

CHAPTER SEVEN

POLICE POWERS FREEDOM OF THE PERSON AND PROPERTY

Constitutional and Administrative Law

FREEDOM OF THE PERSON AND PROPERTY

General Introduction.

We are concerned here with the powers of the police, by virtue of the common law and statute, to stop search and arrest individuals, to seize personal property and to enter onto private property, search that property and seize personal property therein. Prior to the introduction of the **Human Rights Act 1999** (HRA), there were few express freedoms in English Law, the presumption being that the individual was free to act in a particular manner unless the law specifically prohibited the activity. Freedom of the person provided an exception to that general rule, which is now reinforced by the **HRA**. The common law had long since provided protection to land owners and protection against violation of the sanctity of the person both under civil and under criminal law.

In the absence of lawful authority, under civil law any

- interference with the person amounts to the tort of trespass to the person
- interference with personal property amounts to the tort of trespass to property or even conversion in appropriate circumstances.
- entry onto private land amounts to the tort of trespass to land.

Under the civil tort of Trespass to the Person, if the police exceed their legal powers they may be open to a civil action in tort for trespass to the person for assault, battery or false imprisonment.

Assault : According to **Collins v. Wilcock**,¹ 'An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person; a battery is the infliction of unlawful force on another person'.... [and] .. false imprisonment is 'the unlawful imposition of constraint on another's freedom of movement from a particular place'...

There can be an assault without a battery and a battery without an assault. Assault an act of a defendant which causes a plaintiff reasonable apprehension of the infliction of a battery on him by the defendant.² According to **Stephens v Myers**,³ no physical contact is required for an assault to occur.

Battery : The intentional and direct application of force to another person without lawful justification.⁴

False Imprisonment : '... the imposition of a total restraint for some period, however short, upon the liberty of another without lawful justification'.⁵

Any detention amounts to the fact of arrest, which is distinct from the question of the legality of that arrest. It was confirmed in **Kenlin v Gardiner**,⁶ that where an individual had been unlawfully arrested, that individual may resort to self-help to free himself, and may bring an action for damages for assault, battery & false imprisonment.⁷

Defences to trespass to the person include consent, self-defence, a failure to comply with a reasonable condition and lawful arrest.

Remedies for trespass to the person include

- Self help (in the sense of breaking out of false imprisonment.
- Habeas corpus
- A tortious action for damages
- Complaint to the Police Complaints Board (No damages)
- Ask the D.P.P. to prosecute for a criminal offence.

¹ **Collins v. Wilcock** (1984)

² see Salmond, The Law of Tort.

³ **Stephens v Myers** (1830)

⁴ Winfield : The Law of Tort.

⁵ James. Law of Tort.

⁶ **Kenlin v Gardiner** [1967]

⁷ see s117 PACE - reasonable force and other powers of arrest eg **Prevention of Terrorism Act 1984** and see also **Criminal Justice Act 1988**.

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Whilst trespass to land remains, in all but a few exceptional circumstances such as trespass on railways and military establishments etc, a civil rather than criminal matter⁸, trespass to the person can concurrently amount to the common law offences of assault and/or battery and may constitute an offence under the **Offences Against the Persons Act 1861** (OPA 1861). Interference with personal property can also concurrently constitute the crime of theft.

It follows therefore, that in order to protect national security and the public interest against crime and social unrest, the police and like charged authorities (customs and excise / health authorities etc) require specific authorising powers to exempt them from tortious / criminal liability when acting in the course of their duties. Without such powers the police would not be able to lawfully detain individuals for questioning, carry out an arrest or enter private premises to conduct searches and arrest people. Similarly, the police would not be able to effectively police public demonstrations.

With the exception of common law breach of the peace, the authorising powers are contained in statutes. The **Police and Criminal Evidence Act 1984** (PACE) is the primary source of police power to stop, search and arrest. The **Public Order Act 1986** (POA 1986) is the primary source of police power to control public demonstrations. These statutes have to a certain extent codified common law rules and thus some pre-statute precedents provide a valuable guide to the court's attitude towards the exercise of such powers. Subsequent case law informs our understanding of the meaning and scope of the statutory provisions in given circumstances.

A number of statutes cover specific situations, providing the police with an express power of detention, search and arrest. The powers are prescriptive and can only be exercised where the given circumstances arise and for the express purpose set out in the statute. If the circumstance does not exist, or power is exercised for the wrong purpose the action may be unlawful giving rise to civil/criminal liability. Evidence elicited by such unlawful action may be rendered inadmissible in subsequent criminal proceedings by virtue of **s78 PACE**. Numerous other statutes place duties on the police without according them express powers.

Reasonable Suspicion : A central of the criteria of many statutory powers is that a constable has "Reasonable Suspicion / Belief" that a state of affairs is in existence. The question that arises therefore, is what amounts to a reasonable suspicion? The cases provide some examples of what the courts have, in given circumstances considered either to be reasonable or unreasonable. The answer will always be a question of fact for the courts to decide on a case by case basis, taking all circumstances into account.

In **Castorina v Chief Constable of Surrey**,⁹ it was held that detectives had reasonably concluded that the burglary of a company had been an inside job and that documents taken would be of use to a person with a grudge. They were told about someone who had recently been dismissed. Even though that person had no criminal record she was arrested under **s2(4) 1967 Act** but subsequently released without charge.. She claimed damages for wrongful arrest and detention. She was successful at the court of first instance and received damages. The police appealed to Court of Appeal. The appeal was allowed. A middle-aged woman with no record had been arrested. No enquiry was made as to her alibi or possible motives e.g. a grudge. The Court decided nonetheless, that on the basis of experience, motive and inside knowledge being particular characteristics, plus the fact that Castorina was the only person who appeared to have such characteristics, that the officer's suspicion was reasonable.

In explanation Wolf LJ stated that there were three questions to be asked by the court :-

- 1) Did the arresting officer suspect that the person was guilty of the offence. This required a finding of fact as to the state of mind of the officer – i.e. a subjective test..
- 2) If the court found that he had the necessary suspicion it should further inquire as to whether there was reasonable cause for that suspicion. This imposes an objective requirement - judge to decide as to facts found by jury.
- 3) Then if Yes to both, the officer has a discretion to arrest. That discretion however, is itself subject to judicial control under the **Wednesbury reasonableness test of 1948**.

⁸ See also the offence of Aggravated Trespass : s68 & 69 Criminal Justice and Public Order Act 1994.

⁹ **Castorina v Chief Constable of Surrey** [1988] :

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In **Monaghan v Corbert**,¹⁰ a constable spoke to the defendant, whose car was parked outside his house. The constable smelt alcohol on the defendant's breath. The next day, which was a Sunday, the constable was told by a neighbour that the defendant habitually drove for a Sunday drinking session. He waited his return and breathalysed him. The defendant appealed against conviction. Did the constable have reasonable suspicion? On appeal the court held that whilst this can be based on other sources of information, it could not arise out of wholly unrelated matters. In the circumstances, there had been nothing in itself to show any motoring offence had been committed and consequently the conviction was quashed.

POLICE POWERS OF STOP AND SEARCH

If the police suspect someone of being involved in a criminal activity then they may wish to stop, search and detain that person, though insufficient evidence may exist to effect a lawful arrest. What powers if any do the police have to stop a citizen who doesn't wish to be stopped, without making a formal arrest? If so stopped can the police detain that person in order to ask questions? The answer is no unless authorised by statute. The power to stop, interrogate and search persons is provided by specific statutes for special purposes in given circumstances.¹¹

s66 Metropolitan Police Act 1839 gave London Police the power to stop search and detain. **Daniel v Morrison**,¹² held that this included impliedly a power to detain for questioning. The power to stop and search is now embodied in **s1 PACE**. There is no specific mention of the power to detain to question. Will the courts imply this into **s1 PACE**?

In **King v Gardner**,¹³ the court considered the scope of the power under **s66 Metropolitan Police Act 1839** to stop search and detain for reasonable suspicion of possession of stolen or unlawfully obtained property. Police officers had received a radio message as to suspects, namely two males, one female wearing blue jeans / long hair and accompanied by a dog, suspected of loitering with intent. The officer stopped and detained Gardner who was walking with a woman and a dog. Gardner refused to show the contents of a large canvas bag to the officer and subsequently assaulted the police during a purported arrest. Gardner was prosecuted for the assault. The court held that there was insufficient information to constitute a reasonable suspicion and thus the officer had no power to stop and search. The arrest was unlawful and Gardner committed no offence by using lawful force to resist the purported arrest.

Police Obstruction. It is an offence to obstruct or otherwise interfere with a working policeman. **s89 Police Act 1996** (re-enacting previous statutory provisions) states that :-

- (1) *Any person who assaults a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence*
- (2) *Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty shall be guilty of an offence.....*

When is a police constable acting in the execution of his duty? In **Kenlin v Gardiner**,¹⁴ two schoolboys were going from house to house to remind members of their rugby team about a game. Two police officers became suspicious and, producing a warrant card, asked what they were doing. The boys did not believe they were police officers. One boy made as if to run away. The police officer took hold of his arm. The boy struggled violently, punching and kicking the officer. The other boy got involved and struck the other officer. Both were charged with assaulting a police constable in the execution of his duty. The court held that the boys were not guilty as charged. What was done was not as an integral step in the process of arresting, but was done in order to secure an opportunity, by detaining the boys from escape, to put to them or to either of them the question which was regarded as the test question to satisfy the officers whether or not it would be right in the circumstances, and having regard to the answer obtained from that question, if any, to arrest them.

¹⁰ **Monaghan v Corbert** (1983)

¹¹ e.g. under **The Misuse of Drugs Act 1971, s23(2) Firearms Act 1968, s47(3)** and the **P O C J A 1994 s60 and s81**.

¹² **Daniel v Morrison** [1979]

¹³ **King v Gardner** (1979)

¹⁴ **Kenlin v Gardiner** [1967] 2QB 510.

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Not every trivial interference with a citizen's liberty takes a constable outside the course of his duties. In **Donnelly v Jackman**,¹⁵ a uniformed policeman approached Jackman, who was lawfully walking along a pavement, at 11.15am. to question him about offences which the constable thought Jackman had committed. The constable asked if he could 'have a word' with him. The request was ignored, with Jackman continuing to walk away from the constable. The constable followed him, repeated the request, and, eventually tapped him on the shoulder. Shortly afterwards, Jackman turned around and in turn tapped the officer on the chest saying: 'Now we are even, copper'. The constable then touched Jackman on the shoulder a second time. Jackman's response was to strike the constable with some force. The court held that this action constituted an assault of an officer in the execution of his duty.

However **Bentley v Brudzinski**.¹⁶ demonstrates that the courts are prepared on occasions to find that the police have exceeded their authority. At 3.30 am. two brothers were stopped in the street by a P.C. They answered his questions truthfully and identified themselves. After waiting ten minutes for the officer to unsuccessfully verify their identities by radio they decided to walk off. At that moment another officer came along and tried to stop one brother who then punched the P.C. in the face. The court held that he was not guilty of assaulting the officer in the course of his duty. There was more than a trivial interference with the defendant's liberty. It amounted to an unlawful attempt to stop and detain him.

PART 1 PACE 1984 – POWERS TO STOP AND SEARCH

s1 Power of constable to stop and search persons, vehicles etc.

- 1) A P.C. can use the powers of s1
 - a) anywhere public has right of access - express implied or contractual or
 - b) anywhere public has right of access which is not a dwelling
- 2) May search & detain persons & vehicles for stolen or prohibited articles.
- 3) A P.C. must have reasonable grounds for suspecting he will find the above.
- 4) Yards attached to dwellings only searchable if intruder suspected.
- 5) Likewise regarding vehicles in yards.
- 6) A P.C. can seize property he reasonably believes is stolen.
- 7) Offensive weapons and articles adapted for purposes of ss8) are prohibited.
- 8) viz burglary, theft, s12 and 15 Theft Act 1968.
- 9) Offensive weapon : article for injuring - to be used by him or another.

s2 Provisions relating to search under s1 & other powers.

- 1) Having detained in order to search P.C. may omit the search if it appears unnecessary or impracticable.
- 2) Search without warrant : Plain cloths P.C. explain that he is a P.C. and all P.C.s must
- 3) Provide name, their police station, the object of search & the reason for search.
- 4) Unless it appears impractical to do so (violent person etc)
- 5) To appropriate person - ie owner of vehicle or person detained.
- 6) If vehicle unattended explanatory note must be attached to vehicle.
- 7) Preferably inside vehicle if possible.
- 8) Time should be as soon as possible after detention.
- 9) Doesn't authorises strip searches.

s3 Duty to make records concerning searches.

Must be contemporaneous or as soon as possible thereafter, recording object, grounds, date time, place, what is found if anything and any injury or loss discovered. Must give a copy to the person searched if requested.

s4 Road checks. Requires written authorisation by superintendent unless urgent.

s1(1) PACE. Location : The search may only be carried out if the person or vehicle is-

- a) in any place to which at the time when the constables proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or
- b) in any other place to which people have a ready access at the time when he proposes to exercise the power but which is not a dwelling.

¹⁵ **Donnelly v Jackman** [1970] 1 AER 987.

¹⁶ **Bentley v Brudzinski** [1982] Cr. L.R. 825

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s1(2) PACE. Vehicles : The police have a general power to search a person or a vehicle (or anything which is in or on a vehicle) and to detain the person or vehicle for the purpose of such a search.

s1(3) PACE: Grounds for Stop and Search : The police have the power to stop and search people and vehicles only if they have reasonable grounds for suspecting they have stolen goods, offensive weapons, house breaking tools or articles used to carry out a theft or steal a car. 'Offensive weapons' have been held in court to include umbrellas, plastic credit cards, combs and keys. 'Reasonable grounds' for suspicion are based on the officer's personal perception of what is 'reasonable'. Officers will be allowed to exercise 'reasonable force' to carry out a stop and search and to detain a person.

What is meant by 'reasonable grounds for suspicion?'

Annex B of the Code of Practice issued under **s66 PACE** provides guidance to its meaning though, of course, its precise meaning will be a question of fact in each particular case.

- 1 *Reasonable suspicion does not require certainty that an unlawful article is being carried; nor does the officer concerned have to be satisfied beyond reasonable doubt. Reasonable suspicion, in contrast to mere suspicion, must be founded upon fact. There must be some concrete basis for the officer's suspicion, related to the individual person concerned, which can be considered and evaluated by an objective third person. Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective third person. An officer who has such a hunch or instinct may well be justified in continuing to keep the person under observation or speak to him, but additional grounds which bring up mere suspicion to the level of reasonable suspicion are needed before he may exercise the powers dealt with in this code.*
- 2 *Reasonable suspicion may arise from the nature of the property observed or being carried or suspected of being carried, coupled with other factors including the time, the place and the suspicious behaviour of the person concerned or those with him. ... So an officer with prior knowledge of the behaviour of someone he sees in a certain situation, or acting on information received (such as a description of a suspected offender) may have reasonable grounds for searching him although another officer would not.*
- 3 *Reasonable suspicion cannot be supported on the basis simply of a higher than average chance that the person has committed or is committing an offence, eg because he belongs to a group within which offenders of a certain kind are relatively common, or because a combination of factors such as these. A person's colour of itself can never be a reasonable ground for suspicion.*
- 4 *The degree or level of suspicion required to establish the reasonable grounds justifying the exercise of powers of stop and search is no less than the degree or level of suspicion required to effect an arrest without warrant for any of the suspected offences to which these powers relate. The powers to stop and search to provide an opportunity to establish the commission or otherwise of certain kinds of offences without arrest and may therefore render arrest unnecessary.*
- 5 *Para 4 above is subject to the principle that where a PC has reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article, the power to stop and search exists notwithstanding that there would be no power of arrest. Every effort should be made to secure the voluntary production of the article before the power is resorted to.'*

The mere fact that a person is carrying a particular kind of property or is dressed in a certain way or has a certain hair-style is not of itself sufficient to constitute a reasonable suspicion. Nor is the fact that a person is known to have a previous conviction for unlawful possession of an article. However a combination of such factors may be.

s1(4) PACE. Search of Private Land : If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search him in the exercise of the power conferred by this section unless the constable has reasonable grounds for believing -

- a) that he does not reside in the dwelling; and
- b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

s1(5) PACE. Vehicle on private land : If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing -

- a) that the person in charge of the vehicle does not reside in the dwelling;
- b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

s1(6) PACE. Power of seizure : If in the course of a search a constable discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, he may seize it.

As the purpose of the search is to locate stolen goods or 'prohibited articles' it is necessary to define these terms. However, 'stolen goods' isn't a term defined in **PACE**. Thus, it is submitted, it is likely to be interpreted as being analogous to **s24(2) Theft Act 1968** so that goods are stolen goods if they are goods originally stolen, or which directly or indirectly represent or have at any time

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represented stolen goods, or are the proceeds of any disposal or realisation of stolen goods, or are goods obtained by blackmail or by deception.

s1(7) PACE. Prohibited article defined : An article is prohibited if it is a) an offensive weapon; or (b) an article -

- i) made or adapted for use in the course of or in connection with an offence to which this sub-paragraph applies; or
- ii) intended by the person having it with him for such use by him or by some other person.

s1(8) PACE. The offences to which subsection (7)(b)(i) above applies are:

- a) burglary
- b) theft
- c) offences under s12 Theft Act 1968 (taking a motor vehicle or other conveyance without authority); and
- d) offences under s15 of that Act (obtaining property by deception).

s1(9) PACE Offensive weapon defined : offensive weapon means any article.

- i) made or adapted for use for causing injury to persons ; or
- ii) intended by the person having it with him for such use by him or by some other person.

s2 PACE : Conduct of Searches under s1 PACE

As soon as a constable is satisfied that the provisions of s1 have been met he may search any person or vehicle .. s1(2);..in any place to which the public has access ... s1(1); .. providing he has reasonable grounds for (suspicion) s1 (3), then a constable who takes the decision to exercise his powers of search must follow the procedure laid down by s2 and usually make a record of it in accordance with s3.

s2(2) PACE. When information must be provided before a search : 'If a constable contemplates a search .. in the exercise - (a) of the power conferred by s1 ...

- i) to search a person without first arresting him or
- ii) to search a vehicle without making an arrest [then he has] to bring to the attention of the appropriate person - documentary evidence that he is a constable if he is not in uniform; and, whether or not he is in uniform, the matters specified in s2(3)

s2(3) PACE. The information that must be provided :

- (a) the constable's name and the name of the police station to which he is attached;
- (b) the object of the proposed search;
- (c) the constable's grounds for proposing to make it; ... '

s2(4) PACE. Exemption from making a record : No information about recording a record under s3 below need be given if it is impracticable to make a record.

s2(5) PACE. Who information should be given to : The person searched or the person in charge of a vehicle.

According to **R v Fenneley**,¹⁷ a search is unlawful unless the grounds required under s2(3)(c) PACE are given. The police must give the reason for the stop and record it as soon as practicable. However, they need not tell the person if it appears to them that they would not be understood. Does this actually extend the law as some claim? Stop & search powers existed before **PACE**. Many of the provisions were being used by the police before 1984, even if not strictly lawful. 4% of stops result in arrest. The other 96% do not. What are the implications? Either that 4% more criminals are detected than otherwise or that 96% of the people are being harassed unnecessarily. However, most stops last only a few minutes. Is this really a major deprivation of freedom? Only the criminal has something to fear from a stop according to the police.

s2(6) PACE . Notice of Search of Vehicle : If a constable searches an 'unattended' vehicle, on completion of the search he must leave a notice -

- (a) stating that he has searched it;
- (b) giving the name of the police station to which he is attached;
- (c) stating that an application for compensation for any damage caused by the search may be made to that police station
- (d) [effectively states] that if the owner of the unattended vehicle, or the person in charge of it at the time it was searched, requests within 12 months of the date of the search, a copy of the record then he will be entitled to such a copy [as long as] 'the constable who conducted the search made a record of it': s3(8)(b). s3(1)(b) acknowledge that it might not have been practicable to do so'.

s2(7) PACE. The constable shall leave the notice inside the vehicle unless it is not reasonable to do so without damaging the vehicle.

¹⁷ **R v Fenneley** 1989 Cr LR 142 :

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Duration of permissible detention. If police are inefficient or deliberately prolong the search of a person or vehicle they could face a civil action brought by the appropriate person for unlawful detention. Equally, the police are required to complete searches within a specified time limit which may render such searches might be superficial and ineffective. **s2(8) PACE** imposes an apparently vague, and problematic compromise.

s2(8) PACE *'The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby'*.

How much time is 'reasonably required' depends on the facts of the case. Similarly if the search of a person or vehicle is to be carried out 'nearby' the first point of detention, how far away can they be taken / directed before either or both concepts of 'reasonable time' and the 'nearby' location become infringed ?

s2(9) PACE imposes limits on the extent of the search, 'Neither the power conferred by s1 nor any other power to detain and search a vehicle without making an arrest is to be construed -

- (a) as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves; or
- (b) as authorising a constable not in uniform to stop a vehicle'. N.B.: this would appear to make valid a constable's request for a person to remove other articles of clothing provided such removal is not made 'in public'.

S3 Duty to make records concerning searches.

- 3(1) Where a constable has carried out a search in the exercise of any such power as is mentioned in s2(1) above, other than a search
 - (a) under s6 below; or
 - (b) under **s27(2) Aviation Security Act 1982**,he shall make a record of it in writing unless it is not practicable to do so.
- 3(2) If (a) a constable is required by subsection (1) above to make a record of a search; but (b) it is not practicable to make the record on the spot, he shall make it as soon as practicable after the completion of the search.
- 3(3) The record of a search of a person shall include a note of his name, if the constable knows it, but a constable may not detain a person to find out his name.
- 3(4) If a constable does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.
- 3(5) The record of a search of a vehicle shall include a note describing the vehicle.
- 3(6) The record of a search of a person or a vehicle
 - (a) shall state
 - (i) the object of the search;
 - (ii) the grounds for making it;
 - (iii) the date and time when it was made;
 - (iv) the place where it was made;
 - (v) whether anything, and if so what, was found;
 - (vi) whether any, and if so what, injury to a person or damage to property appears to the constable to have resulted from the search; and
 - (b) shall identify the constable making it.
- 3(7) If a constable who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9) below.
- 3(8) If (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in subsection (9) below; and
 - (b) the constable who conducted the search made a record of it, the person who made the request shall be entitled to a copy.
- 3(9) The period mentioned in subsections (7) and (8) above is the period of 12 months beginning with the date on which the search was made.

Road Checks and Roadblocks

Under PACE the police have the power to set up random roadblocks for up to 7 days, extendable indefinitely if a senior officer thinks that because of 'the pattern of crime' in the area a serious crime is likely

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to occur. The person stopped is entitled to know the reason for being stopped. In inner city areas this is tantamount to a random power to set up roadblocks for unspecified periods. It can be used to hamper, control and monitor the flow of traffic into and out of certain areas such as Greenham Common, picket lines and rural areas in North Wales, which have been subjected to the second homes arson campaign. Armed with these powers it was anticipated that the interference with the public's freedom of movement would become more commonplace.¹⁸

s4(1) PACE. The purpose of a road check is to ascertain 'whether a vehicle is carrying -

- (a) a person who has committed an offence other than a road traffic offence or a vehicles excise offence;
- (b) a person who is witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

s4(2) PACE. ...a road check consists of the exercise in a locality of the power conferred by **s159 Road Traffic Act 1972** in such a way as to stop during the period for which its exercise in that way in that locality continues all vehicles or vehicles selected by any criterion.

s4(3) PACE. A police officer of the rank of superintendent or above may authorise in writing a road check i.e. a check-point through which motor vehicles must pass and be checked.

s4(4) PACE. A police officer of the rank of superintendent or above may authorise in writing a road check i.e. a check-point through which motor vehicles must pass and be checked.

One of the reasons why an officer may authorise a road check is because he has reasonable grounds 'for believing that the offence is a serious arrestable *offence*'. Examples of what constitutes a *serious arrestable offence* are given in **s116** and they include: murder, manslaughter, rape and kidnapping; causing explosion likely to endanger life or property and carrying firearms with criminal intent.

s4(5) PACE. an officer below the rank of superintendent may authorise such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in ss(1) above.

s4(11) PACE provides that road checks can be maintained for a maximum of seven days.

s4(12) PACE allows for further continuing extensions not exceeding seven days.

s4(15) PACE provides for the person in charge of the vehicle at the time when it is stopped to be entitled to a written statement of the purpose of the road check if he applies for such a statement within 12 months from the day on which the vehicle was stopped.

The Criminal Justice and Public Order Act 1994

s25-30 CJPO Act 1994 alters the availability of bail to persons once arrested

s60 CJPO Act 1994 introduces police powers to stop and search, in anticipation of violence.

Part VI introduces new powers of stop and search of vehicles and persons in relation to the prevention of terrorism **s60 CJPO Act 1994** provides the police with the power to stop and search pedestrians and vehicles for offensive weapons and dangerous instruments. The officer can make such search as he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind. The power is exercisable in a specific place and only for twenty-four subject to a six hour extension.

s81 CJPO Act 1994 inserts a new **s13A** into the **Prevention of Terrorism (Temporary Provisions) Act 1989** which gives the police powers to stop and search persons, vehicles, ships and aircraft in a specified area for up to 28 days.

s82 CJPO Act 1994 introduces a new **s16A & B to the PTA 1989 :-**

s16A PTA 1989. Creates the offence of having an article in one's possession in circumstances which give rise to a reasonable suspicion that the article is in one's possession for a purpose connected with terrorism. The burden of proof is on the defendant to show the article was not in his or her possession for such a purpose.

s16B PTA 1989. Creates the offence of being in possession of information likely to be useful to terrorists planning acts of violence.

¹⁸ see also the power to stop in relation to raves under the **Public Order and Criminal Justice Act 1994**.

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s166 & 167 CJPO Act 1994 provides the police with a new offence and new powers in relation to ticket touts and touting of hire car services.

Road Traffic Act 1988

s6 R.T.A. 1988 : Breath tests can only be required by a P.C. in uniform. It was held in **Wallwork v Giles**,¹⁹ that a P.C. is in uniform even if he's not wearing his helmet - since he's easily identifiable as a P.C. It was further held in **Cooper v Rowlands** 1971. that a defendant must challenge the uniform issue, otherwise the court will presume a PC was in uniform. However the court held in **Winter v Barlow**,²⁰ that bad faith can invalidate the power of a P.C. under s163 R.T.A. 1988 to stop vehicles. There must be some valid purpose connected with police duties. In **Chief Constable of Gwent v Dash**,²¹ the court held that the police can stop a vehicle to find out if there is a reasonable suspicion of drink driving. If the suspicion is then aroused, they have the power to proceed further with the matter.

s163 RTA 1988 There is an implied duty that the vehicle remain at rest whilst a P.C. carries out inquiries. What if a driver decides to move ? Presumably he can do so if he indicates his intention clearly to the P.C. It was held in **Sanders v DPP**,²² that there is no power to detain under s163. Note however that following **C.C.G. v Dash**, if reasonable suspicion of another offence then comes to light the P.C. may then use other powers to detain. Provided circumstances allow, any prerequisite notice required by the relevant statute should be given.

s163 Road Traffic Act 1988 gives the police the power to stop a vehicle for any reason whatever. It is an offence to fail to stop.²³ This provision does not give the police any right to search the vehicle unless the driver agrees. The police can make observations and often they can smell alcohol on a driver's breath, which would then justify further action.

European Convention on Human Rights 1950

Compare the above provisions with the relevant Articles in the E.C.H.R. Do the U.K. provisions accord with the Convention and if not what action could now be taken either to Strasbourg or via the U.K. courts to the E.C.J.?

Article 5

- 1 Everyone has the right to liberty and security of person.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Article 6 - provides a right to a trial.

Article 7 - provisions against retrospective liability.

Article 8 - provides a right to family privacy and correspondence.

¹⁹ **Wallwork v Giles** [1970]

²⁰ **Winter v Barlow** [1980]

²¹ **Chief Constable of Gwent v Dash** [1986] RTR 41

²² **Sanders v DPP** [1988] Cr.L.R. 605

²³ See **Beard v Wood** [1980]; **Steel v Groacher** [1983]; **Winter v Barlow** [1980]; **Gwent Chief Constable v Dash** [1986]; **DPP v Wilson** [1991]; **Lodwick v Sanders** [1985]; **Sanders v DPP** [1988]. See also p74 "Civil Liberties".

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ENTRY / SEARCH OF PREMISES AND SEIZURE OF PROPERTY THEREIN

Clearly, there are times when the police, in the course of their duties to protect society, will need to enter property to either arrest someone, to question them and to search for evidence or illicit goods and to seize such evidence or goods. The question therefore is, in what circumstances are the police permitted to do so, given the fact that any unlawful invasion of property amounts to trespass to land and unlawful seizure amounts to trespass to goods or even conversion?

By virtue of **s8 & s15 PACE**, the police can enter premises including your home without warrant using force if necessary if they have reasonable belief that they will find a person who has committed an arrestable offence, or who is suspected of committing a 'breach of the peace' or who has committed various other offences. With a magistrate's warrant (rarely hard to obtain) the police can enter **ANY** premises to look for evidence of a 'serious arrestable offence.'

The easiest and potentially least troublesome way of entering property for the purposes of a lawful entry / search isn't by way of invoking statutory procedures but is by way of entry by express or implied permission.²⁴

In **Jones & Jones v Lloyd**,²⁵ X was seen by police officers trying to open a car. He admitted he wasn't the owner, and said that the owner was at a party in one of the houses in the street. L asked to be taken to see her. X invited the officer into the house. Although one of the guests told them to leave, the officers ignored her as she was not the owner of the house. The officers then received assurance as to the validity of X's possession of the car keys and decided to leave. As they were leaving they were assaulted by J & J. The court held that the officers were not trespassers. Where a guest leaves a party and then gets into difficulty, any host would be presumed to have authorised the guest to bring the police back into the house in order to clear his name.

When a police officer has been allowed to enter a private house to make enquiries but is then asked to leave he must be given a reasonable time to do so: In **Robson v Hallet**,²⁶ a police sergeant was told to leave a private house where he was making enquiries. He at once turned and walked towards the front door but was then jumped on. Two constables, who were outside on the front path, went to his aid. The court held that the sergeant had not become a trespasser the *instant* he was told to depart. '*When a licence is revoked as a result of which something has to be done by the licensee, a reasonable time must be implied in which he can do so, in this case to get off the premises; no doubt it will be a very short time, but he was doing his best to leave the premises*'. per Lord Parker CJ. The constables were lawfully in the front garden, as they, like any other members of the public, had implied leave and licence to walk up to the front door, and that implied licence had never been revoked. They were acting in the execution of their duty in assisting the sergeant and avoiding any further breach of the peace.

If however the officer persists in making enquiries and does not attempt to leave private premises when requested he becomes a trespasser: **Davis v Lisle**.²⁷ According to Lord Camden in **Entick v Carrington**,²⁸ '*Every invasion of private property be it ever so minute is a trespass. No man can set his foot upon my ground without my licence but he is liable for an action.*' The basis of Lord Camden's statement is that unless entry is lawfully approved there is an action against it. He could not then have foreseen the amount of statutory powers that were to emerge later in the 20th century.

In **Davis v Lisle**, two police officers entered a garage to make inquiries about a lorry that was obstructing the highway. They became trespassers when the occupier told them to leave and they failed to do so. The entry itself however was held to be lawful.

Robson v Hallet makes it clear that a police officer, as indeed any member of the public, can approach on lawful business. There is an implied licence to come to the door and that person has to be allowed a reasonable time to retreat if he is requested to do so. One can rebut this implication by posting a notice e.g. No Hawkers - etc.

²⁴ See Bailey Harris & Jones, Civil Liberties p90-91 for cases on consent to enter premises and revocation of consent.

²⁵ **Jones & Jones v Lloyd** [1981] Crim LR 340.

²⁶ **Robson v Hallet** [1967] 2 QJ 939.

²⁷ **Davis v Lisle** (1936)

²⁸ **Entick v Carrington** [1765]

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It was held in **Thomas v Sawkins**,²⁹ that a constable may enter private premises to prevent the commission of any offence he reasonably believed is about to be or is likely to be committed.

In **Elias v Pasmore**,³⁰ the police had a warrant for the arrest of Hannington, the organiser of an unemployed workers movement. The warrant dealt with the offences of sedition and causing disaffection. They chose to arrest him while he was at the movements headquarters. They did not have a search warrant but they took the opportunity to search the whole of the premises and seize many documents. Some turned out to have no value as evidence. The rest were used as evidence against Hannington and later against Elias. Elias sued the police for trespass to the premises and also for trespass to goods and requested the return of the documents. The court decided that in the interests of the state the police had been justified in seizing material relevant to the prosecution of any crime committed by any person. The judge did not seem to consider the search of the premises to be unlawful. The decision has been criticised. It seems unsatisfactory that the police, merely by waiting for a person to be in a particular premises before arresting him, can then go on to search the premises and then seize goods without a warrant.

In **Chic Fashions (West Wales Ltd) v Jones**,³¹ police whilst acting on a search warrant in respect of certain stolen goods took away other goods which they reasonably believed to have been stolen. The Court of Appeal held the police action was lawful.

In **Ghani v Jones**,³² whilst investigating a suspected murder the police decided it would be wise to retain the passports of the victims close relatives who came from Pakistan and some letters. They wished the property to be returned to them. The C.A. decided that it should be returned as it had not been shown to be material evidence to prove the commission of a murder and the police did not have reasonable grounds to believe that they were implicated in the crime. The Court also laid down principles regarding the rights of the police to take and retain property during the course of an investigation.³³

- 1). The police must have reasonable grounds for believing a serious crime has been committed and that the material confiscated was the instrument by which the crime was committed or was material evidence of the crime.
- 2). That the person in possession of the article or material is implicated in the crime or that the police have requested the article and the refusal to give it up is quite unreasonable.
- 3). When the police have taken an article they must not keep it longer than is necessary.
- 4). The lawfulness of the police action is to be judged at the time of the event and not in the light of subsequent events.

PROVISIONS UNDER PART II PACE 1984

Part II PACE supplemented by **Schedule 1** now governs police rights of entry search and seizure, coupled with any such rights accorded specifically by other statutes. Such other statutory powers are not limited to the police but extend to other government officials in particular circumstances eg The Inland Revenue, Customs & Excise, Department of Health etc under a wide variety of Acts.³⁴ **PACE** substantially amended the pre-existing powers of entry and search of premises and several anomalies were eliminated.

s8 PACE relates to 'powers of entry, search and seizure' with a warrant

s17-18 PACE related to 'powers of entry, search and seizure' without a warrant.

Does the fact that the police will not always need a warrant change much except efficiency? The major complaint used to be that the police could so easily get a warrant that the provision was no safeguard.

²⁹ **Thomas v Sawkins** [1935] Now see **s127 P.A.C.E.** 1984.

³⁰ **Elias v Pasmore** [1935]

³¹ **Chic Fashions (West Wales Ltd) v Jones** [1968]

³² **Ghani v Jones** [1970]

³³ compare this with the **PACE 1984** provisions

³⁴ e.g. **Misuse of Drugs Act 1971**, **Obscene Publications Act 1959**, **Official Secrets Act 1911** etc.

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PACE simply recognises this fact and does away with unnecessary inconvenience. Stop and search powers already existed in London. Only 4% of stops resulted in arrests. The other 96% were innocent of any offence.

The danger is that this power might be used capriciously against innocent persons and selected groups eg black communities that were harassed by the old 'Sus' laws have a genuine concern that **PACE** might replace 'Sus'. There is every likelihood that this could cause serious damage to police community relationships. A current concern is that the police are so short of resources that they do very little any more. This has been highlighted by the current selected action being taken by the Commissioner of Police for London to combat street crimes such as mugging and steaming and the controversial claims that a very high percentage of these offences are committed by small band of young black youths. Police resources are low, so high profile public relations exercises may be mounted to assuage the public and convince them that the police are combating crime whereas in reality the exercises may achieve little on a nationwide basis.

ENTRY AND SEARCH WITH A WARRANT

s8 PACE permits a constable to enter and search premises on the authority of a warrant issued by a J.P. if he suspects the commission of a 'serious arrestable offence' and the presence on those premises of evidence relevant to that suspected offence.

s8(1) PACE provides: *'If on an application made by a constable a Justice of the Peace is satisfied that there are reasonable grounds for believing*

- (a) that a serious arrestable offence has been committed; and*
- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and*
- (c) that the material is likely to be relevant evidence; and*
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and*
- (e) that any of the conditions specified in subsection (3) below applies, he may issue a warrant authorising a constable to enter and search the premises'.*

s8(2) PACE A constable may seize and retain anything for which a search has been authorized under ss(1) above. The specific references to items 'subject to legal privilege', 'excluded material' and 'special procedure material' mean that a magistrate cannot issue a warrant, which authorises entry and search for any of the following classes of evidence:

s8(3) PACE : The conditions mentioned in s8 subsection (1)(e) above are -

- a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- c) that entry to the premises will not be granted unless a warrant is produced;
- d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them'. (This is particularly relevant regarding drugs, which are quickly disposed of by dealers etc, who receive advance warning of a raid.)

s9 PACE : A Constable can apply to obtain access to excluded material or special procedure material under Schedule 1 provisions.

s10 PACE : Documents subject to legal professional privilege according to the principles of the law of evidence.

This preserves D's rights not to incriminate himself by the disclosure of any information which is given in confidence by or to his legal advisors.

s11 PACE : '**excluded material**' includes personal records of any person's physical or mental health or personal welfare acquired or created in confidence and any journalistic material held in confidence. (Compare with the company fraud provisions especially in relation to insider dealing and the Saunders Case before the E.C.H.R. where it was held the UK infringed the Convention by requiring the accused to provide evidence that may be self incriminating).

s12 PACE : Meaning of personal records : relates to records about health, spiritual counseling, welfare counselling by voluntary organisations, official welfare officers and court ordered counselors.

s13 PACE : Meaning of journalistic material. Material created or acquired for journalistic purposes, or passed on for journalistic purposes.

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s14 PACE : 'special procedure material' includes journalistic material other than that comprised in the definition of 'excluded material', together with certain business records held in confidence or subject to an obligation by statute not to disclose them. This material can be the lawful object of police search and seizure on the authority of a circuit judge. As a general rule a J.P. may issue a warrant to enter and search premises for material other than that categorised as 'legally privileged', 'excluded' or 'special procedure' material.

s15 PACE : Safeguards regarding search warrants. Specifies the form in which an application to a J.P. for the issue of a warrant must be made. The objective of this is to convince the J.P. that there are valid reasons for its grant. The application for a warrant must also specify the suspected offence and (so far as is possible) the evidence sought:

s15(1) PACE : An entry under a warrant is unlawful unless it complies with s16.

S15(2) PACE : Where a constable applies for ... a warrant, it shall be his duty –

- (a) to state -
 - i) the ground on which he makes the application; and
 - ii) the enactment under which the warrant would be issued;
- (b) to specify the premises which it is desired to enter and search;
- (c) to identify, so far as is practicable, the articles or persons to be sought ...

s15(4) PACE : The constable shall answer on oath any question that the justice of the peace or judge hearing the application asks him.

s15(5) PACE : A warrant shall authorise an entry on one occasion only.

s15(6) PACE : A warrant -

- (a) shall specify -
 - (i) the name of the person who applies for it;
 - (ii) the date on which it is issued;
 - iii) the enactment under which it is issued; (iv) the premises to be searched; and
- (b) shall identify, so far as is practicable, the articles or persons to be sought.' -118-

s16 PACE : Execution of warrants : Time Limits On the Validity Of Warrant.

s16(1) PACE : A warrant to enter and search premises may be executed by any constable.

s16(2) PACE : Such a warrant may authorise persons to accompany any constable who is executing it.

s16(3) PACE : Entry and search under a warrant must be within one month from the date of its issue.

s16(4) PACE : Entry and search under a warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

s16(5) PACE : Where the occupier of premises which are to be entered and searched is present at the time when a constable seeks to execute a warrant to enter and search them, the constable

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;
- (b) shall produce the warrant to him; and
- (b) shall supply him with a copy of it.

s16(6) PACE : Where

- (a) the occupier of such premises is not present at the time when a constable seeks to execute such a warrant; but
- (b) some other person who appears to the constable to be in charge of the premises is present, subsection (5) above shall have effect as if any reference to the occupier were a reference to that other person.

s16(7) PACE : If there is no person present who appears to the constable to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

s16(8) PACE : A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

s16(9) PACE : A constable executing a warrant shall make an endorsement on it stating

- (a) whether the articles or persons sought were found; and
- (b) whether any articles were seized, other than articles which were sought. (10)-(12)

Thus, by virtue of s16 we find that a search warrant remains in force for only one month after it has been issued. If it is not executed within that time it lapses and it must be returned to the court office from which it

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was issued: s16(3) & (10). The warrant should be executed at a 'reasonable hour' unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour: s16(4). (Drugs raids frequently take place between 3 & 5 a.m.)

When a constable is on the premises to be searched he must produce the warrant to the occupier (if he's present), leave a copy of it with him and also produce documentary evidence that he is a constable: s16(5). In the absence of the occupier the constable can effectively exercise the same procedure with some other person who appears to be in charge of the premises: s16(6) A Police Constable has a duty to leave a copy of the warrant in a prominent place on the premises if no one present appears to be in charge of the premises : s16(7). The Act is silent on the force permissible such as breaking down doors to gain entry. However, since the entry is carried out in the execution of a Police Constable's duty. Resistance is covered by **s89 Police Act 1996**

ENTRY AND SEARCH WITHOUT A SEARCH WARRANT TO EFFECT AN ARREST

Police powers of entry and search of premises without a warrant are contained in general terms in **s17 & s18 PACE**. The provisions are in addition to any other statutory powers of entry and search and to the sole remaining common law power, viz. entry to deal with or prevent a breach of the peace : **s17(6) PACE**.

s17 PACE Entry for purpose of arrest etc. The principal elements are:

s17(1) PACE : Subject to the following provisions of this section, and without prejudice to any other enactment, a constable may enter and search any premises for the purpose

- (a) of executing -
 - (i) a warrant of arrest issued in connection with or arising out of criminal proceedings: ...
- (b) of arresting a person for an arrestable offence; (i.e. **s24 P.A.C.E. 1984** offence)
- (c) of arresting a person for an offence under -
 - i) **s1** (prohibition of uniforms in connection with political objects), **s4** (prohibition of offensive weapons at public meetings and processions) or **s5** (prohibition of offensive conduct conducive to breaches of the peace) **Public Order Act 1936**;
 - ii) any enactment contained in **ss6 to 8 or 10 of the Criminal Law Act 1977** (offences relating to entering and remaining on property); These powers are exercisable only by constables in uniform.
- (d) of recapturing a person who is unlawfully at large and whom he is pursuing; or
- (e) of saving life or limb or preventing serious damage to property.

D'Sousa v D.P.P.³⁵ concerned **s17(1)(d) PACE**. power of entry for the purposes of recapturing a person who is unlawfully at large and whom he is pursuing. A P.C. entered premises to recapture a person escaped from a mental institution. The family told the P.C. to leave. He proceeded to recapture the patient. A fight ensued and the family was arrested and convicted of assaulting a P.C. in the execution of his duty. It was held on appeal that the word 'pursuing' means that the P.C. must have been chasing the person at large immediately before the forced entry. If not, then a warrant is needed to enter the premises. Since there was no chase the entry was unlawful. The P.C. was not executing his lawful duty. The family were acting in their rights defending the patient from an unlawful arrest. The convictions were quashed.

s17(2) PACE : Except for the purpose specified in paragraph (e) of subsection (1) above, the powers of entry and search conferred by this section -

- (a) are only exercisable if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises; and
- (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search -
 - i) any parts of the premises which the occupiers of any dwelling comprised in the premises' use in common with the occupiers of any other such dwelling; &
 - ii) any such dwelling in which the constable has reasonable grounds for believing that the person whom he is seeking may be ...

Thus, where a constable has reasonable grounds for suspecting that the person whom he is seeking is on particular premises then he may enter and search those premises under **s17(2) PACE**. In such circumstances the constable has to be:-

- 1 seeking to arrest the person under a warrant of arrest issued in connection with or arising out of criminal proceedings; or
- 2 under a warrant of commitment; or

³⁵ **D'Sousa v D.P.P.** [1992] NLJ p1540

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- 3 for an arrestable offence; or
- 4 for certain offences contrary to the **Public Order Act 1936**, or certain offences relating to illegal entry or occupation of property; or
- 5 recapturing a person who is unlawfully at large he is pursuing, or
- 6 saving life or limb or preventing serious damage to property.

Contrasting views on the effects of point 6 are given by *Bevan & Lidstone* and by *Robilliard* who opposes them. *Bevan & Lidstone* say that: "... so many offences involve 'danger to life, limb and property', **s17(1)(e) PACE** can be used instead of obtaining a search warrant and without the consequential need to show that the person sought is in fact on the premises ... the complex search warrant procedures ... could be circumvented". *Robilliard claims* 'this perhaps goes too far, as surely the situation envisaged here relates to what is going on inside the premises there & then, as would have been the position at common law, rather than the investigation of crime in general'.

s17(3) PACE : The powers of entry and search conferred by this section are only exercisable for the purposes specified in subsection (1)(c)(ii) [or (iv)] above by a constable in uniform.

s17(4) PACE : The power of search conferred by this section is only a power to search to the extent that is reasonable required for the purpose for which the power of entry is exercised.'

s17(5) PACE : Subject to subsection (6) below, all the rules of common law under which a constable has power to enter premises without a warrant are hereby abolished.

s17(6) PACE : Nothing in subsection (5) above affects any power of entry to deal with or prevent a breach of the peace.

PACE permits an officer to use, if necessary, reasonable force to enter premises without the householder's consent. This will apply only where a demand to enter has not been complied with by the householder or where there are special circumstances, as where the suspect is dangerous or there is some need to take him by surprise that makes it inadvisable to give warning of impending police approach.

ENTRY AND SEARCH AFTER ARREST :

s18 PACE provides that if a person has been arrested by the police for an arrestable offence then premises occupied or controlled by that person can be searched before going to the station and without a warrant. In all cases, except those covered by the professional bodies such as solicitors, barristers and doctors, evidence of any offence may be seized no matter how trivial. Such sweeping powers make 'fishing expeditions' for 'evidence' perfectly lawful, whether in homes, work places or local organisations. Once again 'reasonable force' may be exercised to gain entry. The Home Office Guidelines state 'Premises may be entered by force, where there are reasonable grounds to believe that to alert the occupier .. would frustrate the object of the search'. The Guidelines further state that 'a search does not have to be made at a reasonable hour if it appears to the officer in charge that the object of the search would be frustrated if the search were conducted at a reasonable hour.

s18(1) PACE : If a suspect is arrested for an arrestable offence a constable has the power to enter and search any premises occupied or controlled by that person if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates –

- (a) to that offence; or
- (b) to some other arrestable offence which is connected with or similar to that offence.

s18(2) PACE : A constable may seize and retain anything for which he may search under subsection (1) above.

s18(3) PACE : The power to search conferred by subsection (1) above is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

s18(4) PACE : Subject to subsection (5) below, the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.

s18(5) PACE : A constable may conduct a search under subsection (1) above –

- (a) before taking the person to a police station; and
- (b) without obtaining an authorisation under subsection (4) above, if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence ...'

s18(6) PACE : If a constable conducts a search by virtue of subsection (5) above, he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.

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s18(7) PACE : An officer who

- (a) authorises a search; or
- (b) is informed of a search under subsection (6) above, shall make a record in writing
 - (i) of the ground for the search; and
 - (ii) of the nature of the evidence that was sought.

s18(8) PACE : If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

POWERS OF SEIZURE UNDER PACE

s19(1) PACE confers a general power of seizure on constables who are 'lawfully on any premises.' When a constable invokes this power and seizes articles.

Before anything is seized under **s19 PACE** the 'reasonable grounds for believing' proviso should be satisfied though no material subject to legal privilege should be seized.

s19(2) PACE The constable may seize anything which is on the premises if he has reasonable grounds for believing

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

s19(3) PACE The constable may seize anything which is on the premises if he has reasonable grounds for believing

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost altered or destroyed.

s19(4) PACE The constable may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for believing -

- (a) that -
 - i) it is evidence in relation to an offence which he is investigating or any other offence; or
 - ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

s19(5) PACE The powers conferred by this section are in addition to any power otherwise conferred.

s19(6) PACE No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.'

s20 PACE Extension of powers of seizure to computerized information

s21 PACE Access to copying

s22 PACE Retention : seized the articles may be retained 'so long as is necessary in all the circumstances' but must be released to the person from whom they were seized (unless there is reason to believe that they have been obtained in consequence of the commission of an offence) of a photograph or copy of them would be sufficient for the purpose for which retention is desired.

There are a number of statutes that specifically authorise the issuing of a warrant to enter premises besides P.A.C.E. 1984 eg **s23 Misuse of Drugs Act 1971**. (MDA 1971)³⁶ and the **Criminal Justice and Public Order Act 1994**.

s23(1) MDA 1971 : A constable or other person authorised in that behalf by a general or special order of the Secretary of State ... shall, for the purposes of the execution of this Act have power to enter the premises of a person carrying on business as a producer or supplier of any controlled drugs and demand the production of and to inspect any books or documents relating to dealings in any such drugs and to inspect any stocks of any such drugs.³⁷

s23(3) MDA 1971... regarding power of magistrate to issue a warrant authorising entry and search of the premises and the persons therein.

³⁶ Similar powers to search persons in premises are contained in **s2 The Incitement to Disaffection Act 1934** : & **s9(1) Official Secrets Act 1911** : **s2(5) Public Order Act 1936**.

³⁷ In **King v R** [1969] under similar legislation, the court held that in order to search persons the persons must be named in the warrant.

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SUMMARY OF PART II PACE

- s8 Power of J.P. to authorise entry & search of premises. If he believes**
- 1) a) serious arrestable offence : b) substantially valuable evidence : c) relevant evidence : d) not privileged : e) subject to ss3 below.
 - 2) P.C. can seize any of the above.
 - 3) impossible to communicate with proprietor of property or owner of evidential material within or entry would be refused without a warrant or purpose of search would be frustrated by telling proprietor.
- s9 Special provisions as to access**
- s10 Meaning of items subject to legal privilege**
- s11 Meaning of excluded material**
- s12 Meaning of personal records**
- s13 Meaning of journalistic material**
- s14 Meaning of special procedure material**
- s15 Search warrants - safeguards.**
On applying for a warrant P.C. must state grounds, which enactment authorises the warrant, name premises and persons concerned and type of articles sought, in writing ; to named premises, specific date, persons and articles sought.
- s16 Execution of warrants.**
By any P.C. within a month at a reasonable time (exceptions if likely to frustrate purpose of search) must identify himself, & produce warrant : if other articles found & retained must be endorsed on the warrant.
- s17 Entry & search without search warrants : for purpose of arrest etc.**
P.C. may enter to carry out a search warrant, arrest for an arrestable offence and to recapture persons, & to save life & limb. Requires reasonable grounds to believe person is within : PC MUST BE IN UNIFORM re s6,8 & 10 Criminal Law Act 1977 offences.³⁸
- s18 Entry & search after arrest.**
Regarding evidence relating to that or 'SIMILAR' offences. P.C. may seize & retain. Require authorisation of a Police Inspector in writing unless in the course of investigation in presence of the defendant before taking him to the station but must inform authorities as soon as possible. Must keep contemporaneous notes. These can be as part of the custody notes.
- s19 General power of seizure.**
- 1) P.C. must be lawfully on the premises
 - 2) may seize if he has reasonable ground to believe property a) was obtained in consequence of an offence & b) seizure necessary to prevent concealment loss damage alteration or destruction.
 - 3) a) evidence in relation of an offence & b) necessary to seize as above. 4) Computer evidence.³⁹
- s20 Extension of powers of seizure to computerized information**
- s21 Access and copying.**
- s22 Retention.**
For trial use as evidence O.K. : But if seized to prevent damage etc must be returned after bailment.
- Powers of Search and Seizure under the Criminal Justice and Public Order Act 1994**
- | | |
|--|--|
| s54 Body samples | s55 Non-intimate body samples |
| s56 Fingerprints | s57 Retention of samples |
| s58 Intimate & non-intimate samples | s59 Power to search a person's mouth. |
| s62 Trespassers on land : Powers of seizure | s64 Raves : Powers of seizure |
| s166 Powers of search & seizure regarding ticket touts. | |

³⁸ See also *Entick v Carrington* [1765] : *Davis v Lisle* [1936] : *Robson v Hallett* [1967] : *Morris v Beardmore* [1980] : *Thomas v Sawkins* [1935] : *R v Chief Constable of Devon & Cornwall* [1981].

³⁹ See also *Ghani v Jones* [1970] : *Chic Fashions (West Wales) Ltd v Jones* [1968] : *R v Sang* [1980].

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ARREST

The police may not arrest a person unless there is a statutory or common law power to arrest that person in relation to a criminal offence, actual or suspected. The individual does not have to show that he or she has the right to do something. The police must show that they have the legal authority to prevent the person engaging in that particular activity. An examination of freedoms in the U.K. therefore has to concentrate on the extent of the powers of the authorities, the prerequisites placed upon the authorities by statute before they can act and the manner in which these powers are exercised.

Dicey stated that '*The right to personal liberty as understood in England means, in substance, a person's right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.*'

An unlawful arrest by the authorities may be challenged through the Writ of Habeas Corpus to secure the delivery up of the body of the person "dead or alive". The individual can also sue the authorities for wrongful arrest and can make complaints in respect of the behaviour of those in authority, eg the police.

In **Liversidge v Anderson**.⁴⁰ Lord Atkin stated that 'One of the pillars of liberty that exists in English Law is that every imprisonment is prima facie unlawful, and that it is for the person directing imprisonment to justify his act.' Such justification may include :

- 1). Arrest and detention pending trial in court.
- 2). Where a defendant has been charged as part of a court action.
- 3). Where a defendant has been tried and found guilty and thus imprisoned.
- 4). Parliament can detain people for contempt.
- 5). Persons can be held in detention pending deportation and subsequent deportation.
- 6). Children in need of care and attention can be held against their will and likewise mental patients.
- 7). Recent statutory powers of detention in relation to drugs trafficking and terrorism.

THE POWER OF ARREST UNDER PART III PACE

Everyone, citizen and police, has the power to arrest in particular circumstances, but the police carry out the majority of arrests. The Law of Arrest has in the past been a mixture of statute and common law. Thus, whilst **s89 Police Act 1996** gives no power of arrest, the obstruction of a police officer during the execution of his duty may give rise to a potential breach of the peace, thereby giving rise to the common law preventative power of arrest. On the other-hand, as an offence against the person contrary to the **OPA 1861**, an assault of a police officer may be arrestable under **s24 PACE**.

The statutory powers of arrest are numerous and various. Otherwise the general description of powers of arrest are set down in **s24 & 25 PACE 1984**. The **Criminal Law Act 1967** now incorporated in **P.A.C.E.** was a rare attempt at making a general statement regarding the law of arrest. It is difficult to know where and when and to what extent the laws apply. This makes resisting arrest a precarious business. There are two kinds of arrest, those requiring a warrant and those that do not.

Arrests requiring a warrant : The purpose of most arrests is to forcefully bring an individual to court. **s1 Magistrates Court Act 1980** (MCA 1980) provides that court proceedings can be started by warrant or summons. With regard to the warrant for arrest, it is issued by the magistrate or other judicial authority. It must name the accused and the offence with which he is charged. The idea of a general warrant of arrest which does not specify the person or charge is unlawful.⁴¹ A warrant can be executed anywhere in England or Wales by a policeman.⁴² The arresting officer does not have to have the warrant in his possession but he must inform the person being arrested of its existence and contents. This is not possible in the circumstances of a violent arrest. **s29 Criminal Justice and Public Order 1994 (CJPO)** ⁴³ introduced a new power of arrest without warrant in respect of an individual who breaches police bail.

Arrests not requiring a warrant : The common law power of arrest was replaced by **s2 Criminal Law Act 1967** which has in turn been replaced by **PACE**. **s2 CLA 1967** created the arrestable offence, one

⁴⁰ **Liversidge v Anderson** [1941] 3 All E.R. 338

⁴¹ see **Entick v Carrington** 1765.

⁴² see **s125 Magistrates Court Act** as amended by **PACE** regarding duration of warrant and who can use it.

⁴³ now **s46A P.A.C.E. 1984** as amended.

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in which the sentence is fixed by law. Arrestable offences are those carrying life imprisonment for murder, plus, any offence that can carry a jail sentence of five years or more.

Any person may arrest without a warrant a person who is or is reasonably suspected to be in the act of committing an arrestable offence i.e. suspected of doing or is in the process of doing.

Where an arrestable offence has actually been committed any person can arrest anyone who they have reasonable cause to suspect of being guilty of the offence or a person who **IS** guilty of the offence.

Where there is merely reasonable cause to suspect that an arrestable offence has been committed a policeman has the additional power of arresting anyone that he has reasonable cause to suspect has committed the offence. This power is not available to the private citizen. A police officer also has the power to arrest without a warrant any person he has reasonable cause to suspect will commit an arrestable offence ie preventative power. In the use of these powers a constable can enter and search any place that he reasonably suspects a person that he wants to arrest to be.

In the use of that power force can be used. **s117 PACE** provides that a person may use such force as is reasonable in the circumstances for the prevention of crime and in the making of a lawful arrest of actual or suspected offenders or of people unlawfully at large. In the majority of cases force is not necessary. At the time of an arrest, clear words should be used to indicate that the person has been arrested. There are exceptions; if a person is caught red-handed or if the circumstances make it impossible for clear words to be used.

In **Christie v Leachinsky**,⁴⁴ a Liverpool policeman purported to exercise a Local Power of Arrest. He knew the conditions needed to exercise the power did not exist. The Police Officers were sued for wrongful arrest and false imprisonment. In court it was argued on behalf of the police that the arrest was lawful because at the time of the arrest the police had information about Leachinsky that would have justified his arrest at common law for another offence. The House of Lords decided that the arrest was unlawful and that it was a condition of the Law of Arrest that the person should be told the reason for the arrest.⁴⁵

In **R v Kulymycz**,⁴⁶ a constable purported to arrest the accused without giving him a reason. A little later at the police station he was told that he had been arrested on suspicion of handling stolen goods in Kings Lyn. Eventually he was charged with the unauthorised possession of controlled drugs in Cambridge. The courts said that whilst the original arrest was unlawful, in the police station he was given sufficient information to make his arrest lawful from that stage onwards.

Arrest. s24, s25 PACE : There are several ways of making an arrest. An arrest can be made without a warrant of people 'reasonably' suspected or a 'serious arrestable offence.' The 'serious' offence includes not only the obvious ones such as murder, rape, arson firearms and explosives offences but others far less obvious. It includes an offence which 'involves serious harm to the security of the state or to public order.' Thus, peace campaigners involved in direct action could be held to be affecting the security of the state, while pickets in large numbers *could* be considered a threat to public order.

It also covers an offence involving 'serious financial loss to anybody'. This may cover all sorts of suspected petty thefts as 'serious financial loss' is defined as 'serious for the person who suffers it.' All robbery offences are considered to be serious including minor losses of small change from old age pensioners. The dangers of this wide definition of 'serious' offences is that people suspected of public order offences, petty thefts and small time burglary or peace campaign activities (all of whom may be wrongly suspected) could be detained in a police station without charge for up to four days for questioning subject to a magistrates' warrant.

One of the widest extensions is given where the officer reasonably suspects that ANY offence, however trivial, was being or was about to be committed. If certain conditions apply, the officer can arrest without a warrant. These conditions include if the person does not tell the officer his or her name and address or the officer believes it to be false or if it is believed that the person might harm him or herself or someone else, damage property, obstruct the

⁴⁴ **Christie v Leachinsky** [1947]

⁴⁵ See s28 P.A.C.E. 1984.

⁴⁶ **R v Kulymycz** [1971].

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highway or cause an affront to public decency. These general grounds could mean some one *could* be arrested without a warrant for very minor offences such as dropping litter or parking on double yellow lines. In addition gay people fear that 'affront to public decency' which is not itself a criminal offence or defined in the Act could be used to harass them. The result of such an arrest will allow the police to keep the person inside the police station without charge for up to 24 hours.

An arrestable offence (as defined in **s24 PACE**) may become a *serious arrestable offence* if, e.g., its commission leads to 'serious financial loss to any person': **s116(6)(f) PACE**

s116(7) PACE provides that: '*Loss is serious for the purposes of this section if, having regard to all the circumstances, it is serious for the person who suffers it*'. Thus theft, contrary to **s1 Theft Act 1968**, (which is an arrestable offence) can become a 'serious arrestable offence' if it has caused or was intended to cause one of the consequences specified in **s116(6)**.

What constitutes an arrest ?

Professor Zander refers to two forms of arrest - lawful and unlawful. In **Spicer v Holt** [1977] AC 987 it was said by Viscount Dilhorne 'Whether or not a person has been arrested depends not on the legality of the arrest, but on whether he has been deprived of his liberty to go where he pleases'.

If a person is being detained by the police against his will he is under arrest. The next point to determine is whether or not that arrest is lawful. As to how an arrest is effected 'there is no magic formula; only the obligation to make it plain to the suspect by what is said and done that he is no longer a free man.' per Stephenson LJ in **R v. Inwood**.⁴⁷

In **Alderson v Booth**,⁴⁸ a Detective Constable said 'I shall have to ask you to come to the police station for further tests' to a defendant who had just given a positive breath test : The court held that this had not amounted to an arrest which was a prerequisite to a conviction for drink and drive.

In **Nichols v Bulman**,⁴⁹ the court held that the words 'I arrest you' alone are insufficient to constitute an arrest. The words needed to be accompanied by a physical act indicating compulsion to constitute an arrest.

Whether the arrest is lawful depends on whether the conditions for a lawful arrest have been fulfilled. Lawful deprivation of a person's liberty by means of arrest is based on 'the principle of justification' i.e. in order to justify an arrest in law the person making the arrest must be able to show that (s)he was exercising a lawful power of arrest. Failure to comply with this renders arrest unlawful.

Article 5(2) European Convention on Human Rights 1950 - *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*

- What does promptly mean?
- How soon is promptly especially if the arresting officer doesn't speak the detainee's language?
- What is the effect of non compliance?
- Does it merely give rise to damages or is the arrest rendered unlawful?

Arrest under warrant

s1(1) of the Magistrate's Courts Act 1980, enables a magistrate to issue a warrant in respect of any offence known to law when written information is laid before him on oath 'that any person has, or is suspected of having, committed an offence'. A warrant for the arrest of someone should not be issued unless the offence in question is indictable or punishable with imprisonment. This reflects the policy that minor offences should be dealt with by summons rather than arrest.

Arrest without a warrant.

The principal provisions relating to arrest without a warrant are now to be found in **PACE**. **PACE** also draws a distinction between '*arrestable offences*' for which a power of arrest without warrant exists in every case (subject to certain conditions - esp. reasonable suspicion) regardless of the seriousness of the harm or damage done in the actual offence, and *other offences* which become arrestable without a warrant only if the gravity of the harm, or risk of further harm, or of the suspect's absconding without having given a true name and address, call for immediate detention. (NB s24 & 25 will be replaced on 1st January 2006 with a new category of arrest for indictable offence.

⁴⁷ **R v. Inwood** [1973] 2 AER 645 : compare PACE

⁴⁸ **Alderson v Booth** [1969] 2 QB 216

⁴⁹ **Nichols v Bulman** [1985] RTR 236 :

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With regard to *arrestable offences*, *Robilhard* points out that:

"The idea that the seriousness of an offence could in itself justify summary arrest, without recourse to a magistrate for a warrant, is one that comes from common law principles ... In addition many statutes dating from before and after [s2 The Criminal Law Act 1967] created particular offences which were arrestable without the need of a warrant .."

ARRESTABLE OFFENCE UNDER PACE 1984 INCLUDES :-

s24(1)(a) PACE : Offences for which the sentence is fixed by law: (e.g. life sentence for murder).

s24(1)(b) PACE : Offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by s33 Magistrate's Courts Act 1980) (which restricts the sentence which may be given for such things as the thefts of property worth £40 or less). This is not a bar on the arrest of those under 21; the available sentence merely determines which offences are arrestable.

s24(1)(c) PACE. Offences not otherwise arrestable under (a) or (b) above as set out in

s24(2) PACE: include (inter-alia);

- indecent assault on a woman;
- causing prostitution of women;
- taking a motor vehicle or other conveyance without authority.

s24(3) PACE : Power to arrest for inchoate offences such as inciting, aiding, abetting, counseling or procuring.

s24(4) PACE : *Any person may arrest without warrant -*

- (a) anyone who is in the act of committing an arrestable offence;
- (b) anyone whom he has *reasonable grounds for suspecting* to be committing such an offence.

s24(5) PACE : Where an arrestable offence has been committed, any person may arrest without a warrant -

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has *reasonable grounds for suspecting* to be guilty of it'.

The powers are discretionary : e.g. **s24(4) PACE** 'Any person *may* arrest ... ' The exercise of statutory powers by police officers are subject to the principles expounded by Lord Greene MR in **Associated Provincial Picture Houses v Wednesbury**,⁵⁰ i.e. officers must not exercise statutory discretions for improper purposes; they must not take legally irrelevant matters into account or fail to have regard to legally relevant matters; and an exercise of discretion must not be so unreasonable that no reasonable authority or officer could so decide.

In **Holgate-Mohammed v Duke**,⁵¹ the H.L. held that it was not an improper use of the power to detain after arrest where the officer did so because he believed that Mrs. H-M. would be more likely to respond truthfully if she was questioned under arrest at the police station than if she was questioned at her home.

There can be no arrest unless the person concerned both intends to and does exercise an available power to arrest.⁵² The power to arrest after the event provided for in s24(5) requires that the arrestable offence has, in fact, been committed. If a private citizen arrests someone he merely suspected of having committed an arrestable offence (when one hasn't actually been committed) then the private citizen is liable in damages for false arrest. It is no defence to show that he reasonably suspected that an arrestable offence had been committed: there must actually have been such an offence: **Walters v W H Smith**.⁵³

Powers of arrest conferred on *constables* not only include the above provisions but are extended :

s24(6) PACE : Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

⁵⁰ **Associated Provincial Picture Houses Ltd. v Wednesbury Corpn.** (1948)

⁵¹ **Holgate-Mohammed v Duke** [1984] AC 437

⁵² **Kenlin v Gardiner and Donnelly v Jackman.**

⁵³ **Walters v W H Smith** [1914] 1 KB 595.

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s24(7) PACE : A constable may arrest without a warrant -

- (a) anyone who is about to commit an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence'.

The purpose of an arrest

s24 PACE indirectly infers that the purpose of an arrest is to act as a precursor to judicial action i.e. a trial which could lead to punishment for s24(1)(a) fixed sentence or (b) may lead to a 5 year term of imprisonment and apply s24(3) ... for the purposes of this ACT.

Thus, even where the specified conditions under **s24(6)** are fulfilled an arrest may still be unlawful if the arresting officer knows a prosecution is not possible - since under **Associated Picture Houses v Wednesbury** an act will be deemed ultra vires the statutory power if it is not exercised for the purposes of the authorising statute. It was held in **Plange v Chief Constable of South Humberside**,⁵⁴ that where a P.C. arrested a person on reasonable suspicion that he had committed an arrestable offence and the arrested person could prove that the arresting officer knew at the time of the arrest that there was no possibility of a charge being made then the arrest would be unlawful because the arresting officer had acted on some irrelevant consideration or for an improper purpose.

Plange assaulted X : X made a complaint to the police but later withdrew the complaint : The charging officer decided that the case would be dropped but PC Hob went and arrested him in any case. Since a decision had been made to drop the charge there was no reason under **s24 PACE** to arrest Plange - who could therefore claim damages for false arrest. Parker LJ however pointed out that provided an arresting P.C. thinks a charge might follow eg because the defendant might confess etc then the arrest would be for a proper purpose. Even if a complainant drops a complaint the police can still prosecute provided they believe they can get sufficient evidence elsewhere to justify a trial.

Article 5(4) ECHR 1950. "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

- How speedy is speedily ?

GENERAL ARREST CONDITIONS.

Power to arrest for offences, which are not 'arrestable'. In addition to the powers of arrest under **s24 PACE**, the Act gives the police new powers of arrest in regard to non-arrestable offences.

s25 (1) PACE : Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions are satisfied.

s25(2) PACE : In this section 'the relevant person' means any person whom the constable has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

s25(3) PACE : The general arrest conditions are -

- (a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the constable;
- (b) that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;
- (c) that -
 - i) the relevant person failed to furnish a satisfactory address for service; or
 - ii) the constable has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;
- (d) that the constable has reasonable grounds for believing that arrest is necessary to prevent the relevant person
 - i) causing physical injury to himself or any other person;
 - ii) suffering physical injury;
 - iii) causing loss of or damage to property;
 - iv) committing an offence against public decency; or
 - v) causing an unlawful obstruction of the highway;
- (e) that the constable has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

⁵⁴ **Plange v Chief Constable of South Humberside** March 23rd 1992 : CA :

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s25(4) PACE : For the purposes of subsection (3) above an address is a satisfactory address for service if it appears to the constable -

- (a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or
- (b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.

s25(5) PACE : Nothing in subsection (3)(d) above authorises the arrest of a person under subparagraph (iv) of that paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

Name & Address : There is no duty (YET) under **P.A.C.E.** to give a P.C. your name and address : There is generally no duty to answer a P.C.'s questions. There is a right to silence and no requirement to incriminate oneself, though the court may now presume guilt rather than innocence from such refusal. However, apart from the fact that it is unwise to be difficult to the police, a PC's powers of arrest may be triggered by the fact that he does not know your name and address.

In **Nicholas v Parsonage**,⁵⁵ a Police Constable indicated to Nicholas that he should not ride his bike without holding the handlebars. Nicholas complied but put two fingers up to the Police Constable. The constable asked him for his name and address because of the way he had ridden his bike. Nicholas refused and the constable said he was arresting him for failure to give his name etc. Nicholas sued for false arrest but failed. The court held that Nicholas knew, (he had been told this a short time before his arrest) that he was being arrested for the cycling offence and not actually for the failure to give his name.

As Home Secretary , Howard proposed to introduce a number of new offences in his next Criminal Justice Bill. It was intended to make it an offence to fail to provide a police officer with one's name and address if asked. This would provide a very neat enforcement system in respect of the new voluntary identity cards that have been introduced. The offence would presumably be arrestable and render the arrest provisions regarding name and address to facilitate service of summons under **s25 PACE** superfluous. It appears that these proposals are now being seriously reconsidered by David Blunkett, the current Home Secretary.

s26(2) and Schedule 2 PACE : Preserved powers of arrest without warrant. Schedule 2 lists 21 statutes, which contain powers authorising a constable to arrest without a warrant or court order. Each is preserved because there is or is thought to be a need for powers of arrest, unfettered by the general arrest conditions, in respect of offences which are not sufficiently serious to be categorised as arrestable offences, or in order to preserve existing powers of arrest of persons who have not committed criminal offences but must be detained either for their own safety or because they are illegally at large. They fall into 7 broad categories :-

- Persons unlawfully at large,
- Terrorism & related offences,
- Protection of animals,
- Road Traffic offences, Soliciting for prostitution,
- Protection of the person being arrested,
- Squatting and public order offences.

The **C.J.&P.O. Act 1994** increases the range.

Arrest under Public Order & Criminal Justice Act 1994

s29 Power for police to arrest for failure to answer to police bail.

s61(5) Power to arrest trespassers on land who refuse to leave.

s63(8) Power to arrest persons committing rave offences.

s65(5) Power to arrest persons going to a rave after being ordered not to.

s68(4) Power to arrest for aggravated trespass.

s69(5) Power to arrest for ignoring order to stop committing aggravated trespass.

s71 New s14C(4) Public Order Act 1986 provision - power to arrest in relation to trespassory assembly.

s73 Power to arrest squatters.

⁵⁵ **Nicholas v Parsonage** [1987] RTL 199

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s76 Power to arrest second time around squatters.

s154 Power of arrest for causing intentional harassment alarm or distress, without warrant, on suspicion. New s4A Public Order Act 1986 Provision s4A(4).

s155 s24 PACE arrest provisions extended to publication of racially inflammatory material.

s166 s24 PACE provisions extended to ticket touts.

Giving Reasons For The Arrest

It was held in **Christie v Leachinsky**,⁵⁶ that where an arrest is made without warrant, the arresting officer must '(1) .. in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. A citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2) If the citizen is not so informed but is nevertheless seized, the policeman ... is liable for false imprisonment ...' per Viscount Simon.

28(1) PACE : Subject to subsection (5) below, where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.

28(2) PACE : Where a person is arrested by a constable, subsection (1) above applies regardless of whether the fact of the arrest is obvious.

28(3) PACE : Subject to subsection (5) below, no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

28(4) PACE : Where a person is arrested by a constable, subsection (3) above applies regardless of whether the ground for the arrest is obvious.

28(5) PACE : Nothing in this section is to be taken to require a person to be informed :-

- (a) that he is under arrest; or
- (b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

s28(3) PACE : provides that: '*no arrest is lawful unless the person is informed of the ground for the arrest at the time of, or as soon as practicable after, the arrest*'. St. John Robilliard comments that: '*Although s28 changes the position for the police, it was not intended to change the rules for 'citizen's arrests' as it was felt to be unfair to place the higher duty that the Act now requires on a man who happens to, say, detain, until the police arrive, a burglar disturbed in his house in the middle of the night. It has always been the case that the common law requirements apply equally to those effecting citizen's arrests and Christie v Leachinsky plus its common law applications, remains the rule for these matters*'.

It was held in **Lewis v C.C. of S.W.C.**⁵⁷ that an initially unlawful arrest becomes a lawful arrest once the reason is given but the pre-reason period remains unlawful.

However, it was held in **D.P.P. v Hawkins**,⁵⁸ that the reason does not have to be given if impracticable. Once lawful a failure to supply a reason as soon as practicable does not impugn the original arrest.

Where the ground for arrest is 'reasonable suspicion of an offence' do the police have to explain the basis for their suspicion? If they did then a suspect might be able to give the police a simple explanation, which could then remove the suspicion rendering the arrest unnecessary and unlawful.

In **Geldberg v Miller**,⁵⁹ the defendant was asked to move his car : he refused. He was arrested for 'obstructing a P.C. in the execution of his duty by refusing to move his car and refusing to furnish a name and address'. The court held that there was no power of arrest at that time for obstruction of police unless a breach of peace was anticipated even though he knew he should have moved his car.

In **Abbassy v M.P.C.**⁶⁰ a P.C. told the defendant she was under arrest for 'unlawful possession'. The P.C. did not specify the object she was alleged to possess. The court held that in the circumstances the defendant knew she was

⁵⁶ **Christie v Leachinsky** [1947] AC 573

⁵⁷ **Lewis v C.C. of S.W.C.** [1991] 1 AER 206 : Similarly see **R v Kulymycz**.

⁵⁸ **D.P.P. v Hawkins** [1988] 1 WLR 1166.

⁵⁹ **Geldberg v Miller** [1961] 1 WLR 153 :

⁶⁰ **Abbassy v M.P.C** [1990] 1 AER 193.

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being questioned about the ownership of the car she was driving. The arrest was lawful.

In **R v Telfer**,⁶¹ a P.C. arrested a defendant 'on suspicion of burglary' without specifying the premises. The court held that the arrest was unlawful.

An arrest can also be effected by a person voluntarily attending a police station or by the use of force.

Voluntary Attendance at a Police Station.

s29 PACE: 'Where for the purposes of assisting with an investigation a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested -

- (a) he shall be entitled to leave at will unless he is placed under arrest;
- (b) he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will'.

Thus, the position of someone 'helping the police with their enquiries' is : either they are under arrest or they are at liberty to leave the police station. However, if a person incorrectly believes he is under arrest there is no duty on the police to spell out that he is not or that he is free to leave at any time.

Procedure following Arrest.

Once a suspect has been arrested (with or without a warrant) he must be taken to a police station 'as soon as practicable' unless the arrest was made at such a station:

s30(1) PACE : The suspect should be taken to a '*designated police station*' (which is defined by s35 as being one specified by the Chief Officer of Police for the detention of arrested persons) unless it is impracticable to do so in that short term.

s30(5) PACE : However, if it appears to the constable that he will be unable to take the suspect to a 'designated' police station without the suspect injuring himself, the officer, or someone else, then he may take him to any police station:

There was no requirement to take an arrested person immediately to a police station but rather to take the person there within a reasonable time. **John Lewis v Timms**,⁶² held that an hour was reasonable before a store detective handed her over to the police.

s31 PACE : Arrest for further offence : Where

- (a) a person
 - (i) has been arrested for an offence; and
 - (ii) is at a police station in consequence of that arrest; and
- (b) it appears to a constable that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

s32 PACE : Search upon arrest

s32(1) PACE : A constable may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others.

s32(2) PACE : Subject to subsections (3) to (5) below, a constable shall also have power in any such case

- (a) to search the arrested person for anything-
 - (i) which he might use to assist him to escape from lawful custody; or
 - (ii) which might be evidence relating to an offence; and
- (b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

s32(3) PACE : The power to search conferred by subsection (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

s32(4) PACE : The powers conferred by this section to search a person are not to be construed as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves [but they do authorise a search of a person's mouth].

s32(5) PACE : A constable may not search a person in the exercise of the power conferred by subsection (2) (a) above unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph.

⁶¹ **R v Telfer** [1976] Cr.LR 562

⁶² **John Lewis v Timms** [1952] AC 676

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s32(6) PACE : A constable may not search premises in the exercise of the power conferred by subsection (2)(b) above unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on the premises.

s32(7) PACE : In so far as the power of search conferred by subsection (2)(b) above relates to premises consisting of two or more separate dwellings, it is limited to a power to search

- (a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and
- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

s32(8) PACE : A constable searching a person in the exercise of the power conferred by subsection (1) above may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

s32(9) PACE : A constable searching a person in the exercise of the power conferred by subsection (2)(a) above may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing

- (a) that he might use it to assist him to escape from lawful custody; or
- (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

s33(10) PACE : Nothing in this section shall be taken to affect the power conferred by **s43 Terrorism Act 2000**.

s32(1) & (2) PACE : The suspect may be searched at the time of his arrest if there is reason to believe that he may present a danger to himself or to others, or may have upon him anything which he might use to escape from lawful custody, or which might be evidence relating to an offence.

The provisions are therefore wide enough to allow a search for evidence of an offence *other than for which the arrest has been made*.

s32(2) & (6) PACE. The search may also extend to premises in which the suspect was arrested, or in which he was present immediately before his arrest, in order to discover evidence relating to the offence for which the arrest was made, if the arresting constable has reasonable grounds for believing that such evidence exists.

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PART IV DETENTION

Inside the Police Station.

ss34-52 PACE. After 24 hours the person must either be charged or released unless arrested for a 'serious arrestable offence' which, as we have seen, includes a substantial number of situations. In the latter cases they may be detained for up to 4 days which was previously only permitted under the **Prevention of Terrorism Act**.

After 24 hours the person must be brought in front of a magistrate : the police may then attest to the magistrate that it is necessary to secure or preserve evidence, that further detention is required - and that the person should be prevented from communicating with council if they can show that the investigation is being carried out 'diligently and expeditiously'. This effectively introduces detention for questioning. All research including that done by the Royal Commission on Criminal Procedure shows that after only a short time the average person who is kept in isolation in a police cell and subjected to interrogation will not be able to keep silent. The Royal Commission said that no confession made by a detained person could ever be purely 'voluntary'. One predicted consequence of the Act's introduction was that the police would elicit more voluntary confessions.

The procedures for tape-recorded interviews and the time limits for interrogation have been claimed by the police to reduce the effectiveness of interrogation. The recent spate of retrials based on suspect confessions emphasizes the need for the police to produce other corroborative evidence in order to secure a firm conviction.

Detention - conditions and duration

34 Limitations on police detention

- (1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Act.
- (2) Subject to subsection (3) below, if at any time a custody officer
 - (a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and
 - (b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part of this Act,

it shall be the duty of the custody officer, subject to ss(4) below, to order his immediate release from custody.

- (3) No person in police detention shall be released except on the authority of a custody officer at the police station where his detention was authorised or, if it was authorised at more than one station, a custody officer at the station where it was last authorised.
- (4) A person who appears to the custody officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.

s35 PACE : Designated police stations

- (1) The chief officer of police for each police area shall designate the police stations in his area which, subject to s30(3) and (5) above, are to be the stations in that area to be used for the purpose of detention arrested persons.

According to **McLorie v Oxford**,⁶³ entry should follow quite soon after arrest. On arrival at the designated police station, the suspect comes under the supervision of a 'custody officer' of at least the rank of sergeant. If the custody officer decides that insufficient evidence exists to charge the suspect (when the arrest has been without a warrant) then the suspect must be released (possibly on bail) unless the officer has reasonable grounds for believing that continued detention is necessary to secure or preserve evidence relating to an offence (e.g. release of the suspect might well lead to the destruction of evidence not yet in the hands of the police) or to obtain such evidence by questioning the suspect: **s37(2) PACE**.

s40(1) PACE. If a charge is made against the suspect it must be recorded in a charge book and there is then a rebuttable presumption that the suspect will be released from police custody. Irrespective of whether a charge is made, however, continued detention of every suspect depends upon a review made at intervals by the custody officer or (in the case of a suspect not yet charged) an officer of at least the rank of inspector who has not been directly involved in the investigation of the offence for which the arrest was made: The limits on the intervals are:

- a) the first review must be made not later than six hours after detention was first authorised;
- b) the second review must not be later than nine hours after the first;
- c) subsequent reviews must be made at intervals of not more than 9 hrs: s40(3).

⁶³ **McLorie v Oxford** [1982] QB 1290 : cf **Elias v Pasmore** [1934] : **R v Badham** [1987] : **R v Beckford** [1991].

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s40(5) PACE. A review may be postponed, however, if it is 'not practicable' to carry it out by the stated time e.g. if the review would interrupt a period of interrogation and the officer responsible for the review is satisfied that the review would prejudice the investigation. The review must then take place as soon as is practicable thereafter:

s41 PACE : As a general rule, imposes a maximum time of 24 hours for which a suspect can be detained in police custody without being charged, though detention beyond 24 hours can be authorised:

- 1) By a superintendent under s42 which then allows detention up to 36 hours without charge on reasonable grounds for belief that it is necessary to secure or preserve evidence and the offence for which the investigation is continuing is a 'serious arrestable offence' and that the investigation is being conducted diligently and expeditiously; or
- 2) By a magistrate's warrant of further detention under **s43 P.A.C.E. 1984**, permitting detention beyond 36 hours and up to a maximum total of 96 hours.

Body Searches. Part V : s53-65 PACE. Searches for property on a person can be forcibly carried out, including strip searches by a constable of the same sex. This allowed despite the concern expressed by the Police Complaints Board that they are carried out unnecessarily to humiliate suspects.

Intimate body searches of a person's vagina, anus and mouth are permitted, by force if necessary, to look for an article which might cause physical injury and for drugs. This is done by a doctor or officer of the same sex. The British Medical Association has not approved this process and has pointed out that such probes by force of delicate parts of the body are dangerous. It is likely that police officers will be responsible for the investigation of a person's intimate parts. Customs Officers have developed the practice of confining a person in solitary, using x-ray equipment to detect alien substances, and specially adapted water closets which retain wastes in plastic bags which can then be analysed and cleansed using hose pipes. This avoids a body search and lets nature take its course. Body samples can be taken forcibly if a 'serious arrestable offence' is suspected, on the authorisation of a superintendent. Intimate body samples require consent; these cover blood, semen & saliva. The **CJPOA 1994 Part IV s54 - s59** introduce new powers for the police to take body samples and conduct intimate body searches. **s60 CJPO** gives the police the power to stop and search in anticipation of violence.

s61 PACE : Fingerprints may be taken forcibly from a detained person on a superintendent's authorisation if the person is suspected of a 'criminal offence' or by any officer if the person has been charged with a 'recordable offence' or if they are to be reported for such an offence. These categories cover almost everybody likely to be detained including children from 10 upwards.⁶⁴

s76-78 PACE deal with Confessions and exclusion of unfair evidence. The removal of the 'right to silence' provisions by **s34-39 CJPOA 1994** do little to reassure critics.

Using Force to Effect an Arrest. s3(1) Criminal Law Act 1967 : 'A person may use such force as is *reasonable in the circumstances* in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large'.

s117 PACE. Where any provision of this Act ... confers a power on a police officer ... the officer may use reasonable force, *if necessary*, in the exercise of the power'. The specific reference to the use of reasonable force *if necessary* under **s117 PACE** may be an indication of a slightly stricter test. As St John Robilliard points out, the pertinent questions which arise are:

- 1 Is it *reasonable* to use force at all? (or, if **s117 PACE** is involved, is it *necessary* to use force at all?) - if so,
- 2 Was the force which was in fact used reasonable in all the circumstances?

Ultimately, they become questions of fact. According to **Simpson v C.C. South Yorkshire**,⁶⁵ excessive force does not make the arrest itself unlawful.

Use of Force in Resisting Arrest. To answer the question: 'to what extent may force be used in order to resist wrongful arrest?' the same two questions (as above) should be asked, viz; is it reasonable to use force and is the force that has been used reasonable in the circumstances?

⁶⁴ See also **s54 C.J. & P.O. Act 1994**.

⁶⁵ **Simpson v C.C. South Yorkshire** [1991]

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Summary Police & Criminal Evidence Act 1984

s24 Summary Arrest : Without warrant for arrestable and other offences.

- 1) a) Fixed sentence offences : b) 5 years + offences
- 2) customs & excise, official secrets, s14 indecent assault, s12(1) taking a motor vehicle, corruption. & conspiracy attempt & aiding, inciting, counselling & procuring & abetting the above.
- 4) Anyone can arrest without warrant a person committing or reasonably suspected of committing an arrestable offence.
- 5) Anyone can arrest without warrant a person guilty of or reasonably suspected of being guilty of an arrestable offence which has been committed.
- 6) P.C. has wider powers & may arrest if he has reasonable grounds for believing.
- 7) P.C. may arrest those about to commit or he has reasonable grounds to believe is about to commit an arrestable offence.

Must the defendant understand from the words that he is being arrested ? and therefore submit to compulsion?

⁶⁶

Motive for arrest is insufficient unless there is a power to arrest: **Holgate Mohammed v Duke**.⁶⁷

s25 General arrest conditions.

- 1). P.C. may arrest for non arrestable offences if a summons is impracticable & any of s3) criteria below is satisfied.
- 2) Any person P.C. has reasonable grounds to suspect of committing or attempting to commit the offence or is in the course of committing the offence. 3). General arrest conditions
 - a) Person is unknown & cannot be readily ascertained by P.C.
 - b) Reasonable grounds to believe name is false.
 - c) Address is unsatisfactory or reasonably believes it is unsatisfactory.
 - d) Arrest is reasonably believed to be necessary to prevent physical harm to the defendant or others or physical injury, loss or damage to property - offence of public decency (if unavoidable by the public (5) below) - obstruction of the highway.
 - e) To protect a child or vulnerable persons.
- 4). Address is satisfactory if the defendant will be at it for sufficient time for police to do what they have to or reliable persons knowing of defendant's whereabouts are there.

Residual common law power of arrest for breach of the peace. **R v Howell**.⁶⁸

s27 Fingerprinting of certain offenders.

s28 Information to be given on arrest.

- 1) The defendant must be told he is under arrest as soon as possible.
- 2) Even if arrest is obvious.
- 3) Must be told grounds of arrest as soon as possible.
- 4) Even if obvious.
- 5) Unless he escaped before being told.

s29 Voluntary attendance at police station. Unless arrested he can leave at will.

s30 Arrest elsewhere than at police station. The defendant must be taken post arrest to a police station as soon as reasonably practicable unless s30(10) his presence is required elsewhere to carry out further investigations immediately. ⁶⁹

s30(7) A subsequent release without charge per se does not make an arrest unlawful. ⁷⁰

Private citizens must take the defendant to a police station as soon as possible. **John Lewis v Timms**⁷¹

s31 Arrest for further offence. Permitted.

s32 Search upon arrest. Search is permitted away from police station if there is a reasonable belief that he presents a danger or might escape or to find evidence of an offence. s54 & s55 P.A.C.E. Act 1984. Strip search not authorised. May seize and retain articles discovered during search if not privileged.

⁶⁶ See **Wheatley v Lodge** [1971] : **R v Inwood** [1973]

⁶⁷ **Holgate Mohammed v Duke** [1984].

⁶⁸ **R v Howell** [1982] :

⁶⁹ **Dallisan v Caffery** [1984] & **R v Holmes ex pte Sherman** [1981].

⁷⁰ **Wiltshire v Barrett** [1966]

⁷¹ **John Lewis v Timms** [1952].

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s34 Limitations on police detention. Unless grounds exist for detention a person cannot be detained & if detained must be released without bail as soon as possible by the Custody Officer. Detention permitted for persons reasonably believed to be unlawfully at large.

s40 Review of police detention.

s41 Limits on period of detention without charge.

- 1) 24 hours maximum without charge : unless authorised by s42 – a superintendent - and or s43 – a warrant for detention is sought from magistrates.
- 2) time runs from arrest or arrival at police station whichever is earliest.
- 3) unless he goes to station voluntarily - then counts from arrest.
- 6) Time in medical care does not count.
- 7) If not charged post 24 hours must be released without bail.
- 9) No re-arrest without a warrant unless new evidence comes to light.

s42 Authorisation of continued detention

s43 Warrants of further detention

s44 Extension of warrants of further detention

s46 Detention after charge

Part V covers questioning and treatment of persons by police covering search powers, the right (s56) to have someone informed when arrested and (s56) right to legal advice, (s60) tape-recording and (s61) fingerprinting, (s62) intimate samples.

Part VII P.A.C. E. covers Evidence in Criminal Proceedings –

s76 Confessions

s78 Unfair Evidence.

Part IX covers Police Complaints and Discipline.

s116 provides a definition of serious arrestable offence.

s117 details the power of a constable to use reasonable force if necessary in the exercise of a constable's power.

Schedule 5 lists serious arrestable offences.

Note that the Prevention of Terrorism Temporary Provisions Acts 1984 & 1989 give the police additional rights and powers not discussed generally above.

Public Order and Criminal Justice Act 1994

- | | |
|--|--|
| s54 Powers of police to take intimate body samples. | s55 Powers of police to take non-intimate body samples. |
| s56 Fingerprints and samples. Supplementary provisions. | s57 Retention of samples in certain cases. |
| s58 Samples : intimate and non-intimate. | s59 Extension of powers to search persons' mouths. |
| s60 Powers of stop & search in anticipation of violence. | s61 Power to remove trespassers on land. |
| s62 Powers of seizure. | s63 Powers to remove persons attending or preparing for a rave. |
| s68 Offence of aggravated trespass. | s69 Powers to remove persons committing aggravated trespass. |
| s70 Trespassory assemblies. | s71 Power to stop persons from proceeding to trespassory assemblies. |
| s72 Powers against squatters. | s77 Powers against unauthorised campers. |
| s81 Powers to stop & search vehicles & persons re terrorism. | s82 Offences relating to terrorism. |
| s83 Investigation into activities & finances of terrorist org's. | s154 Offence of causing intentional harassment alarm or distress. |
| s155 Offence of racially inflammatory publications arrestable. | s160 Police jurisdiction extended to outer limit of territorial sea ie 12 miles. |
| s163 Local authority powers to install closed circuit T.V. surveillance. | |

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Criminal Justice and Police Act 2001

POWERS OF SEIZURE

Additional powers of seizure

50 Additional powers of seizure from premises

50(1) Where-

- (a) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises,
- (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and
- (c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises-
 - (i) whether what he has found is something that he is entitled to seize, or
 - (ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined.

50(2) Where-

- (a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,
- (b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and
- (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

50(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following-

- (a) how long it would take to carry out the determination or separation on those premises;
- (b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;
- (c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;
- (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
- (e) in the case of separation, whether the separation-
 - (i) would be likely, or
 - (ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

50(4) Section 19(6) of the 1984 Act and Article 21(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (powers of seizure not to include power to seize anything that a person has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).

50(5) This section applies to each of the powers of seizure specified in Part 1 of Schedule 1.

50(6) Without prejudice to any power conferred by this section to take a copy of any document, nothing in this section, so far as it has effect by reference to the power to take copies of documents under section 28(2)(b) of the Competition Act 1998 (c. 41), shall be taken to confer any power to seize any document.

51 Additional powers of seizure from the person

51(1) Where-

- (a) a person carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search,
- (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and
- (c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search-
 - (i) whether what he has found is something that he is entitled to seize, or
 - (ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from that place to enable that to be determined.

51(2) Where-

- (a) a person carrying out a lawful search of any person finds something ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,
- (b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and

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- (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

- 51(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following-
- (a) how long it would take to carry out the determination or separation at that time and place;
 - (b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;
 - (c) whether the determination or separation would (or would if carried out at that time and place) involve damage to property;
 - (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
 - (e) in the case of separation, whether the separation-
 - (i) would be likely, or
 - (ii) if carried out by the only means that are reasonably practicable at that time and place, would be likely,to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.
- 51(4) Section 19(6) of the 1984 Act and Article 21(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (powers of seizure not to include power to seize anything a person has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).
- 51(5) This section applies to each of the powers of seizure specified in Part 2 of Schedule 1.

Terrorism Act 2000

Powers of arrest, search, &c.

Arrest of suspected terrorists: power of entry.

81. A constable may enter and search any premises if he reasonably suspects that a terrorist, within the meaning of section 40(1)(b), is to be found there.

Arrest and seizure: constables.

- 82(1) A constable may arrest without warrant any person if he reasonably suspects that the person is committing, has committed or is about to commit-
- (a) a scheduled offence, or
 - (b) a non-scheduled offence under this Act.
- 82(2) For the purpose of arresting a person under this section a constable may enter and search any premises where the person is or where the constable reasonably suspects him to be.
- 82(3) A constable may seize and retain anything if he reasonably suspects that it is, has been or is intended to be used in the commission of-
- (a) a scheduled offence, or
 - (b) a non-scheduled offence under this Act.

Arrest and seizure: armed forces.

- 83(1) If a member of Her Majesty's forces on duty reasonably suspects that a person is committing, has committed or is about to commit any offence he may-
- (a) arrest the person without warrant, and
 - (b) detain him for a period not exceeding four hours.
- 83(2) A person making an arrest under this section complies with any rule of law requiring him to state the ground of arrest if he states that he is making the arrest as a member of Her Majesty's forces.
- 83(3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises where the person is.
- 83(4) If a member of Her Majesty's forces reasonably suspects that a person-
- (a) is a terrorist (within the meaning of Part V), or
 - (b) has committed an offence involving the use or possession of an explosive or firearm,
- he may enter and search any premises where he reasonably suspects the person to be for the purpose of arresting him under this section.
- 83(5) A member of Her Majesty's forces may seize, and detain for a period not exceeding four hours, anything which he reasonably suspects is being, has been or is intended to be used in the commission of an offence under section 93 or 94.
- 83(6) The reference to a rule of law in subsection (2) does not include a rule of law which has effect only by virtue of the Human Rights Act 1998.

Munitions and transmitters.

84. Schedule 10 (which confers power to search for munitions and transmitters) shall have effect.

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Explosives inspectors.

- 85(1) An explosives inspector may enter and search any premises for the purpose of ascertaining whether any explosive is unlawfully there.
- 85(2) The power under subsection (1) may not be exercised in relation to a dwelling.
- 85(3) An explosives inspector may stop any person in a public place and search him for the purpose of ascertaining whether he has any explosive unlawfully with him.
- 85(4) An explosives inspector-
- (a) may seize any explosive found in the course of a search under this section unless it appears to him that it is being, has been and will be used only for a lawful purpose, and
 - (b) may retain and, if necessary, destroy it.
- 85(5) In this section "explosives inspector" means an inspector appointed under section 53 of the Explosives Act 1875.

Unlawfully detained persons.

- 86(1) If an officer reasonably believes that a person is unlawfully detained in such circumstances that his life is in danger, the officer may enter any premises for the purpose of ascertaining whether the person is detained there.
- 86(2) In this section "officer" means-
- (a) a member of Her Majesty's forces on duty, or
 - (b) a constable.
- 86(3) A dwelling may be entered under subsection (1) only by-
- (a) a member of Her Majesty's forces authorised for the purpose by a commissioned officer of those forces, or
 - (b) a constable authorised for the purpose by an officer of the Royal Ulster Constabulary of at least the rank of inspector.

Examination of documents.

- 87(1) member of Her Majesty's forces or a constable who performs a search under a provision of this Part-
- (a) may examine any document or record found in order to ascertain whether it contains information of the kind mentioned in section 58(1)(a) or 103(1)(a), and
 - (b) if necessary or expedient for the purpose of paragraph (a), may remove the document or record to another place and retain it there until the examination is completed.
- 87(2) Subsection (1) shall not permit a person to examine a document or record if he has reasonable cause to believe that it is an item subject to legal privilege (within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989).
- 87(3) Subject to subsections (4) and (5), a document or record may not be retained by virtue of subsection (1)(b) for more than 48 hours.
- 87(4) An officer of the Royal Ulster Constabulary who is of at least the rank of chief inspector may authorise a constable to retain a document or record for a further period or periods.
- 87(5) Subsection (4) does not permit the retention of a document or record after the end of the period of 96 hours beginning with the time when it was removed for examination under subsection (1)(b).
- 87(6) A person who wilfully obstructs a member of Her Majesty's forces or a constable in the exercise of a power conferred by this section commits an offence.
- 87(7) A person guilty of an offence under subsection (6) shall be liable-
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

Examination of documents: procedure.

- 88(1) Where a document or record is examined under section 87-
- (a) it shall not be photographed or copied, and
 - (b) the person who examines it shall make a written record of the examination as soon as is reasonably practicable.
- 88(2) The record shall-
- (a) describe the document or record,
 - (b) specify the object of the examination,
 - (c) state the address of the premises where the document or record was found,
 - (d) where the document or record was found in the course of a search of a person, state the person's name,
 - (e) where the document or record was found in the course of a search of any premises, state the name of a person appearing to the person making the record to be the occupier of the premises or to have had custody or control of the document or record when it was found,
 - (f) where the document or record is removed for examination from the place where it was found, state the date and time when it was removed, and
 - (g) where the document or record was examined at the place where it was found, state the date and time of examination.
- 88(3) The record shall identify the person by whom the examination was carried out-
- (a) in the case of a constable, by reference to his police number, and

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- (b) in the case of a member of Her Majesty's forces, by reference to his service number, rank and regiment.
- 88(4) Where a person makes a record of a search in accordance with this section, he shall as soon as is reasonably practicable supply a copy-
- (a) in a case where the document or record was found in the course of a search of a person, to that person, and
 - (b) in a case where the document or record was found in the course of a search of any premises, to a person appearing to the person making the record to be the occupier of the premises or to have had custody or control of the document or record when it was found.

Power to stop and question.

- 89(1) An officer may stop a person for so long as is necessary to question him to ascertain-
- (a) his identity and movements;
 - (b) what he knows about a recent explosion or another recent incident endangering life;
 - (c) what he knows about a person killed or injured in a recent explosion or incident.
- 89) A person commits an offence if he-
- (a) fails to stop when required to do so under this section,
 - (b) refuses to answer a question addressed to him under this section, or
 - (c) fails to answer to the best of his knowledge and ability a question addressed to him under this section.
- 89(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 89) In this section "officer" means-
- (a) a member of Her Majesty's forces on duty, or
 - (b) a constable.

Power of entry.

- 90(1) An officer may enter any premises if he considers it necessary in the course of operations for the preservation of the peace or the maintenance of order.
- 90) In this section "officer" means-
- (a) a member of Her Majesty's forces on duty, or
 - (b) a constable.

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PART 3

POLICE POWERS ETC.

Powers of arrest

110 Powers of arrest

(1) For section 24 of PACE (arrest without warrant for arrestable offences) substitute-

"24 Arrest without warrant: constables

24(1) A constable may arrest without a warrant-

- (a) anyone who is about to commit an offence;
- (b) anyone who is in the act of committing an offence;
- (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
- (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.

24(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

24(3) If an offence has been committed, a constable may arrest without a warrant-

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

24(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

24(5) The reasons are-

- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
- (b) correspondingly as regards the person's address;
- (c) to prevent the person in question-
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss of or damage to property;
 - (iv) committing an offence against public decency (subject to subsection (6)); or
 - (v) causing an unlawful obstruction of the highway;
- (d) to protect a child or other vulnerable person from the person in question;
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

24(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

24A Arrest without warrant: other persons

24A(1) A person other than a constable may arrest without a warrant-

- (a) anyone who is in the act of committing an indictable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

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- 24A(2) Where an indictable offence has been committed, a person other than a constable may arrest without a warrant-
- (a) anyone who is guilty of the offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- 24A(3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if-
- (a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and
 - (b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.
- 24A(4) The reasons are to prevent the person in question-
- (a) causing physical injury to himself or any other person;
 - (b) suffering physical injury;
 - (c) causing loss of or damage to property; or
 - (d) making off before a constable can assume responsibility for him."
- 110(2) Section 25 of PACE (general arrest conditions) shall cease to have effect.
- 110(3) In section 66 of PACE (codes of practice), in subsection (1)(a)-
- (a) omit "or" at the end of sub-paragraph (i),
 - (b) at the end of sub-paragraph (ii) insert "or
 - (iii) to arrest a person;"
- 110(4) The sections 24 and 24A of PACE substituted by subsection (1) are to have effect in relation to any offence whenever committed.

Search warrants

113 Search warrants: premises

- 113(1) PACE is amended as follows.
- 113(2) Section 8 (power to authorise entry and search of premises) is amended as provided in subsections (3) and (4).
- 113(3) In subsection (1)-
- (a) in paragraph (b), for "specified in the application" substitute "mentioned in subsection (1A) below",
 - (b) in paragraph (e), at the end add "in relation to each set of premises specified in the application".
- 113(4) After subsection (1) insert-
- "(1A) The premises referred to in subsection (1)(b) above are-
- (a) one or more sets of premises specified in the application (in which case the application is for a "specific premises warrant"); or
 - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an "all premises warrant").
- (1B) If the application is for an all premises warrant, the justice of the peace must also be satisfied-
- (a) that because of the particulars of the offence referred to in paragraph (a) of subsection (1) above, there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the material referred to in paragraph (b) of that subsection; and
 - (b) that it is not reasonably practicable to specify in the application all the premises which he occupies or controls and which might need to be searched."

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Reading Material on Freedom of the Person and Police Powers

Civil Liberties : Bailey Harris & Jones : Butterworths.

Civil Liberties : Lecture Notes - H.Fenwick - Cavendish 1994

Civil Liberties : Text Book - H.Fenwick - Cavendish. 1994

Civil Liberties and Human Rights. D.Feldman - OUP. 1993

De Smith. Constitutional & Administrative Law. Ch 24,25,26

Bradley & Ewing. Constitutional & Administrative Law. Chs 26-30

Hood-Phillips. Constitutional & Administrative Law. Chs 24-27

John Alder. Constitutional & Administrative Law. Ch 24

Holborn Constitutional Law Text Book. Purgrove. Ch 22

Cases & Materials on Constitutional & Administrative Law. Allen, Thompson & Walsh. Chapter 6

Geoffrey Wilson : Cases & Materials on Constitutional & Administrative Law Ch 9 Government & Law Hartley & Griffith : Ch 7 & 8

Blackstone : Statutes on Public Law : Commentary on Criminal Justice Act 1988 Public Order Law : Peter Thornton

Police Powers and the Individual. Robillard & McEwan Freedom the individual & the law. Geoffrey Robertson Lee. Swot Constitutional Law Chapter 10

Bevan & Lindstone : A guide to PACE chapters 2,3,4,5 & 10. Walkers & O'Connell. A guide to PACE.

M.Zander. PACE.

Police & Criminal Evidence Act 1984. Public Order Acts.

Criminal Justice And Public Order Act 1994