

**Public Place Naturism
Scotland
January 2019**



**British Naturism
www.bn.org.uk**

British Naturism has created this updated document to assist with explaining legal issues of relevance to the Nativist community with respect to the law of Scotland

There are rarely any incidents in any year, usually none, but it is wise to be well informed in case of challenge or enquiry by any official.

Due to infrequency in the past some officials have not been well informed! This Guide is applicable only to the law of Scotland and has been created following correspondence with the Crown Office and Procurator Fiscals Service (COPFS), the Scottish Government Justice Directorate, The Minister for Justice, and Police Scotland. However the authors are not lawyers so if you require legal advice you should always consult a solicitor or other qualified lawyer as individual circumstances will vary.

Naturism is Lawful in Scotland

Policing Practice

Following discussions with Police Scotland the service advises that, following any report and having enquired of details of conduct they will respond as follows:

Passive Behaviour in public (Sunbathing, walking, swimming etc) - Provide Advice to caller *i.e* No public indecency involved, no sexual element and no alarm or distress caused - Activity is Lawful requiring *No Further Police Action*

Disorderly &/or Sexual Behaviour

Causing harassment, alarm or distress to another - Police will attend

Disturbed Behaviour - Possibly affected by drink/drugs/mental ill health - Police will attend

D

5. Unfold, cut off margins, fold up

From August 2018 Responding Police Officers are given the following guidance:

Naked Person in Public Place - No clear sexual motive nor behaviour, no disorderly conduct nor harassment, alarm or distress, attended by no other offences:- Give advice to complainant - *No Further Police Action*

Naturism and the law

There is no specific statutory offence of public nudity in Scotland.

Past erroneous allegations that have been made against Naturists undertaking their ordinary naturism have included:

Breach of the Peace

Exposure of the naked body might constitute a Breach of the Peace, a common law offence. Prosecutors are required to consider in each case whether, on the facts and circumstances, the exposing of the body could be reasonably said to produce alarm in the minds of the public. It is not enough for the individual just to have been naked for a breach of the peace to have occurred. Alarm in this context is not necessarily alarm in the sense of personal fear but alarm that threatens serious disturbance in the community. Where this level of alarm is absent the COPFS have advised that it is unlikely that a prosecution would result. However there was a case several years ago which resulted in a man being charged with breach of the peace after someone complained about him being naked on a local beach. The sheriff dismissed the case and there was no prosecution as the beach had been used historically by naturists.

Public Indecency

In a rare case a naked walker who sat next to a woman on a park bench who made complaint, pleaded guilty to Public Indecency in 2017. He was not fined nor entered on the sexual offences register but was given a criminal record.

Criminal Justice and Licensing Scotland Act 2010 s38.1

A naturist might possibly be charged with this offence if they were deemed to have behaved in a manner which was threatening or abusive to members of the public or officers called upon to investigate. Therefore it is vital that naturists respond calmly if challenged about their nudity, cover up if asked to do so by the police, and then contact British Naturism's Head Office.

Criminal Justice and Licensing Scotland Act 2010 s41 indecent Images of Children

Children (classed as people under 18)

It is an offence to take, permit to be taken, or make any indecent photograph or pseudo-photograph or to hold or distribute any of a child of this type. It may not be taken for any sexual purpose.

Photographs within a naturist or normal context should not contravene the law in this area.

Adults

Taking photographs of adults is permitted with consent.

Everyone has a right of privacy in their private and family lives and accordingly they should not be subject to observation or photographed without their consent.

Sexual Offences Scotland Act 2009 s.8

Section 8 of this Act relates to sexual exposure. The legislation is aimed primarily at 'Flashers' and where it appears that the person has not acted for the purpose of sexual gratification or causing fear and alarm a prosecution would not normally be pursued by COPFS.

Police Scotland advise that individual circumstances are always taken into account with statements from complainants and witnesses being a significant factor in any decision to arrest and send a report to the COPFS.

They advise that even if there is not an individual victim they may consider whether the conduct would cause public offence "to the average person in contemporary society" when making their decision.

Several years ago a naked man running at 3am through the suburbs of his local community was charged with public indecency. The man concerned was cleared at Court when his solicitor successfully argued that no member of the public had complained about his behaviour and asked the Court "What is publicly indecent about being naked? We come into the world naked and leave it naked."

E

4. Horizontal fold E behind D

F

3. Horizontal fold F on top of E

A

B

C

1. Vertical fold, B behind A

2. Vertical fold, C facing B

Beaches and other facilities should be available to all groups in society according to recent changes in the law so designations are no longer appropriate. Some of these beaches have not been used frequently by naturists though custom and practice is changing rapidly therefore

In Scotland there are several beaches used by Naturists. Here is a shortlist

Aberlady, East Lothian
Ardeer, North Ayrshire
Balmedie, Aberdeen
Kearvaig, Sutherland
Crackaig, Sutherland

Findhorn, Moray Firth
Kinshaldy Beach, Tentsmuir Forest, Fife
Tynninghame, East Lothian
Cleats Shore, Lagg, Isle of Arran
And others

Beaches and other facilities should be available to all groups in society according to recent changes in the law so designations are no longer appropriate. Some of these beaches have not been used frequently by naturists though custom and practice is changing rapidly therefore people may find themselves being challenged by police or public; and for Naturists who don't live near a suitable beach it is likely that they will wish to find other areas to enjoy walking and bathing. Since the passage of The Equalities Act discrimination is not allowed.

Since signing into The Human Rights Conventions everyone has Freedom of Expression under Article 10.

The state and its officers must respect this right but are allowed to intervene if there are lawful grounds to do so.

Contact with the police

In any encounter with the police, British Naturism advises the following:

- Remain calm and be cooperative. The police are employed by us as well.
- Try to have witnesses present, and get their contact details.
- If told to get dressed do so, and remain dressed.
- If told to leave the area, do so.
- If asked for your name and address, give it.

Direct measures from the procurator fiscal

Fixed penalty fines, Compensation offers, Combined offers (a fine and a compensation offer)

Fiscal work offers, Diversions from prosecution, Procurator fiscal warnings

You can get information about these alternatives to prosecution from the Crown Office and Procurator Fiscal Service website

Recorded Police Warnings: BN recommends that you not accept a warning and to seek legal assistance. If you are accused of an offence then a court of law is the appropriate place for an examination to be undertaken

The police have the power to give you a recorded police warning if you're 16 or over and not under a compulsory supervision order.

If you refuse the warning when it's given to you

The police can change your warning to an 'antisocial behaviour fixed penalty notice' — a type of fine.

Or, they can report the case to the procurator fiscal. This means you might have to go to court.

Appeal your recorded police warning

You have 28 days to appeal your recorded police warning. You must do this in writing. Your appeal may mean that the police send a report to the procurator fiscal.

If the procurator fiscal decides that the case against you should go ahead, you may have to appear in court. If this happens you will have the chance to challenge the case against you.

What happens with information about your warning

The police will keep information about your warning for 2 years. It can be taken into account if you commit another crime in that time.

Your police warning will not automatically be included on an Enhanced Disclosure Certificate or Protecting Vulnerable Groups (PVG) scheme record.

But a chief constable can include information about your warning as 'Other Relevant Information' if they reasonably believe that: it's relevant to the disclosure's purpose. The information should be included on the disclosure certificate

If the worst case scenario arises and you are arrested and detained you are entitled to free legal advice and BN support.

You should not agree to be interviewed without a solicitor present.

Keep your comments factual and remain calm and polite.

Any comments you make can be recorded and be used against you.

After any encounter with the police please contact BN headquarters promptly so that we can provide appropriate guidance

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Copies are also available in the 'Downloads' section of the BN website.

Similar documents will be prepared for other parts of the UK

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If you have any encounter with the police or other officials, good or bad, please let us know about it. Information is vital. Please also give us feedback on whether you believe this document has helped in your dealings with the police and public.

Conduct

Naturists don't need a formal code. In general:

- There is equality under the law for everyone, clothed or not.
- Avoid being a nuisance.
- Do not be an exhibitionist.
- Avoid confrontations or approaching non-Naturists; respect others personal space
- Naturism is non-sexual. Sexual activity is inappropriate &/or illegal in public spaces.
- Take care to safeguard your valuables.
- Always report crime.

999 - Crime in progress or person in danger

101 - Non-urgent calls to the police

In Scotland, Naturism is lawful

Following the above should avoid legitimate complaints of unlawful conduct.

Please tell us! If we don't know about it then we can't do anything about it.

Nothing in this document may be construed as legal opinion nor legal advice. British Naturism 2019 v1.0