

PART 2: POLICE POWERS

Chapter 2: Arrest

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Aim of this Chapter

This chapter will enable you to achieve the following learning outcome from the ILEX syllabus:

- 2 Understand police powers in relation to the investigation of crime

2.1 Introduction to Part 2

Most criminal prosecutions begin with the police investigating an allegation that a crime has been committed or when a police officer arrests someone whom he suspects of having committed an offence.

When investigating a criminal offence, the police have a wide range of statutory powers to stop and search people and vehicles, to search property and premises and to arrest and detain those suspected of having committed the crime. Occasionally, a member of the public may voluntarily assist the police with their enquiries.

Part 2 of this course manual examines the exercise of police powers during the investigation of a criminal offence. **Chapter 2** is concerned with the powers of arrest; **Chapter 3**, the powers of stop and search; and **Chapter 4**, the law relating to the detention of suspects at the police station.

PACE 1984 is the most important Act dealing with “general” police powers and other issues relating to criminal procedure and evidence including:

- general powers of arrest (**Chapter 2**);
- powers to stop and search persons and/or motor vehicles in the street (**Chapter 3**);
- powers to search premises and persons after arrest (**Chapter 3**);
- the treatment of suspects at the police station (**Chapter 4**);
- the questioning of suspects (**Chapter 5**);
- the taking of samples and identification procedures (**Chapter 5**);
- the law dealing with the admissibility of confessions and other evidence (**Chapter 24**).

PACE 1984 is supplemented by an extensive set of **Codes**. The **Codes** are attached to **PACE 1984** and were issued under **ss66** and **67 PACE 1984**.

(1) The **Codes** assist in the day-to-day implementation of **PACE 1984** by providing practical guidance to both the police and the public as to how police powers should be exercised. They provide important safeguards to individuals who are stopped and searched, arrested and held in police detention.

(2) The **Codes** are not rules of law but a breach of them is admissible in evidence on the question of whether evidence obtained in breach of them ought to be admitted (**s67(11) PACE**).

(3) The most up-to-date version of the **PACE Codes** can be accessed at: <http://www.homeoffice.gov.uk/police/powers/pace-codes/> . They deal with the following:

- **Code A** – police powers to stop and search in the street and in other public places;
- **Code B** – police powers to search persons, premises and to seize property;
- **Code C** – detention, treatment and questioning of suspects at the police station;
- **Code D** – identification procedures at the police station;
- **Code E** – tape-recording of police interviews;
- **Code F** – video-recording of police interviews;
- **Code G** – police powers of arrest;
- **Code H** – detention, treatment and questioning of persons under **s41**; and
- **Sch 8 Terrorism Act 2000**.

Any evidence that is obtained in consequence of an unlawful exercise of police powers is vulnerable to challenge. If the suspect is charged and faces trial, the admissibility of such evidence may be challenged at trial by the defence under **s78 PACE 1984** on the basis that the admission of the evidence would have “an adverse effect on the fairness of the proceedings”.

You need to be able to state and explain the coercive powers of arrest and search available to a police officer in a particular situation and be able to identify and explain the possible consequences of a wrongful/unlawful exercise of police powers.

2.1.1 Introduction to arrest power

This chapter is concerned with the legal processes involved in the early stages of the investigation of an offence which, in most cases, involves the arrest of a suspect. Surprisingly, the law does not formally define the meaning of an “arrest”. Lidstone and Palmer, in their book *The Investigation of Crime – A Guide to Police Powers*, suggest the following formulation:

“Arrest is the apprehending or restraining of a person in order to detain him at the police station while the alleged or suspected crime is investigated and in order that he be forthcoming to answer an alleged or suspected crime.”

The most important reason, but not the only reason, for the suspect being arrested is to allow him to be questioned about the offence of which he is suspected. Other reasons for arresting a person include the prevention of a breach of the peace or the protection of that person from harm while he is drunk or mentally ill.

The present law on the general police powers of arrest, is largely to be found in the **Police and Criminal Evidence Act 1984 (PACE 1984)** and in **Code G** of the **Codes of Practice** issued under **s66 PACE 1984**.

2.2 Arrest with a warrant

A police officer may arrest a person with or without a warrant. Arrest with a warrant is now unusual because:

- the police enjoy wide powers of arrest without a warrant (see **2.3**);
- there is a principle of law that a warrant for arrest should not be issued where a summons would be equally effective (see *O'Brien v Brabner [1885]*).

In practice, the most common use by the police of an arrest warrant is where the identity of the suspect is known and where, for whatever reason, it has not been possible to serve a summons. An information will be laid with the magistrates who, under **s1 Magistrates' Courts Act 1980 (MCA 1980)**, may issue a warrant for the arrest of a person. Arrest by warrant is used in connection with minor criminal cases and motoring offences.

s1 MCA 1980 provides that a magistrate may issue a warrant for arrest provided that:

- a person has, or is suspected of having, committed an offence;
- an information relating to the offence has been laid in writing; and
- if the suspect is aged 18 or over:
 - the offence is indictable or punishable with imprisonment; or
 - the suspect's address cannot be sufficiently established for the service of a summons.

A warrant for arrest is a document addressed to all police constables in the police force area in which it is issued and orders the arrest of the accused (or, exceptionally, a witness) and his appearance before the Magistrates' Court named on the warrant. Details of the offence alleged in the information must appear on the face of the warrant and it must be signed by the magistrate issuing it. The issue of a warrant to arrest is a judicial act which cannot be delegated to a court official.

Once the warrant has been issued, any constable of the police force named in it may arrest the accused anywhere in the United Kingdom (**s136 Criminal Justice and Public Order Act 1994 (CJPOA 1994)**). The police officer effecting the arrest need not have the warrant in his possession at the time of

effecting the arrest, but must on demand show it to the accused as soon as is reasonably practical. In executing a warrant of arrest, reasonable force may be used; this includes using reasonable force to enter premises where the suspect is known to be (**s3 Criminal Law Act 1967**).

To avoid defendants being held in custody unnecessarily, the courts are empowered to issue a warrant “backed for bail”. This formally empowers the police to arrest the suspect, but then to release him on bail subject to an obligation to appear at the Magistrates’ Court at a time specified on the warrant (**s117 MCA 1980**). When a warrant is backed for bail the suspect can be released subject to such conditions as surrendering his passport or regularly reporting to a nominated police station.

2.3 Arrest without a warrant

Some offences are classified as indictable offences. This term is used repeatedly in criminal law.

Indictable offences are criminal offences which must or can be tried at the Crown Court. They include an:

- indictable-only offence; or
- either-way offence.

An indictable-only offence is a serious offence which **can only** be tried at the Crown Court (e.g. murder). An either-way offence is a less serious offence and **can** be tried at either the Crown Court or the Magistrates’ Court. Both theft and murder will always be indictable offences.

It is important to understand what constitutes an indictable offence because an ordinary citizen may make an arrest only if the offence is an indictable offence (see **2.3.2**).

Powers of arrest without a warrant are contained in **ss24** and **24A PACE 1984**:

- **s24 PACE 1984** gives a power of arrest to police constables. The term “police constables” includes all police officers irrespective of their rank;
- **s24A PACE 1984** sets out the circumstances in which an ordinary citizen can make an arrest. This is known as a citizen’s arrest.

2.3.1 The power of arrest by a police officer

A police officer has wide powers of arrest under **s24 PACE 1984**. A lawful arrest requires the completion of two distinct elements:

- (a) the conditions stipulated in **s24(1)–(3)** must be met; and
- (b) compliance with the necessity test.

2.3.1.1 The arrest conditions – s24(1)–24(3) Police and Criminal Evidence Act 1984

s24(1) PACE 1984 provides that:

A constable may arrest without a warrant:

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