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Photographers Rights: Public vs Private

Members of the public do not need a permit to shoot in public places and, apart from some notable exceptions you can shoot private buildings or property as long as you're standing on public land.

'Public' property is rather a loose term, because all land in the UK is owned, even if it's accessible at all times. There are some 'prohibited places', which it is an offence to take photos of (such as factories, dockyards and mines owned by the Crown).

Some public places also have bylaws preventing commercial photography, such as in Trafalgar Square, Parliament Square and some Royal Parks. But if you're not taking photos for commercial gain or causing an obstruction, you're unlikely to be restricted.

That's not to say you won't draw some attention. Stake out a street corner with an SLR, long lens and tripod, and you might be approached by over-zealous security guards, keen to see what you're up to. Be courteous and polite, but be aware of your rights.

Private property

It can be hard to discern if you're on public or private property, as a lot of private property isn't clearly marked. Unless you're absolutely sure that you're on the public highway, it pays to be cautious.

If you're on private land and the owner asks you to leave, failure to do so will be classed as trespass. They can use reasonable force to make you leave the land, but this doesn't include grabbing or smashing your kit.

Also note that it's a criminal offence to commit trespass on railway or military property, and some politicians' and Crown property in the UK.

Be careful when you're out and about in the country with your camera, too. Most fields, and all farmland, in the UK are privately owned. If shooting within the boundaries of a farmer's field without permission, you'll risk trespassing, unless you're on a designated and marked public footpath.

Shooting a field of flowers from the public road is fine, even though they're on private property.

Photography on Public Transport

Trains

You can take photographs at train stations for personal use. Any commercial photography requires prior permission from the train operator or Network Rail. Flash photography is banned, and you may be asked not to use a tripod, too.

The Tube

Personal photography is fine, but you must not use a flash or a tripod on the platforms. If you want to spend longer than 15 minutes taking pictures, or you want to sell the pictures, you need to apply for a permit.

Planes

Airports are private property, so restrictions apply. Generally, only photos for personal use can be taken in the terminal lounges. Most civil airports have viewing areas outside the boundaries, from where you can shoot aircraft.

Photographers Rights: Taking Pictures of People in Public

Are you breaking any law when you're taking pictures of people in public? Probably not, but the position under UK law is uncertain.

There are currently no general privacy laws under UK law, but the UK courts must take into account the European Convention on Human Rights, which gives everyone the right to respect for their private and family life. As this is an area of law that has been developing rapidly over the last few years, it is hard to be certain what will constitute an infringement.

The key issue is whether the place the image is taken is one where a person would have a reasonable expectation of privacy. For example, it has been suggested that the right of privacy of a child could be infringed by publishing a photo of them with their parents in a public street.

It is therefore advisable to be careful when taking photos intended for publication, even where the subject matter is in a public place. Failure to obtain a model release for the use of an image will certainly make it harder to sell the picture to stock libraries.

Photographing children

The same laws apply to adult and child subjects, but a child does not have the legal capacity to consent and a parent or guardian must therefore do so on their behalf. Be aware that schools, leisure centres and places where children and adults gather usually have their own photography restrictions.

Although decent photos of children taken in a public place may be fine for non-commercial use, seek permission from the child's parents or guardians and don't shoot covertly with a long lens. For commercial images, you'll need to get a model release signed by the parents.

What is a model release?

A model release is simply confirmation of consent given to a photographer by the person in the photograph that the image may be used for various purposes - and it is not a requirement of the law. There are currently no standalone 'image rights' in the UK, but please note that they may exist in other countries.

Currently, there's no 'industry standard' model release form, and each agency or publisher will have his or her own requirements. If you know which agency you'd like to submit images to, visit their website, where you're likely to find a printable copy.

Photographers Rights: Police vs Security Guards

Police in the UK have no powers to stop you taking photos in a public place, but there are other laws you could be arrested and imprisoned for, such as the Official Secrets Act. An officer may wish to search you in connection with the 'stop', but they can only do this if they suspect you're carrying drugs, weapons, stolen property or items that could be used to commit a crime, an act of terrorism or cause criminal damage.

Searches carried out under Section 44 of the Terrorism Act 2000 have been banned for individuals, but an officer can still stop and search you if they have a 'reasonable suspicion' that you're a terrorist, under Section 43.

Security guards

Unlike police officers, security guards have no powers to stop and search. They are members of the public, and as a result they can't obstruct you from taking pictures if you are standing on public land, nor can they ask you to delete any shots.

Anyone who demands you should, and uses threatening behaviour, could be committing assault.

Similarly, if they use force to take your camera or memory card then not only could they commit assault, but also the civil tort of trespass to goods and trespass to person. If they withhold your camera or memory card then it's theft and a criminal offence. In this situation, call the police.

You do need to make sure that you haven't accidentally strayed onto private land owned by their employers, though. Even if you simply lean over a wall or a fence to take a photograph, this can be classed as trespass.

Photographers Rights with Police

Police can...

- Stop and search you if they reasonably suspect you to be a terrorist under Section 43 of the Terrorism Act 2000.
- View images on the camera you're carrying if you're being searched under Section 43.
- Seize and retain your camera if the police officer reasonably suspects that it may contain evidence that you are a terrorist.
- Question you if you appear to be taking photos of a member of the police force, armed forces or intelligence services.
- Arrest you for taking pictures of the police, armed forces or intelligence services under Section 58A of the Terrorism Act 2000, if they have a reasonable suspicion that the 'information' is designed to provide assistance to a person committing or planning an act of terrorism.

Police can't...

- Stop and search you under Section 44 of the Terrorism Act 2000 (which doesn't require any suspicion of an offence having been committed).
- Prevent you taking pictures on the public highway (although you could be charged with obstruction or a public order offence - breach of the peace, for example).
- Delete or ask you to delete digital images at any point during a search under Section 43 (although they can do this following seizure if there is a court order or similar that permits it).
- Arrest you for photographing police officers involved in the course of normal police duties and incidents (unless they have a reasonable suspicion that the pictures will be used for assisting terrorist activities).

Photographers Rights with Security Guards

Security guards can...

- Ask you to stop taking photographs if you're standing on private land without permission or a permit.
- Use 'reasonable force' to remove you from private property if necessary.

Security guards can't...

- Prevent you taking pictures of private property if you're standing on public land.
- Take your camera equipment.
- Look at your photographs.
- Delete, or force you to delete, any of your shots.

Photographers Rights: Harassment & Other Laws

Harassment: Can you be arrested for it?

It depends

Harassment will occur when a person ought to know that his conduct amounted to harassment if a reasonable person in possession of the same facts would believe it was. The behaviour must have occurred on at least two occasions. If shooting candid, this is unlikely to happen, unless you persistently follow someone. In England, Wales and Northern Ireland, harassment is a criminal offence. It's not in Scotland, but you might be arrested for breach of the peace.

Invasion of Privacy: Can you be arrested for it?

No

This is a civil matter for which you can be sued, not a criminal offence, but it's unclear if it's possible to invade someone's privacy by taking their photo in public. Each case will be decided on its circumstances. The Press Complaints Commission's code of practice advises: "It is unacceptable to photograph individuals in private places without consent." It also defines a private place as: "Public or private property where there is a reasonable expectation of privacy."

Libel: Can you be arrested for it?

No

Libel is a matter for the civil courts, which can award considerable payments to parties found to have been libelled. The majority of instances where libel is an issue for photographers is in their image title or a caption.

For example, taking a candid shot of a scruffily dressed person lying down on a park bench, giving it the title 'Homeless drunk sleeping' and sticking it on an online gallery will leave you wide open for libel action. How do you know the person was homeless? How do you know they were a drunk? Are you even sure they were sleeping? Never use conjecture in titles or captions. Stick to the facts.

Obstruction: Can you be arrested for it?

Yes

Be careful with your tripod - setting one up in the middle of a busy street may class as an obstruction of the free passage of the highway (highways include footways and cycle paths). Legally, the police could arrest you, but they are more likely to ask you to remove the tripod, only arresting you if you refuse to take the obstruction away. You can also be arrested if you obstruct a policeman in the execution of his duty.

Just standing in the street taking a photograph is unlikely to lead to an obstruction charge, but be careful if you are shooting a disturbance, as the police might think you're one of the perpetrators.

Photographers Rights: Selling your pictures

Commercial vs Non-commercial

Another important consideration when taking pictures on public or private land is whether the images are for commercial use. There's no clear-cut photographic or legal definition between the classifications at the point of image capture, and this is where it becomes very cloudy.

When you take a picture, the ultimate destination for that image may not be clear - a picture you take for personal use could be used in the future for commercial gain.

Non-commercial photography is any photo taken for which you don't receive commercial reward. This includes competition entries taken in good faith. Commercial photography is everything else, including pictures shot to sell as prints or through stock websites, advertising, calendars or commissioned work.

Do you need a permit?

Taking photos for commercial gain in a public place may be prohibited in some instances.

Operating a business (such as carrying out a commercial photoshoot) in your local park could be forbidden by law, for instance.

Although it's hard for authorities to police the situation, a call to the relevant council or authority will tell you if you need a permit or have to pay a fee. However, unless you're a pro with huge lighting rigs that prevent the public from going about their business, you're unlikely to be prevented from doing so.

The exceptions to this in the UK are Trafalgar Square, Parliament Square and some Royal Parks, where filming and photography bylaws are ruthlessly enforced to prevent photography for business, trade, profession or employment purposes.

In the case of taking photos on private property without permission to shoot for commercial use, any financial gain could result in the owner seeking losses, or a percentage of your gain through court.

It's advisable to get permission in writing, or a property release, particularly if you plan to submit shots to a picture library, which is unlikely to accept them otherwise. This is also true of people shots, and it's best to get consent at the time of shooting by asking subjects to sign a model release form.

Photographers Rights: Copyright & Trademarks

Copyright protects your rights and stops people stealing your work. But not only does it protect your images, it also protects the rights of many other people's work, such as literary, dramatic, musical and artistic works.

Copyright arises in original works if they have been produced as a result of a person's skill, labour and effort and are recorded in permanent form. So it's important to consider what copyright works may appear in your photographs.

What is protected?

It will usually be an infringement of copyright to take a photograph of a work protected by copyright without the permission of the copyright owner - works of art, jewellery, fabric, glassware etc. The same applies to photos, television images and even theatrical performances.

If all this seems worryingly restrictive, then rest easy, as incidental inclusion of a copyright work, such as a painting in the background or advertising material on display in a street scene, isn't an infringement of copyright.

However, whether something is included 'incidentally' will depend on the purpose for which it has been included; it must not have been placed in the background on purpose.

There will also not be an infringement if you take a photograph of buildings or sculptures permanently situated in a public place, or in premises that offer open access to the public.

Did You Know?

Taking a picture of a UK bank note is illegal unless you have written permission from the Bank of England or the relevant issuer in Scotland or Ireland, as applicable.

Photographers Rights: Animals and Plants

When out and about photographing wild birds and animals, you'll still need to observe the boundaries of public and private land (see over).

More importantly, you need to consider the welfare of the creatures you're photographing, as well as the protection they're offered by the Wildlife and Countryside Act 1981.

The Countryside and Rights of Way Act 2000 (for England and Wales) ensures that you do so by law. While there are no restrictions on photography, the Act makes it an offence to intentionally or recklessly disturb any wild bird listed in Schedule One of the Act while it's at or near its nest, or its dependent young.

The Act also covers certain plants and wild animals, so stay up to date with the latest lists and, if required, obtain a licence to take pictures - contact Natural England, Scottish Natural Heritage or the Countryside Council for Wales to do so.

Photography in Zoos and Animal Parks

Zoos are private property and will have their own restrictions that they're free to impose on photographers. As a general rule, most zoos will allow photography for private and personal use. You'll need express permission for commercial photography and this will usually require payment of a fee. Check with the zoo before you visit.