



# LAW ANSWERED

## SAMPLE CHAPTER FROM OUR CRIMINAL LAW & PRACTICE ELECTIVE GUIDE

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# KEY POLICE POWERS, OBLIGATIONS & DETAINEE RIGHTS

Police powers in this area are largely governed by the **Police and Criminal Evidence Act 1984** (“PACE”) and by the accompanying **Codes of Practice**. All references in this guide to “Codes” are to the **PACE Codes of Practice** unless otherwise stated.

## POLICE STOP AND SEARCH POWERS

Police have the power to search any person or vehicle for stolen or prohibited articles (**s. 1(2) PACE**) or for articles to which **s. 1(8A)** applies. This includes offensive weapons and items adapted or intended to be used in the commission of crimes of burglary, theft, taking a motor vehicle, fraud or damaging property.

**NOTE:** there is no power to make a “routine” stop under **PACE** (only under the **Road Traffic Act** or for a 24-hour authorised period under terrorism legislation).

<b>REASONABLE SUSPICION</b>	Searches require reasonable suspicion (an objective test) ( <b>Code A 1.1 – 2.29</b> , especially <b>2.2 – 2.4</b> ). Powers must be used fairly and without discrimination.
<b>REASONABLE FORCE</b>	Police can use reasonable force in exercising their search powers ( <b>s. 117 PACE</b> ).
<b>COMPLIANCE</b>	They must comply with the rules regulating the conduct of searches found in <b>Code A 3.1 - 3.7</b> . They cannot require someone to remove their clothes in public ( <b>s. 2(9) PACE</b> ).
<b>INFORMATION TO BE GIVEN TO THOSE SEARCHED</b>	Information that must be given to those being searched is prescribed ( <b>Code A 3.8-3.11</b> ). If a police officer is not in uniform, they must take reasonable steps to show their warrant card and must always give details of the purpose of the search, their name and the object of the search.

If there is a major breach of these rules any evidence discovered as a result of the unlawful search may be excluded at trial (**s. 78 PACE**).

Stop and search powers may also be derived from the **Misuse of Drugs Act 1971** (searching for drugs) and **s. 60 CJPOA 1994** and **s. 87 Serious Crime Act 2007** (where serious violence is anticipated).

## POLICE POWERS OF ARREST

Powers of police arrest arise under **s. 24 PACE**. The police may arrest citizens anywhere and at any time. Under the common law any citizen can carry out an arrest where there is a threatened breach of the peace.

**Under PACE a police officer may arrest anyone who is:**

- guilty of, committing or about to commit an offence; or
- where there are **reasonable grounds** for suspecting a person to be guilty of, committing or about to commit an offence (**s. 24(1)-(3)**).

The police officer must identify themselves as police and must also have reasonable grounds for believing that the **arrest is necessary** on one of the grounds set out in **s. 24(5)** (**s. 24(4)**) and **Code G Para 2.2**. These include:

- to obtain a person's name or address;
- to prevent a person causing or suffering physical injury, damaging property, committing an offence against public decency or obstructing a highway;
- to protect a child or other vulnerable person;
- to allow for a prompt and effective investigation of an offence; or
- to prevent prosecution being prevented by a person's disappearance (**s. 24(5)**).

**NOTE:** while there is a low evidential burden for the police to demonstrate that there were reasonable grounds for suspecting that a suspect had committed an offence, the burden of proving that the arrest was “*necessary*” is much more substantial. In ***Rashid v Chief Constable of West Yorkshire Police***, a high-profile GP succeeded in a claim for wrongful arrest (and false imprisonment) when he was arrested on suspicion of fraud. No charge was ever brought and there was evidence that he would have gone to the police station voluntarily if requested.

**Once arrested, the suspect must be:**

- told promptly that they are under arrest, the crime that the police believe has been committed, the reason why the arrest is necessary and that they are not free to leave (**Code C.3** and **s. 28 PACE**). This must occur even where the reasons for the arrest are obvious.

**NOTE:** failure to give reasons may be subsequently rectified (***Lewis v CC for South Wales***).

- taken to a police station **as soon as is practicable** (**s. 30(1A) PACE**) (an exception was created by **s.4 CJA 2003**; a police officer can release a suspect on bail at any time before reaching the police station. The suspect must be given a notice informing them when and at which police station they must attend for interview; this is known as “*street bail*”).
- reminded of their **right to legal advice** (**Code C 6.1**, see also **Code C 11.2**); and
- **cautioned** on arrest and **prior to any interview** (**Code C 10**).

## POLICE POWERS OF ENTRY, SEARCH AND SEIZE (ss. 8-17 PACE)

### s.8 ISSUE OF WARRANT

An application can be made by police officers to magistrates for a warrant to enter and search.

A warrant may be issued if the magistrate is satisfied there are reasonable grounds for believing that an indictable offence has been committed, that there is material on the premises which is likely to be of substantial value to an investigation and relevant to it and that the material is not subject to legal privilege **AND** (under **s.8(3)**) that it is not practicable to communicate with anyone to get access to the premises or access to the evidence, or that entry to the premises will be denied without a warrant, or that the purpose of the search will be prejudiced unless immediate access can be gained.

Any materials found which fall within the authorisation may be seized by the police.

**s.17 ENTRY TO PREMISES**

Police may enter premises to execute a warrant of arrest, arrest a suspect in connection with an indictable offence, to recapture an escapee or to preserve life and limb or protect property.

**s.18 ENTRY TO OCCUPIED OR CONTROLLED PREMISES**

This gives power to a police officer to enter premises occupied or controlled by someone suspected of an indictable offence.

The officer must have reasonable grounds for believing that there is evidence on the premises relating to the suspected (or a linked or similar) indictable offence.

**s.19 POWER OF SEIZURE**

This applies generally where a police officer is lawfully on premises, i.e. with the consent of the occupier or under any of the powers listed above.

## PUBLIC ORDER ACT 2023

Additional powers were given to the police under this legislation enacted in May 2023 and coming into effect immediately, and in time for the coronation of His Majesty King Charles III. The powers were used to arrest a number of people whom the police considered likely to demonstrate during the coronation event.

New offences were introduced as follows:

- 1) Locking on or going equipped to lock on – relating to the attaching by individuals of themselves to buildings or other objects in order to cause disruption.
- 2) Obstructing major transport works.
- 3) Interfering with national infrastructure.
- 4) Causing serious disruption by tunnelling.

Other powers include:

- Extension of stop and search powers. Police may stop and search on suspicion that a person is carrying an object “*made or intended for use in connection with a protest related offence*”. A search may also be carried out **without the need for suspicion** when a police officer of the rank of **Inspector** or above gives authorisation for a specific locality and for a specified period.
- Introduction of **Serious Disruption Prevention Orders (“SDPO”)**. These can be imposed on individuals previously convicted of a protest related offence or those found in contempt of court for breach of an injunction against protest.
- Enabling a Secretary of State to bring civil proceedings if protest action is causing or is likely to cause serious disruption to key national infrastructure or access to goods or services.

The government maintain that these new provisions do not breach **arts. 10 and 11 ECHR** (which provide for the freedom of expression, assembly and association). These rights are not absolute and can be balanced with the freedom of others.

## NATIONAL SECURITY ACT 2023

This legislation came into effect in December 2023. It is designed to protect the UK against threats made by hostile states against the UK's democracy, economy and values. It provides some additional powers to law enforcement agencies to support its aims.

Brief details of the new offences and police powers are set out below. You are unlikely to need to know the offences, but an awareness of the new police powers will be useful.

Not all the provisions are yet in force. There is a General Election in the UK this year and it is possible that if there is regime change an incoming government will not choose to implement all the provisions.

### NEW OFFENCES

- Espionage;
- Sabotage;
- Offences relating to foreign interference (including in relation to UK elections); and
- Preparatory conduct – relating to the commission of an offence under the Act. This can be in relation to a specific offence or general offences.

### NEW POLICE POWERS

- Designation of some sites (specifically related to defence or nuclear installations) as **Prohibited Places**, at such sites the police have additional powers to capture and prosecute those engaged in activities deemed to be harmful.
- Ability to arrest people at an earlier stage of an investigation and to hold them for longer periods. A constable may arrest without warrant someone whom they "*reasonably suspect*" of involvement in foreign power activity. The constable may also use "*reasonable force*" expressed to be in addition to their common law powers.
- Additional Search and Seize powers (not yet in force).
- Ability for police to apply to a judge for a disclosure order on grounds of "*reasonable suspicion*".

The act also restricts access to Legal Aid for convicted terrorists.

## THE CUSTODY OFFICER (ss. 37 – 39 PACE)

At the police station, the arrested suspect must be brought before the **Custody Officer** as soon as practicable (**Code C 2.1**). The Custody Officer, a police officer of at least Sergeant rank, is responsible for:

- **Authorising** a suspect's detention and supervising the detainee's welfare;
- Performing a **risk assessment**;
- Informing the detainee of their **rights**;
- Keeping an accurate **Custody Record**;
- Searching the suspect or authorising a search (**Code C 4.1**), and;
- Making any decision about **charging** the detainee and/or deciding about their bail, if any. Remember that bail must be granted unless an exception applies (**ss. 37 & 38 PACE**).

## CONDITIONS OF DETENTION

The conditions for detention are outlined in **PACE Code C 8**, which states:

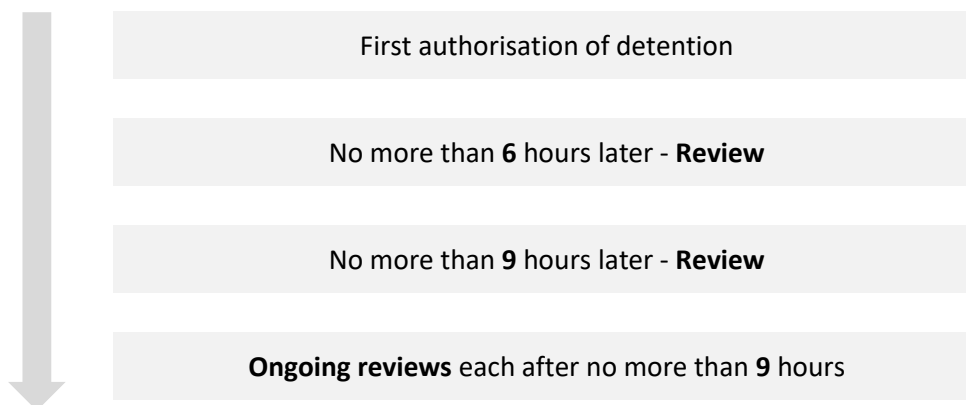
- Not more than one detainee per cell (so far as practicable)
- Cells to be adequately heated, cleaned, ventilated and supplied with sanitary bedding
- Access to toilet and washing facilities to be provided
- Drinks and two light meals and one main meal offered per 24-hour period
- Brief outdoor exercise to be offered daily (if practicable)
- Particular vulnerable suspects to be visited in their cells every hour (**Code C 9.3**)
- Suspects must receive medical attention if the custody officer considers this appropriate (**Code C 9.5**)
- Juveniles are not to be placed in a cell unless no other secure accommodation is available (and if so, the reason must be recorded). A juvenile must not be in the same cell as an adult.

## DETENTION PERIODS

A suspect can ordinarily be held for a **maximum of 24 hours** without charge (**s. 41 PACE**).

The **clock starts** when the suspect **first arrives at the police station**, not when they are first arrested outside the police station (the “*relevant time*”).

Detention must be **reviewed** periodically – to ensure the grounds for detention are still applicable – by a **Review Officer** (where a suspect has been charged this is the custody officer, for a person arrested and not yet charged this must be an officer at the rank of **Inspector** or above) (**s. 40 PACE**):



## EXTENSION OF DETENTION PERIODS

**By an officer of the rank of Superintendent or above responsible for the relevant police station**

Up to a **maximum of 36 hours** (**s. 42 PACE**) where there are reasonable grounds to believe that the detention is necessary to secure or preserve evidence, or to obtain evidence by questioning and where the investigation is for an **indictable offence** and is being conducted diligently and expeditiously.

**By application to a magistrate on oath and on notice to the defendant**

The detention period can be further extended – up to a **maximum of 96 hours** from the relevant time – by a **warrant of further detention (ss. 43 & 44 PACE)**. This will only be justified in relation to an indictable offence and where the detention without charge is necessary to secure or preserve evidence, or to obtain evidence by questioning and where the investigation is being conducted diligently and expeditiously.

## CLASS A DRUGS – SECTION 23 MISUSE OF DRUGS ACT 1971

An intimate search can be authorised by an officer of the rank of **Inspector** or above if there are reasonable grounds to believe that the suspect might have any class A drug(s) concealed on their person which they intend to supply to another or export (**Code C Annex A para. 2**). The officer must have reasonable grounds for believing that the search is the only means of removing those items.

The search must be carried out by a registered medical practitioner or registered nurse, unless an officer of at least **Inspector** rank considers it is not practicable, in which case a police officer will carry out the search (**para. 3**). A search by anyone other than a medical practitioner or registered nurse must be considered a “*last resort*” and the risks of allowing the item to remain with the detainee must outweigh the risks of the search (**para. 3A**).

The suspect’s consent must be obtained in writing if relates to a drug offence (**para. 2(b)**). Before the suspect is asked to consent to a search, they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial (**para. 2B**). In the case of a child or vulnerable adult the warning must be given in the presence of the appropriate adult.

## KEY DETAINEE RIGHTS

<b>1:</b>	Right to consult the <b>Codes of Practice</b> .
<b>2:</b>	<p>Right to consult a solicitor <b>in private (Code C 6 and s. 58 PACE)</b>.</p> <p>This can be delayed if authorised by an officer of the rank of <b>Superintendent</b> or higher, where the suspect has been arrested for an <b>indictable</b> offence, if the officer has <b>reasonable grounds</b> to believe that telling the named solicitor will lead to one of the consequences in <b>s. 58(8) or 58(8A) (Code C, Annex B)</b>. These consequences are:</p> <ul style="list-style-type: none"> <li>• Interference with or harm to evidence or interference with or physical harm to people.</li> <li>• The alerting of other people connected to the offence but not yet arrested for it.</li> <li>• Hindering the recovery of any property obtained as a result of the offence.</li> </ul>
<b>3:</b>	<p>Right to have someone <b>informed of the arrest (Code C 5.1 and s. 56 PACE)</b>.</p> <p>This is typically via a telephone call.</p> <p>This right can be delayed if authorised by an officer of the rank of <b>Inspector</b> or higher where the suspect has been arrested for an indictable offence (<b>Code C 5.2 &amp; Annex B and s. 56(2)-(6) PACE</b>) and where the police officer has reasonable grounds for believing that the notification will lead to any of the outcomes set out in 2 above justifying the right to refuse legal advice.</p>

## SUGGESTED EXAM STRUCTURE FOR ANSWERING A QUESTION ON POLICE POWERS (PACEE)

<b>STEP 1:</b>	<b>P</b>	Identify the <b>power</b> the police are seeking to use, e.g. extending detention.
<b>STEP 2:</b>	<b>A</b>	State the <b>authority</b> the police will seek to rely on in exercising this power, e.g. <b>s. 41 PACE</b> .
<b>STEP 3:</b>	<b>C</b>	State the required <b>criteria</b> that need to be satisfied for this power to be exercised lawfully, e.g. that it must be an indictable offence, authorised by a <b>Superintendent</b> who has reasonable grounds to believe the detention is necessary to secure/preserve evidence, and that the investigation is being conducted diligently and expeditiously.
<b>STEP 4:</b>	<b>E</b>	Consider whether any of the <b>extra</b> powers in the <b>Public Order Act 2023</b> have been used.
<b>STEP 5:</b>	<b>E</b>	Apply the facts to the criteria to see whether the police have <b>exercised</b> their authority lawfully. Draw a conclusion.