (17	
s 193	245	<i>Statutes</i> 435)	
Air Guns and Shotguns, etc. Act 1962	161	s 107 (1)	34, 39
Aliens Restriction (Amendment)		Children and Young Persons Act 1969	
Act 1919 (1 <i>Statutes</i> 917)		(40 <i>Statutes</i> 843)	
s 3	240	s 29	362
(1)	240	Cinematograph Act 1909	
Ancient Movements Consolidation		(35 <i>Statutes</i> 197)	318
and Amendment Act 1913 (24		Cinematograph Act 1952	
<i>Statutes</i> 241)	40	(35 <i>Statutes</i> 237)	318
Army Act 1955		City of London Police Act 1839	
(29 <i>Statutes</i> 168)	240, 244, 378	s 22	62
s 34	331	35	81
193	244	Civil Defence (Armed Forces)	
Atomic Energy Authority Act 1954		Act 1954 (38 <i>Statutes</i> 516)	379
(37 <i>Statutes</i> 386)		s 2	379
s 6 (3)	255	Commissioner of Works Act 1852	
Sch 1	296	(6 <i>Statutes</i> 565)	35
Atomic Energy Authority Act 1971 (41		Commons Registration Act 1965 (3	
<i>Statutes</i> 2025)		<i>Statutes</i> 919)	40
s 17	251, 255	s 1	37
19	251	22 (1)	7
Schedule	251, 255	Conspiracy and Protection of Property Act	
Bail Act 1976 (48 <i>Statutes</i> 288)		1875 (8 <i>Statutes</i> 206)	66, 371, 372
s 4	315	s 7	66, 372
5, 6	316	(1)	66
Sch 1	315	(2)	69
Bill of Rights (1688) (6 <i>Statutes</i> 489)	28, 316	(4)	66, 69
Burgh Police (Scotland) Act 1892	62	Counter-Inflation Act 1973	226
s 380 (9)	193	Courts Act 1971 (41 <i>Statutes</i> 285)	
(12)	3	s 56	190
381	77	(4)	181
Burial Laws Amendment Act 1880 (3		Sch 8	190
<i>Statutes</i> 508)		Sch 11	181
s 7	193	Criminal Damage Act 1971	
Caravan Sites Act 1968		(41 <i>Statutes</i> 409)	195
(24 <i>Statutes</i> 225)	318	s 1	167, 194
s 3	205	(1)	194
Caravan Sites and Control of Development		(2), (3)	195
Act 1960 (24 <i>Statutes</i> 145)	318	2 (a)	177
		3 (a)	194

xviii *Table of statutes*

	PAGE		PAGE
Criminal Damage Act 1971 — <i>contd</i>		Criminal Law Act 1977 — <i>contd</i>	
s 4, 5	195	s 10 (1), (2), (4), (5)	205
10 (2) (b)	194	11	205
11 (8)	166	(1)	
Schedule Pt I	165, 166	12 (1) (a)	203
Criminal Jurisdiction Act 1975 (45 <i>Statutes</i>		(3)	203
528)		15	19
s 7	173	(1)	3
Criminal Justice Act 1925 (21 <i>Statutes</i> 75)		(4)	178
s 42	189	16	77
Criminal Justice Act 1948		19-22	163, 169
(8 <i>Statutes</i> 337)	240	23	194, 195
s 1 (1)	207	26	105
Sch 10	190	28	24, 163, 394
Criminal Justice Act 1961 (8 <i>Statutes</i> 500)		(2)	184, 243, 244, 352
s 3	147	29	195
Criminal Justice Act 1967		30	19
(8 <i>Statutes</i> 583, 25 <i>Statutes</i>		(3)	178
886)	62, 77, 81	31	20, 21, 105, 181
s 8	233, 238	32	243
67	365	(1)	184
92 (8) (d)	352	33	173
105	190	51	74, 176
Sch 6	190	(1), (2)	177
Criminal Justice Act 1972 (42 <i>Statutes</i> 99)		Sch 1	3, 19, 21, 24
s 33	4, 178	Sch 2	77
Criminal Justice Administration		Sch 3	105, 194
Act 1962 (7 <i>Statutes</i> 734)		Sch 4	194, 195
s 17 (2)	365	Sch 6	20, 105, 181, 350,
Criminal Law Act 1967 (8 <i>Statutes</i> 552;			366
21 <i>Statutes</i> 335)	207, 212, 233	Sch 12	163, 173
s 2 (6)	107	Criminal Procedure Act 1851 (8 <i>Statutes</i>	
3	135, 212, 329	109)	
5 (2)	188	s 9	135
6 (3)	105	Criminal Procedure (Scotland) Act 1975	
10 (2)	134, 135	s 321 (3)	362
Sch 1 List B	239	Crown Lands Act 1829 (6 <i>Statutes</i> 557)	35
Sch 2	188	Crown Lands Act 1851 (6 <i>Statutes</i> 561)	36
Sch 3	134, 135	s 22	35
Pt I	145	Crown Lands Act 1927 (6 <i>Statutes</i> 577)	35
Pt III	244	Crown Lands Act 1936 (6 <i>Statutes</i> 578)	
Criminal Law Act 1977		s 6 (1)	35
(47 <i>Statutes</i> 142, 692)	16, 20, 148	Customs and Excise Act 1952 (9 <i>Statutes</i>	
s 1	189	55)	379
(1)	74	s 5	379
5 (2), (3)	188	71 (3)	379
6 (1)-(3)	203	72, 73	178
(4) (a), (b)	203	274, 275, 297	379
(5)	203	307	379
(6)	205	Defence of the Realm Act 1914	223, 224
7	204	Defence of the Realm (No. 2) Act 1915	225
(1), (10)	204	Defence (Transfer of Functions)	
(11)	205	Act 1964 (6 <i>Statutes</i> 795)	
8	178	s 3 (2)	378
(1)	178, 204	Dundee Corporation (Consolidated Power's)	
(3)	204	Order Confirmation Act 1957	
(4)	205	s 467	192, 193
9 (1)	204	468	39
(2)	204	Durham County Council Act 1963	
(d)	204	s 43	32
(5)-(7)	205		

Table of statutes xix

	PAGE
Ecclesiastical Courts Jurisdiction Act 1860 (10 <i>Statutes</i> 239)	
s 2	192
Edinburgh Corporation Confirmation Act 1958	
s 3 (2)	39
167	31
Edinburgh Corporation Order Confirmation Act 1961	
s 3 (2)	39
Schedule	
s 184 (c)	193
192	82, 193, 316
Emergency Laws (Re-enactments and Re- peals)	
Act 1964 (38 <i>Statutes</i> 336)	226
s 2	216
Emergency Laws (Repeal) Act 1959 (38 <i>Statutes</i> 329)	226
Emergency Powers Act 1920 (38 <i>Statutes</i> 289)	371
s 2 (1)	216
(3)	217
Emergency Powers Act 1964 (38 <i>Statutes</i> 335)	226, 371
s 2	378
Emergency Powers (Defence) Act 1939	224,
	226, 325
s 1	224
Emergency Powers (Defence) Act 1940	225,
	226
Emergency Powers (Defence) (No. 2) Act 1940	223, 225
Employment Act 1980	
s 16	65
17	65, 72
Employment Protection (Consolidation) Act 1978 (48 <i>Statutes</i> 452)	292
s 138	293
(4)	293
European Communities Act 1972 (42 <i>Statutes</i> 78)	292
s 11 (2)	251
Explosive Substances Act 1883 (8 <i>Statutes</i> 220)	179, 208
s 1	353
2	173, 353
3	173, 175, 353
(2)	173
4	173, 174, 175, 354
(1)	173
5	173, 354
Explosive Substances Act 1883	
s 6	173
7	174, 354
(1)	173
8	174
9	173, 174, 354
Explosives Act 1875 (13 <i>Statutes</i> 155)	
s 3 (1)	174
Films Act 1960 (35 <i>Statutes</i> 256)	318

	PAGE
Firearms Act 1920 (8 <i>Statutes</i> 292)	347
s 16	180
Firearms Act 1937	161
s 1	171, 318
11	171
Firearms Act 1965	
Sch 7	161
Firearms Act 1968 (8 <i>Statutes</i> 727)	161, 348
s 1	161, 162, 163, 164,
	166
(1)	172
(a)	165
(3) (a)	164
(4)	163
2	161
3	161, 162
4	163, 167
(4)	163
5	162
7 (1)	162
8 (1)	162
9 (1)	162
10-13	162
16	162, 165, 166,
	168
17	162, 168
(1)	154, 167, 168
(2)	105, 167, 168
18	164, 168
(1), (2)	168
19	164, 168, 169
20	162, 168
(1), (2)	169
21	162, 168
(2)	162
22-24	162, 168
25	162
30 (2)	162
26-42	162
44, 46-51	163
52	163, 172
54	162
57 (1)	161, 163, 165,
	166
(b), (c)	167
(2)	161, 163
(4)	165, 167, 169
58 (1)	162
(2)	161, 164, 165
Sch 1	167
Sch 6	163, 165, 169
Pt II para 3	163
Firearms (Amendment) Act 1936	346
Forcible Entry Act 1381 (18 <i>Statutes</i> 405)	202
Forcible Entry Act 1429 (18 <i>Statutes</i> 408)	202
Forestry Act 1917	
s 2 (1)	37
Game Act 1831 (14 <i>Statutes</i> 448)	
s 32	178

xx *Table of statutes*

	PAGE		PAGE
Glasgow Corporation Consolidation (General Powers) Order Confirmation Act 1960)		International Headquarters and Defence Organisation Act 1964 (6 <i>Statutes</i> 1008)	346
Schedule		Internationally Protected Persons Act 1978 (48 <i>Statutes</i> 78)	217
s 161	31, 82, 316	Interpretation Act 1978 (48 <i>Statutes</i> 1296)	347
Glasgow Police Act 1866		s 16 (1)	364
s 149 (47)	48	Juries Act 1974 (44 <i>Statutes</i> 566)	
Gloucester Corporation Act 1958		s 5	250
s 64	316	Justices of the Peace Act 1361 (21 <i>Statutes</i> 17)	172, 312, 313, 314
Highway Act 1835 (15 <i>Statutes</i> 12)		Justices of the Peace Act 1968 (21 <i>Statutes</i> 394)	22, 314
s 72	116	s 1 (7)	22, 314
Highways Act 1959 (15 <i>Statutes</i> 143)	39, 69, 108, 337	Land Powers (Defence) Act 1958 (43 <i>Statutes</i> 170)	38
s 34 (1)	39	s 7	37
72	77	Late Night Refreshment Houses Act 1969 (17 <i>Statutes</i> 1265)	318
121	69, 77, 80, 81	Law of Libel Amendment Act 1888 (19 <i>Statutes</i> 30)	
(1)	66, 80	s 8	196, 200
127	80	Law of Property Act 1925 (27 <i>Statutes</i> 341)	
226 (1)	35	s 7 (1)	35
294	39	193	40
Hijacking Act 1971 (41 <i>Statutes</i> 99)	217	Leicester Corporation Act 1956	
s 1 (1)-(4)	207	s 94 (4)	32
2, 5	208	Libel Act 1843 (19 <i>Statutes</i> 11)	
Historic Buildings and Ancient Monuments Act 1953 (24 <i>Statutes</i> 267)	40	s 4, 5	196
Immigration Act 1971 (41 <i>Statutes</i> 12)	292, 293, 365	6, 7	198
s 1	363	Libraries Offences Act 1898 (14 <i>Statutes</i> 327)	36
3 (2)	289	Licensing Act 1964 (17 <i>Statutes</i> 1053)	
(5)	288	s 40-55, 76	318
(b)	289	Liverpool Corporation Act 1921	62
(6)	288	s 416	20, 193
5, 7	288	420	39
15 (3)	288	421	31, 62
33 (3)	366	636	62
Sch 2	366	Local Government Act 1894 (19 <i>Statutes</i> 321)	
Immigration Appeals Act 1969 (40 <i>Statutes</i> 257)		s 6 (1) (c)	36
s 9	289, 291	8 (1) (d)	36
Incitement of Dissaffection Act 1934)		Local Government Act 1972 (42 <i>Statutes</i> 841)	316
(8 <i>Statutes</i> 312)	11, 244	s 222	318, 326
s 1	241, 242, 243, 244, 383	235	194, 316
2	241, 243, 383	Local Government (Scotland) Act 1973 (43 <i>Statutes</i> 677)	316
(1)	241, 242	London Government Act 1963 (20 <i>Statutes</i> 448)	
(2)	241	s 58	36
3	384	76	350
(1)	243	82	36
(2), (3)	241	Sch 4 para 29	36
4	384	London Parks and Works Act 1887	
Incitement to Mutiny Act 1797 (8 <i>Statutes</i> 43)	240	s 2	35
s 1	240	Magistrates' Courts Act 1952 (21 <i>Statutes</i> 181)	314, 393
Indemnity Act 1920	216, 224	s 38	362
Indictments Act 1915 (8 <i>Statutes</i> 271)	143		
Industrial Relations Act 1971 (41 <i>Statutes</i> 2062)			
s 134	70, 73, 79		
(1)	65, 69		
(b)	69		
(2)	70, 73		

	PAGE		PAGE
Magistrates' Courts Act 1952 — <i>contd</i>		Northern Ireland (Emergency Provisions)	
s 91	312, 314	Act 1978 — <i>contd</i>	
Magistrates' Courts (Appeals from Binding		Sch 2	218
Over Orders) Act 1956 (21 <i>Statutes</i>		Northern Ireland (Emergency Provisions)	
315)	315	Amendment Act 1975 (45 <i>Statutes</i>	
Malicious Damage Act 1861 (8 <i>Statutes</i>		1551)	218
114)	195	Nottinghamshire County Council Act 1951	
s 9, 10	179	s 240	316
11, 12	135, 195	Nuclear Installations Act 1965 (37 <i>Statutes</i>	
35, 36	195	430)	
45, 46	179	s 2	255
47, 48	195	Sch 1	255
54, 55	179	para 2	251
58, 72	195	Obscene Publication Act 1959 (8 <i>Statutes</i>	
Manoeuvres Act 1958 (29 <i>Statutes</i>		479)	193
1183)	38	Offences against the Person Act 1861	
Marine, &c. Broadcasting (Offences)		(8 <i>Statutes</i> 147)	159, 208
Act 1967 (35 <i>Statutes</i> 133)		s 20-22	167
s 4	207	28, 29	179
Metropolitan Police Act 1839 (28 <i>Statutes</i>		30	167, 179
34)		32	167
s 2	36	38	105, 108, 109, 110,
18	105		167
52	31, 32, 59, 60, 61, 317,	47, 56	167
	320, 321, 322, 349,	Offences at Sea Act 1799 (8 <i>Statutes</i> 52)	
	350	s 1, 2	206
54	34, 39, 59, 114, 349	Official Secrets Act 1911 (8 <i>Statutes</i>	
(6)	39, 78, 81	250)	246, 247
(9)	59, 61		260, 338, 390, 394, 395
(13)	20	s 1	247, 248, 249, 251
(14)	316		259, 385, 391, 392
58	194	(1)	247, 248
Metropolitan Police Act 1861		(c)	250
s 3	105	(2)	247, 250
Metropolitan Streets Act 1867 (28 <i>Statutes</i>		2	246, 249, 250, 251,
114)	317		252, 253, 254, 256,
s 3	34		258, 264, 272, 386
Military Lands Act 1892 (29 <i>Statutes</i>		(1)	251, 391
1149)	37	(a)	252
Military Lands Act 1903 (29 <i>Statutes</i>		(2)	252
1169)	37	3	37, 247, 248, 387
Minister of Works Act 1942 (6 <i>Statutes</i>		4	300
719)	35	6	387
Municipal Corporations Act 1882 (19		7	388
<i>Statutes</i> 239)		8	249, 292, 297, 388
s 195	105	(4)	250, 297
National Parks and Access to the Country-		9-11	388
side Act 1949 (24 <i>Statutes</i> 65)		12, 13	389
s 64	40	Official Secrets Act 1920 (8 <i>Statutes</i>	
90(1)	317	294)	246, 247, 255, 395
Naval Discipline Act 1957 (29 <i>Statutes</i>		s 1	390
42)	240, 378	(1)	183
s 94	244	2	391
Night Poaching Act 1828 (14 <i>Statutes</i>		3	37, 255, 392
443)	178	4	261, 392
Northern Ireland (Emergency Provisions)		5	392
Act 1973 (43 <i>Statutes</i> 1235)	211, 218	6	249, 393
s 2	213	7	254, 255, 393
Northern Ireland (Emergency Provisions)		8	393
Act 1978 (48 <i>Statutes</i> 972)	218	9, 10	247, 251
s 21	218	11	394

xxii *Table of statutes*

	PAGE		PAGE
Official Secrets Act 1920 — <i>contd</i>		Prevention of Crime Act 1953 — <i>contd</i>	
Sch 1	247, 251	s (1)	153, 154, 159
Official Secrets Act 1939 (8 <i>Statutes</i>		(4)	148, 154
337)	246, 247	2	352
s 2	395	Prevention of Crimes Act 1871	
Open Spaces Act 1906 (24 <i>Statutes</i> 24)	36, 40	(8 <i>Statutes</i> 197)	
s 10, 15	36	s 7	152
Oxfordshire County Council Act 1971		12	105, 111, 112, 128
s 68	54	15	167, 188
Parks Regulation Act 1872 (24 <i>Statutes</i>		Prevention of Crimes Amendment	
20)	35, 318	Act 1885	
Parks Regulations (Amendment)		s 2	61, 67, 105, 111, 112, 113, 129
Act 1926 (24 <i>Statutes</i> 40)	35, 318	Prevention of Terrorism (Temporary Pro-	
s 2 (1)	35	visions) Act 1974 (44 <i>Statutes</i>	
Parliamentary Commissioner Act 1967		164)	23, 218, 223, 364
(6 <i>Statutes</i> 822)	332	Prevention of Terrorism (Temporary Pro-	
s 5 (3)	332	visions) Act 1976 (46 <i>Statutes</i>	
11	251	266)	179, 218, 223, 288
Sch 3	332	s 1	218, 221, 222, 356, 362, 363, 364, 367
Penal Servitude Act 1891 (25 <i>Statutes</i> 816)		(3)	218
s 7	167, 188	2	185, 218, 219, 357, 363, 367
Piracy Act 1698 (8 <i>Statutes</i> 27)		3	358, 363
s 8	207	(1)	219, 220
Piracy Act 1721 (8 <i>Statutes</i> 30)		(2)	363
s 1	207	4	219, 358, 359, 363
Piracy Act 1837 (8 <i>Statutes</i> 85)		(3) (a)	365
s 2, 3	207	(5), (6)	222
Police Act 1919		5	219, 358, 363
s 3	244	(3) (a)	365
Police Act 1964 (25 <i>Statutes</i> 330)	394	6	219, 357, 359, 363
s 1 (1)	167	7	219, 359, 360, 363
48 (1)	332	8	220, 360, 362, 363
49	332	9	220, 222, 360, 362, 363, 367, 368
51	105, 115, 118	10	218, 221, 222, 360, 362, 363, 367, 368
(1)	105, 109, 110, 117	(1), (5)	221
(3)	67, 68, 109, 110, 117	11	218, 221, 222, 361, 362, 363, 367, 368
52	183	12	222, 362, 363, 367, 368
53	244	(2)	222
(3)	137	13	222, 362, 363, 364, 365, 366, 367
62 (b)	50, 181	(2) (b)	366
64 (3)	105	14	363, 364
Sch 10	105	(1)	218, 220
Police Act 1976 (46 <i>Statutes</i> 1179)	332	15	363
Police (Property) Act 1897	384	16	364
Post Office Act 1908	393	17	363, 364
Post Office Act 1953 (25 <i>Statutes</i> 413)		18, 19	364
s 11 (1) (b)	192	Sch 1	218, 357, 364, 365
58 (1)	300	Sch 2	358, 359, 364, 365
Post Office Act 1969 (25 <i>Statutes</i> 470)		Sch 3	363, 364, 365
s 11, 60	179	Pt I para 1	223, 362
78	177	Pt II	223
80	300	para 6	222
Post Office and Telegraph Act 1920	393		
Powers of Criminal Courts Act 1973 (43			
<i>Statutes</i> 288)			
s 31	315		
Prevention of Crime Act 1953 (8 <i>Statutes</i>			
407)	148, 158, 159, 169, 178, 204, 337		
s 1	148, 153, 160, 178, 352		

	PAGE		PAGE
Prices and Incomes Act 1966 (37 Statutes 202)	226	Public Order Act 1936 — <i>contd</i>	
Prison Act 1952 (25 Statutes 828)		s 3(4)	57, 58
s 8	106	4	148, 178, 345, 347
Private Places of Entertainment (Licen- sing) Act 1967 (35 Statutes 298) ...	318	(2)	155
Prosecution of Offences Act 1979 (49 Statutes 281)	343	5	1, 3, 4, 5, 6, 9, 14, 15, 18, 22, 24, 62, 66, 137, 183, 187, 201, 346, 347
s 6	343	5A	15, 16, 24, 55, 183, 346, 347
Protection from Eviction Act 1977 (47 Statutes 661)		(1)	17
s 1	205	(2) (a), (b)	17
(1)	205	(3), (4)	17
(4)	206	(5)	15
Protection of Aircraft Act 1973 (43 Statutes 19)	208, 217	(6)	15, 16, 17
s 1	208, 209	6	21
(6), (7)	208	7	347
2	208, 209	(1)	184
(7)	209	(2)	181
3	209	9	4, 31, 32, 178, 347
4	209	(1)	4
(1), (2)	209	10	348
5, 6	209	(2)	21
Public Health Act 1875 (26 Statutes 38)		Public Order Act 1963 (8 Statutes 522) ...	3
s 4	39	s 1(2)	21
164	36	Public Records Act 1958	
171	61, 190	(12 Statutes 883)	262
276	61	Public Records Act 1967 (12 Statutes 909)	262
Public Health Act 1925 (26 Statutes 146)		Public Statutes (Metropolis) Act 1954 (20 Statutes 17)	
s 1(3)	39	s 1	34
Public Health Act 1936 (26 Statutes 189)		Public Utilities Streets Works Act	
s 235-248	318	1950 (15 Statutes 62)	35
Public Health Act 1961 (26 Statutes 500)		Race Relations Act 1965 (1 Statutes 926)	237
s 52	36	s 6	15, 16, 18, 19, 24
Public Libraries Act 1901	36	(1)	24
Public Meeting Act 1908 (8 Statutes 239)	31, 48, 62, 328	(2)	17
s 1	21	7	3, 22, 125
(1), (2)	21	Race Relations Act 1976	
Public Order Act 1936 (8 Statutes 327)	1, 3, 6, 14, 18, 20, 50, 133, 148, 182, 183, 317, 328, 335, 337	(46 Statutes 389) ...	10, 24, 55, 62, 337
s 1	180, 218, 219, 320, 343, 347	s 70	15, 185
(1)	182	Recreation Grounds Act 1859	40
2	184, 344, 347	Refreshment Houses Act 1960	
(1)	184	(17 Statutes 947)	318
(b)	185, 186	Refreshment Houses Act 1967	318
(6)	182, 329	Rent Act 1965 (18 Statutes 620)	
3	5, 32, 36, 50, 52, 53, 55, 57, 58, 59, 100, 320, 322, 337, 345	s 30	205, 206
(1)	51, 52, 53, 54, 55, 57, 58, 182	Representation of the People Act 1949 (11 Statutes 543)	
(2)	51, 53, 57, 58	s 82, 83	41, 323
(3)	32, 51, 55, 57, 58, 182	84	21
		Sch 7	41, 323
		Sch 9	21
		Reserve Forces Act 1966	
		(29 Statutes 838)	217
		Restriction of Offensive Weapons Act 1959 (8 Statutes 472)	179
		s 1	149

xxiv *Table of statutes*

	PAGE
Restriction of Offensive Weapons Act 1961 (8 Statutes 499)	179
Riot Act 1714	134, 212
Riot (Damages) Act 1886 (25 Statutes 273)	135
s 1	135
Road Safety Act 1967 (28 Statutes 458) s 2, 3	115
Road Traffic Act 1972 (42 Statutes 1633)	
s 159	108
178	81
Seditious Meetings Act 1817 (8 Statutes 67)	60, 245
Sexual Offences Act 1956 (8 Statutes 415) s 1	167
13	191
17, 18	167
20	167
32	191, 192
37	191
46	192
Sch 2	192
Sexual Offences Act 1967 (8 Statutes 577) s 1, 3	191
4 (3)	191
Shipping Offences Act 1793 (8 Statutes 40)	135
Statute of Northampton 1328	145
Statutory Instruments Act 1946 (32 Statutes 668)	
s 3 (2)	318
Street Offences Act 1959 (8 Statutes 474)	192
s 1	107, 191
(4)	191
Summary Jurisdiction (Ireland) Act 1851 s 13	33
Supplies and Services (Extended Purposes) Act 1947	226
Suppression of Terrorism Act 1978 (48 Statutes 699)	217
Teesside Corporation (General Powers) Act 1971	
s 104	54
Telegraph Act 1869	391
Theatres Act 1968 (35 Statutes 306) s 5	19
(1) (a), (b)	19
7	19
(2)	19
8	19
Theft Act 1968 (8 Statutes 782) s 9	169
10 (1) (b)	204
12	318
(1)	167
13	318
Tokyo Convention Act 1967 (2 Statutes 702)	206
Schedule	207

	PAGE
Tokyo Convention Act 1967 — <i>contd</i> Art 15-17	207
Town Gardens Protection Act 1963 (24 Statutes 16)	37, 40
Town Police Clauses Act 1847 (28 Statutes 64)	39, 62, 316
s 1, 2	61
3	39
21	31, 32, 61, 82, 320
22-27	61
28	61, 81, 190, 192
29	61, 195
Town Police Clauses Act 1889 (28 Statutes 130)	64
Trade Disputes Act 1906 (37 Statutes 1001)	70, 371, 372
s 2	65, 67, 68
Trade Union and Labour Relations Act 1974 (44 Statutes 1766) s 13	65
15	65, 66, 67, 69, 73
(2), (3)	65
29	65
Trafalgar Square Act 1844	35, 36, 318
Treachery Act 1940	234
Treason Act 1351 (8 Statutes 14)	230
Treason Act 1795 (8 Statutes 42) s 1	231
Treason Act 1814 (8 Statutes 64) s 1	230
Treason Act 1842 (8 Statutes 96)	234
s 2	234
Treason Felony Act 1848 (8 Statutes 100) s 7, 8	233
Tumultuous Petitioning Act 1661 (8 Statutes 22)	61
Uniforms Act 1894 (29 Statutes 157)	183
Unlawful Drilling Act 1819 (8 Statutes 68) s 1	180, 181, 183
2	180
Unlawful Oaths Act 1797 (8 Statutes 44)	224
s 5 (1)	245
Unlawful Oaths Act 1812 (8 Statutes 62)	244, 245
Vagrancy Act 1824	192
s 3	188
4	152, 155, 167, 178, 188, 189, 190
5, 10	190
Vagrancy Act 1838 (8 Statutes 87) s 2	189
Visiting Forces Act 1952 (29 Statutes 921)	346
West Midlands County Council Act 1979	54
Wireless Telegraphy Act 1904	391
Wolverhampton Corporation Act 1969 s 102	41, 54

	PAGE		PAGE
Antigua		Police Offences Act 1927	
Public Order (Amendment) Act 1976	15	s 3 (dd)	21
		40	33
Australia		Police Offences Amendment Act 1951	239
Crimes Act 1960	235	s 2	236
Crimes Act 1900-1957 (NSW)		(2)	238
s 545C	121	3	236
Police Offences Act 1901-1958 (NSW)			
s 12	193	Nigeria	
Criminal Code (Queensland)		Federal Criminal Code Act	
s 31 (2)	331	Schedule	
39	233	s 41	233
51	180	57	180
61, 64	134	83	141
70, 71	202	249 (d)	1
72	141	Penal Code (Northern Nigeria)	183
77 (1) (b)	180, 183		
(c)	183		
Criminal Law Consolidation Act		Northern Ireland	
1955 (South Australia)		Children and Young Persons Act	
s 243	202	(Northern Ireland) 1968	
Police Offences Act 1958 (Victoria)		s 50 (3)	362
s 26 (b)	3	Civil Authorities (Special Powers) Act	
27	193	(1922 Northern Ireland)	218
34	21	Criminal Appeal (Northern Ireland)	
		Act 1968 (23 <i>Statutes</i> 995)	
Canada		s 48A	211, 212, 330
Criminal Code		Criminal Injuries Act (Northern Ireland)	
s 87	128	1956	135
281. 2	15	Flags and Emblems (Display) Act	
		(Northern Ireland) 1954	183
Germany		Magistrates' Courts Act (Northern	
Basic Law of the Federal Republic of		Ireland) 1964	
Germany		s 132	362
art 10, s.2	302	Prevention of Incitement to Hatred Act	
Restrictions on the Secrecy of the Mail		(Northern Ireland) 1970	15
1968	302	Public Order Act (Northern Ireland)	
		1951	
India		s 3	3
Criminal Code		Summary Jurisdiction and Criminal	
s 504	3	Justice Act (Northern Ireland) 1935	
		s 59	194
Jamaica			
Public Order Law No 44 of 1957		Sierra Leone	
s 28	3	Public Order Act 1965	
		s 22	32
Kenya			
Penal Code	183	Sri Lanka	
		Penal Code	
New Zealand		s 156, 157	141
Crimes Act 1908		Police Ordinance (1956 Edn)	
s 104-107	1	s 79 (2)	3
108-110	1, 180		
111	1, 202	Sudan	
112	1, 141	Penal Code	183
113, 114	1		

xxvi *Table of statutes*

	PAGE		PAGE
Swaziland		First Amendment to the Constitution . . .	25, 72, 83, 92, 97, 98, 99, 100, 102, 103, 104, 271, 272, 276, 277, 278
Public Order Proclamation 1963		amendment 1	83
Pt III, X	180	Foreign Agents Registration Act 1938	234
Tanzania		Foreign Intelligence Surveillance	
Penal Code		Act 1978	305
s 87	141	s 101, 102	305
Uganda		103, 104	306
Penal Code (Amendment) Act 1966	235	105	306, 307
United States of America		106, 107	307
Administrative Procedure Act 1946		Freedom of Information Act 1966	278, 279, 280, 281, 284, 285, 286, 340
s 3	278	Freedom of Information Act and Amend-	
Alien and Sedition Acts 1798	234	ment 1974	280
Alien Registration Act 1940	234	Immigration and Nationality Act 1952 . . .	288
Aliens Act 1918	289	s 212	288
Amendment XIV to the Constitution . . .	97, 100	Intelligence Oversight Act of 1980	311
s 1	85	Internal Security Act 1950	234
Atomic Energy Act 1946	275	International Security Act 1950	285
s 2014, 2162, 2274	275	Ominibus Crime Control and Safe	
Communist Control Act 1954	234	Streets Act 1968	304
Criminal Syndicalism Statute 1918 (Ohio):	87	Penal Code (California)	
Espionage Act 1917	230, 285	s 415	89
Title 1		Penal Law (New York)	
s 2 (a)	230	s 1425	94
s 3	85	Sch 16	
Espionage Act 1918	231	para (d)	94
Espionage Law		Subversive Activities Control Act	298
s 793	273	United States Constitution	
(d), (e)	273	Act III	
Expatriation Act 1954	289	s 3 (1)	230
Federal Communications Act 1934		Voorhis Act 1940	234
s 605	304		

Table of European
Communities Legislation
and Conventions etc.

	PAGE		PAGE
Treaties		European Convention Human Rights and Fundamental Freedoms— contd	
EEC Treaty (42A Statutes 309, 751)		11	399
art 3 (c)	292	(2)	73
48	292	13, 14	399
(3)	292	15	226, 228, 229, 399
		(1)	228, 229
Secondary Legislation		16	399
EEC Council Directive 64/221		17, 18	400
(42A Statutes 129)	292	19	229, 400
		20, 23, 24	400
Conventions etc.		25	400, 401, 405
European Convention Human Rights and Fundamental Freedoms	199,	26	335, 401
	226, 337	27, 28	401
preamble	303, 396	29	401, 402
art 1	28, 396	30	401
2	27, 28, 227, 396,	31	402
	399	32	402, 403
(2)	330	33, 34, 38	402
3	227, 228, 397, 399	44-47	403
4	399	48	402, 403
(1)	227	50, 51	403
5	228, 229, 397	52-54	405
6	397	57	334, 404
(1)	290	60-63	404
7	227	64, 65	405
8	302, 303, 398	Protocol 4	
(1)	302	art 3, 4	405
(2)	302, 303	International Covenant on Civil and Political Rights	
9	398	art 4	226
10	13, 199, 398, 399	21	28
art 10 (1)	242	Universal Declaration of Human Rights	
		art 20	28, 73