Blackstone’s
Police Manuals
Update January 2006

— Serious Organised Crime and Police Act 2005
— PACE Codes of Practice

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[Updated to reflect the Centrex OSPRE® Part I syllabus changes for 2006]
Blackstone's Police Manuals

Update in relation to the Serious Organised Crime and Police Act 2005 and PACE Codes of Practice

[Please note, this update should be used for Centrex OSPRE® Part I examination purposes only]
Introduction from Centrex

Dear colleague

The introduction of the Serious Organised Crime and Police Act 2005 (SOCPA) and the resultant amendments to the Codes of Practice to the Police and Criminal Evidence Act 1984 (PACE) represent a significant change to policing powers and procedures. As a consequence, Centrex, in conjunction with Oxford University Press, have prepared this syllabus update, which outlines and explains the changes resulting from the new legislation.

The contents are designed to identify only the critical areas of legislation which have changed. As such, while the document does not provide a fully comprehensive description of the recent SOCPA/PACE changes, it provides a short summary and explanation of each of the key changes. Moreover, it will give you a summary of the changes which affect the contents of the September 2005 OSPRE® syllabus.

This update should be considered as an extension to the September 2005 OSPRE® Syllabus for Part I, and therefore its content will be examinable in the March 2006 Sergeants’ Part I and September 2006 Inspectors’ examinations.

The contents of this publication will be the only additional information that will be examinable within 2006 OSPRE® Part I examinations, beyond the existing content outlined in the Rules & Syllabus document. More detailed guidance on the recent legislation changes can be found through the sources outlined below. However, it is not necessary to refer to these additional sources in preparing for the examination.

In releasing this syllabus update, it is not the intention to add significant additional material to the OSPRE® Part I syllabus, as we are aware that you are already asked to familiarise yourself with a considerable amount of preparation material. However, it is vital that officers preparing for the examination are familiarising themselves with the law and procedure that they will need to use in their day-to-day duties.

All new legislation wording is shown in square brackets and underlined. Where wording is deleted or substituted it is shown in italics.

Further copies of this document are available from the Centrex website (www.centrex.police.uk), and copies have been distributed electronically to all force examinations officers.

We hope this update assists you in preparing for your examination, and best of luck in your examination.

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Note from Oxford University Press
(Blackstone’s)

This update should not be used by non-examination candidates as a full update to SOCPA 2005 and the new PACE Codes. Please refer to the websites on the previous page for full details of the new legislation.

Blackstone’s Police Manuals 2007, which publish in August 2006, will be fully updated to SOCPA and PACE.

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PART ONE

Changes to Blackstone’s Police Manuals 2006
Volume 1 Crime

1.6.8.15 Obstructing or Breaching Closure Order
The Anti-Social Behaviour Act 2003, s. 4(5) has been repealed.

EXPLANATION
The preserved power of arrest under the Anti-Social Behaviour Act 2003, s. 4(5) ceases to exist following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

1.10.10.4 Soliciting
The Street Offences Act 1959, s. 1 now states:

(1) It shall be an offence for a common prostitute whether male or female to loiter or solicit in a street or public place for the purpose of prostitution.

(2) ...

(3) ...

EXPLANATION
The preserved power of arrest for this offence ceases to exist following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

1.15.7 Assisting Offenders
The Criminal Law Act 1967, s. 4 now states:

(1) Where a person has committed an arrestable offence [a relevant offence], any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence [other relevant offence], does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence.

(1A) In this section and section 5 ‘arrestable offence’ has the meaning assigned to it by section 24 of the Police and Criminal Evidence Act 1984.

([1A] In this section and section 5 below, ‘relevant offence’ means—
(a) an offence for which the sentence is fixed by law,
(b) an offence for which a person of 18 years 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 section 33 of the Magistrates’ Courts Act 1980).]
EXPLANATION
The Serious Organised Crime and Police Act 2005, sch. 7, part 3 contains amendments consequential on the repeal of the definitions and concepts of an 'arrestable offence' and a 'serious arrestable offence'. In general, this will mean that police powers which were available in cases involving 'serious arrestable offences' and 'arrestable offences' will now only be available in cases involving indictable only or triable either way offences.

1.15.8 Concealing Arrestable Offences
The Criminal Law Act 1967, s. 5 now states:

(1) Where a person has committed an arrestable offence [a relevant offence], any other person who, knowing or believing that the offence or some other arrestable offence [other relevant offence] has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be liable . . .

EXPLANATION
The Serious Organised Crime and Police Act 2005, sch. 7, part 3 contains amendments consequential on the repeal of the definitions and concepts of an 'arrestable offence' and a 'serious arrestable offence'. In general, this will mean that police powers which were available in cases involving 'serious arrestable offences' and 'arrestable offences' will now only be available in cases involving indictable only or triable either way offences.

1.16.2 Illegal Entry to the United Kingdom
1.16.2.5 Power of Arrest
The Immigration Act 1971, s. 28A states:

(1) A constable or [An] immigration officer may arrest without warrant a person—
(a) who has committed or attempted to commit an offence under section 24 or 24A; or
(b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.

EXPLANATION
The power of arrest for this offence in relation to a constable ceases to exist following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

1.16.5 Passport Offences
1.16.5.1 Power of Arrest
The Asylum and Immigration (Treatment of Claimants etc.) Act 2004, s. 2(10) states:

If a constable or [an] immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.
EXPLANATION

The power of arrest for the offence of entering the UK without a passport ceases to exist in relation to a constable following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.
2.15.6.2 Right to Have Someone Informed

Section 56 of the Police and Criminal Evidence Act 1984 has been amended by the Serious Organised Crime and Police Act 2005.

EXPLANATION
The Serious Organised Crime and Police Act 2005, sch. 7, part 3 contains amendments consequential on the repeal of the definitions and concepts of an 'arrestable offence' and a 'serious arrestable offence'. In general, this will mean that police powers which were available in cases involving 'serious arrestable offences' and 'arrestable offences' will now only be available in cases involving indictable only or triable either way offences.

2.15.6.6 Right to Legal Advice

References to 'serious arrestable offence' should now read 'indictable offence'.

EXPLANATION
The Serious Organised Crime and Police Act 2005, sch. 7, part 3 contains amendments consequential on the repeal of the definitions and concepts of an 'arrestable offence' and a 'serious arrestable offence'. In general, this will mean that police powers which were available in cases involving 'serious arrestable offences' and 'arrestable offences' will now only be available in cases involving indictable only or triable either way offences.

2.15.12 Taking Photographs of Detained Persons

Section 64A(1A) and (1B) of the Police and Criminal Evidence Act 1984 are inserted by the Serious Organised Crime and Police Act 2005, s. 116.

[(1A) A person falling within subsection (1B) below may, on the occasion of the relevant event referred to in subsection (1B), be photographed elsewhere than at a police station—
(a) with the appropriate consent; or
(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(1B) A person falls within this subsection if he has been—
(a) arrested by a constable for an offence;
(b) taken into custody by a constable after being arrested for an offence by a person other than a constable;
(c) made subject to a requirement to wait with a community support officer under paragraph 2(3) or (3B) of Schedule 4 to the Police Reform Act 2002 (the 2002 Act);
(d) given a penalty notice by a constable in uniform under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001, a penalty notice by a constable under section 444A of the Education Act 1996, or a fixed penalty notice by a constable in uniform under section 54 of the Road Traffic Offenders Act 1988.
(e) given a notice in relation to a relevant fixed penalty offence (within the meaning of paragraph 1 of Schedule 4 to the 2002 Act) by a community support officer by virtue of a designation applying that paragraph to him; or

(f) given a notice in relation to a relevant fixed penalty offence (within the meaning of paragraph 1 of Schedule 5 to the 2002 Act) by an accredited person by virtue of accreditation specifying that that paragraph applies to him.

EXPLANATION
The Serious Organised Crime and Police Act amends s. 64A of the Police and Criminal Evidence Act 1984 so as to enable a person to be photographed, with or without his consent, by a constable elsewhere than at a police station.

Section 64A is also amended so as to allow the police to pass a photograph to the court for the purposes of the enforcement of a sentence. This new power is in addition to that which allows the police to pass a photograph to the court for the purposes of prosecution.

The definition of photograph is also amended so as to include a moving image.

2.16.5 Fingerprints

2.16.5.1 Before Conviction

Note: Section 118(3) of the Serious Organised Crime and Police Act amends s. 63A of the Police and Criminal Evidence Act 1984 by including references to 'impressions of footwear' as well as fingerprints.

2.16.5.2 After Conviction

After s. 61(6) of the Police and Criminal Evidence Act 1984, the following has been inserted:

(6A) A constable may take a person's fingerprints without the appropriate consent if—
(a) the constable reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence; and
(b) either of the two conditions mentioned in subsection (6B) is met.

(6B) The conditions are that—
(a) the name of the person is unknown to, and cannot be readily ascertained by, the constable;
(b) the constable has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.

(6C) The taking of fingerprints by virtue of subsection (6A) does not count for any of the purposes of this Act as taking them in the course of the investigation of an offence by the police.

EXPLANATION
Section 61 of the Police and Criminal Evidence Act 1984 is amended so as to provide a power for the police to take a person’s fingerprints prior to an arrest and away from a police station in circumstances where—

• the constable reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence; and

• either the name of the person is unknown to, and cannot be readily ascertained by, the constable or the constable has reasonable grounds for doubting whether the name given by the person is his real name.
2.16.5.5 Footwear Impressions

**NEW PROVISIONS**

61A Impressions of footwear

(1) Except as provided by this section, no impression of a person’s footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person’s footwear must be in writing if it is given at a time when he is at a police station.

(3) Where a person is detained at a police station, an impression of his footwear may be taken without the appropriate consent if—

(a) he is detained in consequence of his arrest for a recordable offence, or has been charged with a recordable offence, or informed that he will be reported for a recordable offence; and

(b) he has not had an impression taken of his footwear in the course of the investigation of the offence by the police.

(4) Where a person mentioned in paragraph (a) of subsection (3) above has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if the impression of his footwear taken previously is—

(a) incomplete; or

(b) not of sufficient quality to allow satisfactory analysis, comparison or matching, whether in the case in question or generally.

(5) If an impression of a person’s footwear is taken at a police station, whether with or without the appropriate consent—

(a) before it is taken, an officer shall inform him that it may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the impression has been taken, and if he is detained at a police station, the record shall be made on his custody record.

(6) In a case where, by virtue of subsection (3) above, an impression of a person’s footwear is taken without the appropriate consent—

(a) he shall be told the reason before it is taken; and

(b) the reason shall be recorded on his custody record as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person detained at a police station without the appropriate consent shall be exercisable by any constable.

(8) Nothing in this section applies to any person—

(a) arrested or detained under the terrorism provisions;

(b) arrested under an extradition arrest power.
EXPLANATION
The Serious Organised Crime and Police Act 2005 inserts a new s. 61A into the Police and Criminal Evidence Act 1984. The section will allow the police to take an impression of a person’s footwear with or without consent. An impression may only be taken without consent where a person has been arrested for, charged with, or informed that he will be reported for a recordable offence and he has not previously had an impression of his footwear taken in the course of the investigation for the offence.

2.16.6 Body Samples and Impressions
Note: s. 118(3) of the Serious Organised Crime and Police Act amends s. 63A of the Police and Criminal Evidence Act 1984 by including references to ‘impressions of footwear’ as well as fingerprints.

2.16.7.1 Intimate and Non-Intimate Samples Defined
EXPLANATION
The Serious Organised Crime and Police Act 2005 amends the definitions of an intimate and non-intimate sample.

The definition of an intimate sample now reads:
- a sample of blood, semen, or any other tissue, fluid, urine or pubic hair;
- a dental impression;
- a swab taken from any part of a person’s genitals or from a person’s body orifice other than the mouth.

The definition of a non-intimate sample now reads:
- a sample of hair, other than pubic hair, which includes hair plucked with the root;
- a sample taken from a nail or from under a nail;
- a swab taken from any part of a person’s body including the mouth but not any other body orifice (other than a part from which a swab taken would be an intimate sample);
- saliva;
- a skin impression which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of a skin pattern and other physical characteristics or features of the whole, or any part of, a person’s foot or of any other part of their body.

2.16.8 Intimate Samples
EXPLANATION
See explanation to para. 2.16.7.1 above.
3.5.2 Unfit through Drink or Drugs

3.5.2.2 Police Powers

EXPLANATION
The power of arrest under the Road Traffic Act 1988, s. 4(6) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

3.5.4 Preliminary Tests

3.5.4.7 Powers of Arrest

The Road Traffic Act 1988, s. 6D now states:

(1) A constable may arrest a person without warrant if as a result of a preliminary breath test the constable reasonably suspects that the proportion of alcohol in the person’s breath or blood exceeds the prescribed limit.

[(1A) The fact that specimens of breath have been provided under section 7 of this Act by the person concerned does not prevent subsection (1) above having effect if the constable who imposed on him the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in the breath of the person.]

(2) A constable may arrest a person without warrant if—

(a) the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under section 6, and

(b) the constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug.

[(2A) A person arrested under this section may, instead of being taken to a police station, be detained at or near the place where the preliminary test was, or would have been, administered, with a view to imposing on him there a requirement under section 7 of this Act.]

(3) A person may not be arrested under this section while at a hospital as a patient.

EXPLANATION
The Road Traffic Act 1988, s. 6D has been amended by the Serious Organised Crime and Police Act 2005 in relation to preliminary tests and the power of arrest. The amendments permit police to carry out an evidential breath test not only at a police station, but also at a hospital, or at or near a place (such as the roadside) where a preliminary breath test has been administered. See also amendments to paras 3.5.5.1 and 3.5.5.7 below.

Unlike the power of arrest under s. 4(6), the above power has not been repealed by the Serious Organised Crime and Police Act 2005.
3.5.5.1 **Provision of Specimens for Analysis**

Section 7 of the Road Traffic Act 1988 now states:

(1) In the course of an investigation into whether a person has committed an offence under section 3A, 4 or 5 of this Act a constable may, subject to the following provisions of this section and section 9 of this Act, require him—
   (a) to provide two specimens of breath for analysis by means of a device of a type approved by the Secretary of State, or
   (b) to provide a specimen of blood or urine for a laboratory test.

(2) A requirement under this section to provide specimens of breath can only be made at a police station.

(1)(a) A requirement under this section to provide specimens of breath can only be made at or near a place mentioned in subsection (2)(b) above unless the constable making it—
   (a) is in uniform, or
   (b) has imposed a requirement on the person concerned to co-operate with a relevant breath test in circumstances in which section 6(5) of this Act applies.

(2) A requirement under this section to provide specimens of breath may not be made at or near a place mentioned in subsection (2)(c) above unless the constable making it—
   (a) is in uniform, or
   (b) has imposed a requirement on the person concerned to co-operate with a relevant breath test at any place, he is entitled to remain at or near that place in order to impose on him there a requirement under this section.

(2D) A requirement under subsection (1)(a) above has been made at a place other than at a police station, such a requirement may subsequently be made at a police station if that only if—
   (a) a device or a reliable device of the type mentioned in subsection (1)(a) above was not available at that place or it was for any other reason not practicable to use such a device there, or
   (b) the constable who made the previous requirement has reasonable cause to believe that the device used there has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned.

(3) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital, and it cannot be made at a police station unless—
   (a) the constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required, or
   (b) (specimens of breath have not been provided elsewhere and, at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a) above is not available at the police station or it is then for any other reason not practicable to use such a device there, or
   (bb) a device of the type mentioned in subsection (1)(a) above has been used at the police station (at the police station or elsewhere) but the constable who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned, or
   (bc) as a result of the administration of a preliminary drug test, the constable making the requirement has reasonable cause to believe that the person required to provide a specimen of blood or urine has a drug in his body, or
   (c) the suspected offence is one under section 3A or 4 of this Act and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug, but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.
A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.

(7) A constable must, on requiring any person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

EXPLANATION
The Road Traffic Act 1988, s. 7 has been amended by the Serious Organised Crime and Police Act 2005 so as to permit police to carry out an evidential breath test not only at a police station, but also at a hospital, or at or near a place (such as the roadside) where a preliminary breath test has been administered. Under the current law an evidential breath test may only be administered at a police station.

3.5.6 Failing to Give Permission for Test or Provide Specimen
3.5.6.1 Choice by Defendant
Section 8 of the Road Traffic Act 1988 states:

(1) Subject to subsection (2) below, of any two specimens of breath provided by any person in pursuance of section 7 of this Act that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(2) If the specimen with the lower proportion of alcohol contains no more than 50 micrograms of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under section 7(4) of this Act and, if he then provides such a specimen, neither specimen of breath shall be used.

(2A) If the person who makes a claim under subsection (2) above was required to provide specimens of breath under section 7 of this Act at or near a place mentioned in subsection (2)(c) of that section, a constable may arrest him without warrant.

EXPLANATION
The Road Traffic Act 1988, s. 8 has been amended by the Serious Organised Crime and Police Act 2005 in relation to evidential breath tests.

3.5.9 Detention of Person Affected
Section 10 of the Road Traffic Act 1988 states:

(1) Subject to subsections (2) and (3) below, a person required to provide a specimen of breath, blood or urine may afterwards be detained at a police station until it appears to the constable (or, if the specimen was provided otherwise than at a police station, arrested and taken to and detained at a police station) if a constable has reasonable grounds for believing that, were that person then driving or attempting to drive a mechanically propelled vehicle on a road, he would not be committing an offence under section 4 or 5 of this Act.

(2) A person shall not be detained in pursuance of this section if it appears to a constable that there is no likelihood of his driving or attempting to drive a mechanically propelled vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.
A person who is at a hospital as a patient shall not be arrested and taken from there to a police station in pursuance of this section if it would be prejudicial to his proper care and treatment as a patient.

A constable must consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and must act on the medical practitioner's advice.

EXPLANATION
The Road Traffic Act 1988, s. 10 has been amended by the Serious Organised Crime and Police Act 2005 so as to provide that a person may be detained at a police station if a constable has reasonable grounds for believing that, were that person then driving or attempting to drive a mechanically propelled vehicle on a road, he would commit an offence under s. 4 or 5 of that Act.

3.5.10 Hospital Procedure
Section 9 states:

(1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test under section 7 of this Act unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—

(a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but

(b) if the medical practitioner objects on the ground specified in subsection (2) below, the requirement shall not be made.

EXPLANATION
The Road Traffic Act 1988, s. 9 has been amended by the Serious Organised Crime and Police Act 2005 in relation to evidential breath tests. See para. 3.5.5.1 above.

3.6 Insurance
3.6.2.6 Producing Documents

EXPLANATION
The Serious Organised Crime and Police Act 2005 inserts new ss. 165A and 165B into the Road Traffic Act 1988 giving the police a specific power to seize vehicles which are detected being used by uninsured drivers or drivers who do not have a valid licence.

For further details see the explanation to para. 3.11.4 below.
3.11 Driver Licensing

3.11.4 Police Powers

The Road Traffic Act 1988 is amended by the Serious Organised Crime and Police Act 2005. The two new ss. 165A and 165B read as follows:

165A Power to seize vehicles driven without licence or insurance

(1) Subsection (5) applies if any of the following conditions is satisfied.

(2) The first condition is that—

(a) a constable in uniform requires, under section 164, a person to produce his licence and its counterpart for examination,

(b) the person fails to produce them, and

(c) the constable has reasonable grounds for believing that a motor vehicle is or was being driven by the person in contravention of section 87(1).

(3) The second condition is that—

(a) a constable in uniform requires, under section 163, a person to produce evidence that a motor vehicle is not or was not being driven in contravention of section 143,

(b) the person fails to produce such evidence, and

(c) the constable has reasonable grounds for believing that the vehicle is or was being so driven.

(4) The third condition is that—

(a) a constable in uniform requires, under section 163, a person to produce a vehicle to stop the vehicle,

(b) the person fails to stop the vehicle, or to stop the vehicle long enough, for the constable to make such lawful enquiries as he considers appropriate, and

(c) the constable has reasonable grounds for believing that the vehicle is or was being driven in contravention of section 87(1) or 143.

(5) Where this subsection applies, the constable may—

(a) seize the vehicle in accordance with subsections (6) and (7) and remove it,

(b) enter, for the purpose of exercising a power falling within paragraph (a), any premises other than a private dwelling house on which he has reasonable grounds for believing the vehicle to be,

(c) use reasonable force, if necessary, in the exercise of any power conferred by paragraph (a) or (b).

(6) Before seizing the motor vehicle, the constable must warn the person by whom it appears that the vehicle is or was being driven in contravention of section 87(1) or 143 that he will seize it—

(a) in a section 87(1) case, if the person does not produce his licence and its counterpart immediately;

(b) in a section 143 case, if the person does not provide him immediately with evidence that the vehicle is not or was not being driven in contravention of that section.

But the constable is not required to give such a warning if the circumstances make it impracticable for him to do so.

(7) If the constable is unable to seize the vehicle immediately because the person driving the vehicle has failed to stop as requested or has driven off, he may seize it at any time within the period of 24 hours beginning with the time at which the condition in question is first satisfied.

(8) The powers conferred on a constable by this section are exercisable only at a time when regulations under section 165B are in force.

(9) In this section—

(a) a reference to a motor vehicle does not include an invalid carriage,

(b) a reference to evidence that a motor vehicle is not or was not being driven in contravention of section 143 is a reference to a document or other evidence within section 165B(1); and

(c) ‘counterpart’ and ‘licence’ have the same meanings as in section 164.
(d) ‘private dwelling house’ does not include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house.

165B Retention etc of vehicles seized under section 165A

(1) The Secretary of State may by regulations make provision as to—
(a) the removal and retention of motor vehicles seized under section 165A, and
(b) the release or disposal of such motor vehicles.

(2) Regulations under subsection (1) may, in particular, make provision—
(a) for the giving of notice of the seizure of a motor vehicle under section 165A to a person who is the registered keeper, the owner or the driver of that vehicle;
(b) for the procedure by which a person who claims to be the registered keeper or the owner of a motor vehicle seized under section 165A may seek to have it released;
(c) for requiring the payment, by the registered keeper, owner or driver of the vehicle, of fees, charges or costs in relation to the removal and retention of such a motor vehicle and to any application for its release;
(d) as to the circumstances in which a motor vehicle seized under section 165A may be disposed of;
(e) as to the destination—
(i) of any fees or charges payable in accordance with the regulations,
(ii) of the proceeds (if any) arising from the disposal of a motor vehicle seized under section 165A;
(f) for the delivery to a local authority, in circumstances prescribed by or determined in accordance with the regulations, of any motor vehicle seized under section 165A.

(3) Regulations under subsection (1) must provide that a person who would otherwise be liable to pay any fee or charge under the regulations is not liable to pay it if—
(a) he was not driving the motor vehicle at the time in question, and
(b) he did not know that the vehicle was being driven at that time, had not consented to it being driven and could not, by the taking of reasonable steps, have prevented it from being driven.

(4) Regulations under subsection (1) may make different provision for different cases.

(5) In this section—

‘local authority’—

(a) in relation to England, means—
(i) a county council,
(ii) the council of a district comprised in an area for which there is no county council,
(iii) a London borough council,
(iv) the Common Council of the City of London, or
(v) Transport for London;

(b) in relation to Wales, means the council of a county or county borough, and

(c) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994.

‘registered keeper’, in relation to a motor vehicle, means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994.

EXPLANATION

The Serious Organised Crime and Police Act 2005 inserts new ss. 165A and 165B into the Road Traffic Act 1988. It gives the police a specific power to seize immediately vehicles which are detected being used by uninsured drivers or drivers who do not have a valid licence, and for the vehicle to be removed, released or disposed of in accordance with regulations made by the Secretary of State. These regulations are likely to require payment of prescribed charges, and the production of a valid insurance certificate or licence, in connection with the release of a vehicle.
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4.4.4.10 Road Checks

Section 4 of the Police and Criminal Evidence Act 1984 now states:

(1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying—
(a) a person who has committed an offence other than a road traffic offence or a vehicle excise offence;
(b) a person who is a witness to such an offence;
(c) a person intending to commit such an offence; or
(d) a person who is unlawfully at large.

(3) Subject to subsection (5) below, there may only be such a road check if a police officer of the rank of superintendent or above authorises it in writing.

(4) An officer may only authorise a road check under subsection (3) above—
(a) for the purpose specified in subsection (1)(a) above, if he has reasonable grounds—
(i) for believing that the offence is a serious arrestable offence [an indictable offence]; and
(ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
(b) for the purpose specified in subsection (1)(b) above, if he has reasonable grounds for believing that the offence is a serious arrestable offence [an indictable offence];
(c) for the purpose specified in subsection (1)(c) above, if he has reasonable grounds—
(i) for believing that the offence would be a serious arrestable offence [an indictable offence]; and
(ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
(d) for the purpose specified in subsection (1)(d) above, if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

EXPLANATION
The Serious Organised Crime and Police Act 2005, sch. 7, part 3 contains amendments consequential on the repeal of the definitions and concepts of an ‘arrestable offence’ and a ‘serious arrestable offence’. In general, this will mean that police powers which were available in cases involving ‘serious arrestable offences’ and ‘arrestable offences’ will now only be available in cases involving indictable only or triable either way offences.

4.4.7 Arrest without Warrant

4.4.7.1 Arrestable Offences

Section 24 of the Police and Criminal Evidence Act 1984 is substituted by s. 110 of the Serious Organised Crime and Police Act 2005 as follows:

[24 Arrest without warrant: constables.
(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.

(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.

(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.

(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.

(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.

(6) Subsection (5)(c) 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

(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.

(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.

(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.

(4) The reasons are—
(a) causing physical injury to himself or any other person;
(b) suffering physical injury;
(c) causing loss of or damage to property;
(d) making off before a constable can assume responsibility for him.
EXPLANATION

Section 110 of the Serious Organised Crime and Police Act 2005 replaces s. 24 (arrest without warrant for ‘arrestable offences’) and s. 25 (general arrest conditions) of the Police and Criminal Evidence Act 1984 as it presently stands with a new s. 24 PACE definition. This is divided into two parts, the first dealing with a constable’s power of arrest and the second, at s. 24A, which deals with the power of arrest for other persons.

The intended purpose of the introduction of s. 110 is to standardise a constable’s power of arrest, in effect giving the constable a power of arrest for all offences subject to a necessity test, and to standardise or set a threshold in relation to the powers of entry without warrant to arrest for offences and powers of entry without warrant to search for evidence of offences.

An arrest will now only be justified if the constable believes it is necessary for any of the reasons set out in the new s. 24(5) of the Police and Criminal Evidence Act 1984 and has reasonable objective grounds for that belief.

A new s. 24A sets out the power of arrest for persons other than constables. The exercise of the citizen’s power of arrest will be limited to indictable offences.

Further guidance is given in the new Code of Practice, Code G which is seen in Part 2 this update.

4.4.7.2 List of Specific Arrestable Offences

Schedule 1A to the Police and Criminal Evidence Act 1984 (list of Specific Arrestable Offences) as set out in General Police Duties, para. 4.4.7.2, has been repealed by the Serious Organised Crime and Police Act 2005.

4.4.7.3 Serious Arrestable Offences

Section 116 of the Police and Criminal Evidence Act 1984 has been repealed.

4.4.7.4 List of Serious Arrestable Offences

Section 116(2) of and sch. 5 (list of Serious Arrestable Offences) to the Police and Criminal Evidence Act 1984 have been repealed by the Serious Organised Crime and Police Act 2005.

4.4.7.6 General Arrest Power: Police and Criminal Evidence Act 1984, s. 25

Section 25 of the Police and Criminal Evidence Act 1984 is repealed by the Serious Organised Crime and Police Act 2005, sch. 17.

4.4.7.7 Preserved Powers of Arrest

The following is a list of the preserved powers of arrest still in force following the Serious Organised Crime and Police Act 2005.

1952 c. 52 Prison Act 1952, s. 49
1952 c. 67 Visiting Forces Act 1952, s. 13
1955 c. 18 Army Act 1955, ss. 186 and 190B
1955 c. 19 Air Force Act 1955, ss. 186 and 190B
1957 c. 53 Naval Discipline Act 1957, ss. 104 and 105
1969 c. 54 Children and Young Persons Act 1969, s. 32
1971 c. 77 Immigration Act 1971, s. 24(2), sch. 2, paras 17, 24 and 33, sch. 3, para. 7
1976 c. 63 Bail Act 1976, s. 7
1983 c. 2 Representation of the People Act 1983, sch. 1, r. 36
1983 c. 20 Mental Health Act 1983, ss. 18, 35(10), 36(8), 38(7), 136(1) and 138
1984 c. 47 Repatriation of Prisoners Act 1984, s. 5(5)
4.4.12 Powers of Search and Seizure under Warrant

4.4.12.1 Application for Warrant

Section 15 of the Police and Criminal Evidence Act 1984 now reads:

(1) This section and section 16 below have effect in relation to the issue to constables under any enactment, including an enactment contained in an Act passed after this Act, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless it complies with this section and section 16 below.

(2) Where a constable applies for any such 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; and

(iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;

(b) to specify the premises which it is desired to enter and search; and

(b) to specify the matters set out in subsection (2A) below; and

(c) to identify, so far as is practicable, the articles or persons to be sought.

(2A) The matters which must be specified pursuant to subsection (2)(b) above are—

(a) if the application is for a specific premises warrant made by virtue of section 8(1A)(a) above or paragraph 12 of Schedule 1 below, each set of premises which it is desired to enter and search;

(b) if the application is for an all premises warrant made by virtue of section 8(1A)(b) above or paragraph 12 of Schedule 1 below—

(i) as many sets of premises which it is desired to enter and search as is reasonably practicable to specify;

(ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;

(iii) why it is necessary to search more premises than those specified under sub-paragraph (i); and

(iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.

(3) An application for such a warrant shall be made ex parte and supported by an information in writing.

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

(5) A warrant shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries.

(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

(6) 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; and
(iv) the premises to be searched, and

(b) the person who is in occupation or control of premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched, and

(b) shall identify, so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant.

(7) Two copies shall be made of a specific premises warrant (see section 8(1A)(a) above) which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.

(8) The copies shall be clearly certified as copies.

EXPLANATION
The Serious Organised Crime and Police Act 2005 extends the current provisions under the Police and Criminal Evidence Act 1984 for the issue of warrants. See para. 4.4.12.3 below.

Section 15 has been amended as a result of these changes and sets out the new safeguards for applications for search warrants. This new s. 15 sets out what must be included in an application for a ‘specific premises warrant’ or an ‘all premises warrant’. In particular, the applicant must set out the grounds on which a multiple entry warrant has been sought.

4.4.12.2 Execution of Warrant

Section 16 of the Police and Criminal Evidence Act 1984 now states:

1. A warrant to enter and search premises may be executed by any constable.

2. Such a warrant may authorise persons to accompany any constable who is executing it.

2A. A person so authorised has the same powers as the constable whom he accompanies in respect of—

(a) the execution of the warrant, and

(b) the seizure of anything to which the warrant relates.

2B. But he may exercise those powers only in the company, and under the supervision, of a constable.

3. Entry and search under a warrant must be within one month [three months] from the date of its issue.

3A. If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of inspector has in writing authorised them to be entered.

3B. No premises may be entered or searched for the second or any subsequent time under a warrant which authorises multiple entries unless a police officer of at least the rank of inspector has in writing authorised that entry to those premises.

4. 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.

5. 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

(c) shall supply him with a copy of it.

6. 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.

(7) 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.

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

(9) 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 and
unless the warrant is a specific premises warrant specifying one set of premises only, he shall do so separately in respect of each set of premises entered and searched, which he shall in each case state in the endorsement.

(10) A warrant shall be returned to the appropriate person mentioned in subsection (10A) below—
(a) when it has been executed; or
(b) in the case of a specific premises warrant which has not been executed, or an all premises warrant, or any warrant authorising multiple entries, upon the expiry of the period of three months referred to in subsection (3) above or sooner.

(10A) The appropriate person is—
(a) if the warrant was issued by a justice of the peace, the designated officer for the local justice area in which the justice was acting when he issued the warrant;
(b) if it was issued by a judge, the appropriate officer of the court from which he issued it.

EXPLANATION

The Serious Organised Crime and Police Act 2005 extends the current provisions under the Police and Criminal Evidence Act 1984 for the issue of warrants. See para. 4.4.12.3 below for a more detailed explanation.

Section 16 is amended as a result of these changes. New subs. 8(1C) and (1D) (see below) provide that a warrant (either an ‘all premises warrant’ or a ‘specific premises warrant’) may authorise access on more than one occasion, if necessary. It is also now provided that the second and any subsequent entries must be authorised in writing by an officer of the rank of inspector or above. It also extends the lifetime of the warrant from one month to three months.

4.4.12.3 Search Warrants for Serious Arrestable Offences

Section 8 of the Police and Criminal Evidence Act 1984 now states:

(1) 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 [an indictable offence] has been committed; and
(b) that there is material on premises specified in the application [mentioned in subsection (1A) below] 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 [in relation to each set of premises specified in the application]
he may issue a warrant authorising a constable to enter and search the premises.

(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.

(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.

(3) The conditions mentioned in 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.

(4) In this Act 'relevant evidence', in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

EXPLANATION

The Serious Organised Crime and Police Act 2005 extends the current provisions under the Police and Criminal Evidence Act 1984 for the issue of warrants to search premises and seize evidence. It also introduces an extension to the specific premises warrant to cover more than one set of premises.

A constable will be able to apply for this type of warrant when it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practicable to specify all such premises at the time of applying for the warrant. The warrant will allow access to all premises occupied or controlled by that person, both those which are specified on the application, and those which are not. It will still be possible to obtain a warrant which relates to one set of premises, now known as a 'specific premises warrant'.

4.4.13 Entry, Search and Seizure Powers without Warrant

4.4.13.1 Arrestable Offences

Section 18(1) of the Police and Criminal Evidence Act 1984 now states:

Subject to the following provisions of this section, a constable may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable [indictable].
offence, 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 [indictable] offence which is connected with or similar to that offence.

EXPLANATION
This power has been amended to apply where the evidence relates to some other indictable offence as opposed to an ‘arrestable’ offence, a term repealed by the Serious Organised Crime and Police Act 2005.

4.4.13.2 Powers to Search after Arrest for Other Offences
Section 32(2) now states:

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) if the offence for which he has been arrested is an indictable offence, to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence.

EXPLANATION
This power has been amended to apply where the search arises from an arrest for an indictable offence as opposed to an ‘arrestable’ offence, a term repealed by the Serious Organised Crime and Police Act 2005.

4.4.13.5 Power of Entry: Police and Criminal Evidence Act 1984, s. 17
Section 17(1) of the Police and Criminal Evidence Act 1984 now states:

(1) 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; or
(ii) a warrant of commitment issued under section 76 of the Magistrates’ Courts Act 1980;
(b) of arresting a person for an arrestable [indictable] offence;
(c) of arresting a person for an offence under—
(i) section 1 (prohibition of uniforms in connection with political objects) of the Public Order Act 1936;
(ii) any enactment contained in sections 6 to 8 or 10 of the Criminal Law Act 1977 (offences relating to entering and remaining on property);
(iii) section 4 of the Public Order Act 1986 (fear or provocation of violence);
(iv) section 163 of the Road Traffic Act 1988 (failure to stop when required to do so by a constable in uniform);
(v) section 4 (driving etc when under influence of drink or drugs) or 162 (failure to stop when required to do so by constable in uniform) of the Road Traffic Act 1988;
(via) section 76 of the Criminal Justice and Public Order Act 1994 (failure to comply with interim possession order);
(vii) of arresting, in pursuance of section 32(1A) of the Children and Young Persons Act 1969, any child or young person who has been remanded or committed to local authority accommodation under section 26(3) of that Act;
(viiia) of arresting a person for an offence to which section 61 of the Animal Health Act 1981 applies;
(cb) of recapturing any person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained—
   (i) in a prison, remand centre, young offender institution or secure training centre, or
   (ii) in pursuance of section 92 of the Powers of Criminal Courts (Sentencing) Act 2000
       (dealing with children and young persons guilty of grave crimes), in any other place;
   (d) of recapturing any person whatever who is unlawfully at large and whom he is pursu-
       ing; or
   (e) of saving life or limb or preventing serious damage to property.

EXPLANATION
This power has been amended to apply where the proposed arrest relates to an indictable offence as
opposed to an 'arrestable' offence, a term repealed by the Serious Organised Crime and Police Act 2005.
In addition, the powers of entry formerly contained in the Road Traffic Act 1988 for failing to stop when
required to do so by a constable in uniform and driving etc. when under the influence of drink or drugs
have now been included under the above provisions.

4.5.3.1 Use of Words, Behaviour or Display of Written Material
4.5.3.3 Power of Arrest
The Public Order Act 1986, s. 18(3) has been repealed.

EXPLANATION
The power of arrest under the Public Order Act 1986, s. 18(3) ceases to have effect following the introduc-
tion of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this
update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.7 Affray
4.6.7.1 Power of Arrest
The Public Order Act 1986, s. 3(6) has been repealed.

EXPLANATION
The power of arrest for affray under the Public Order Act 1986, s. 3(6) ceases to have effect following the
introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes
in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.8 Fear or Provocation of Violence
4.6.8.2 Power of Arrest
The Public Order Act 1986, s. 4(3) and the Crime and Disorder Act 1988, s. 31(2) have been
repealed.
4.6.9 Intentional Harassment, Alarm or Distress

4.6.9.2 Power of Arrest

The Public Order Act 1986, s. 4A(4) has been repealed.

EXPLANATION
The power of arrest under the Public Order Act 1986, s. 4A(4) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.10 Harassment, Alarm or Distress

4.6.10.3 Power of Arrest

The Public Order Act 1986, s. 5(4) and the Crime and Disorder Act 1988, s. 31(3) have been repealed.

EXPLANATION
The powers of arrest under the Public Order Act 1986, s. 5(4) and the Crime and Disorder Act 1988, s. 31(3) (in relation to an offence which is racially or religiously aggravated) cease to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.10.6 Power of Arrest

The Criminal Justice and Police Act 2001, s. 42(8) has been repealed.

EXPLANATION
The power of arrest under the Criminal Justice and Police Act 2001, s. 42(8) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.12 Public Processions and Assemblies

4.6.12.5 Power of Arrest

The Public Order Act 1986, s. 12(7) (power of arrest for failing to comply with conditions regarding organising or taking part in, or inciting another to take part in a public procession) has been repealed.
The power of arrest under the Public Order Act 1986, s. 12(7) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.12.7 Power of Arrest for Prohibited Processions
The Public Order Act 1986, s. 13(10) has been repealed.

EXPLANATION
The power of arrest under the Public Order Act 1986, s. 13(10) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.12.9 Power of Arrest for Breach of Conditions on Public Assemblies
The Public Order Act 1986, s. 14(7) has been repealed.

EXPLANATION
The power of arrest under the Public Order Act 1986, s. 14(7) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.12.12 Power of Arrest Regarding Trespassory Assemblies
The Public Order Act 1986, s. 14B(4) has been repealed.

EXPLANATION
The power of arrest under the Public Order Act 1986, s. 14B(4) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.6.12.13 Police Powers Regarding Trespassory Assemblies
The Public Order Act 1986, s. 14C(4) has been repealed.

EXPLANATION
The power of arrest under the Public Order Act 1986, s. 14C(4) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.
4.8.5 Trespassing with Weapon of Offence

4.8.5.1 Power of Arrest

**EXPLANATION**
The preserved power of arrest under the Criminal Law Act 1977, s. 8(4) ceases to exist following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.4 Trespass intending to Obstruct, Disrupt or Intimidate

4.11.4.1 Power of Arrest

The Criminal Justice and Public Order Act 1994, s. 68(4) has been repealed.

**EXPLANATION**
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 68(4), in relation to trespass intending to obstruct, disrupt or intimidate, ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.4.4 Power of Arrest

The Criminal Justice and Public Order Act 1994, s. 69(5) has been repealed.

**EXPLANATION**
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 69(5), in relation to the offence of failure to leave or re-entry when directed to leave, ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.5 Trespassing for Purpose of Residence

4.11.5.3 Power of Arrest

The Criminal Justice and Public Order Act 1994, s. 61(5) has been repealed.

**EXPLANATION**
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 61(5) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.
4.11.6 Trespassing for Purpose of Residence with Vehicle(s) when Alternative Site Available

4.11.6.2 Police Powers

The Criminal Justice and Public Order Act 1994, s. 62B(4) has been repealed.

EXPLANATION
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 62B(4) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.7 People Attending a Rave

4.11.7.4 Power of Arrest

The Criminal Justice and Public Order Act 1994, s. 63(8) has been repealed.

EXPLANATION
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 63(8) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.7.7 Powers to Stop People from Proceeding to ‘Raves’

4.11.7.8 Power of Arrest

The Criminal Justice and Public Order Act 1994, s. 65(5) has been repealed.

EXPLANATION
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 65(5) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.8 Residing in Vehicles on Land

4.11.8.4 Power of Arrest

The Criminal Justice and Public Order Act 1994, s. 76(7) has been repealed.

EXPLANATION
The power of arrest under the Criminal Justice and Public Order Act 1994, s. 76(7) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.11.9.5 Power of Arrest under Section 6

The Criminal Law Act 1977, s. 6(6) has been repealed.
4.11.9.6 Failing to Leave

Power of arrest

The Criminal Law Act 1977, s. 7(6) has been repealed.

EXPLANATION

The preserved power of arrest under the Criminal Law Act 1977, s. 7(6) ceases to exist following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.

4.12.9.14 Failure to Surrender Items Believed to be Alcohol

4.12.9.15 Power of Arrest for Failure to Surrender

The Confiscation of Alcohol (Young Persons) Act 1997, s. 1(5) has been repealed.

EXPLANATION

The power of arrest under the Confiscation of Alcohol (Young Persons) Act 1997, s. 1(5) ceases to have effect following the introduction of a general power of arrest by the Serious Organised Crime and Police Act 2005. See notes in this update in relation to General Police Duties, para. 4.4.7.1 for a further explanation.
PART TWO

Changes to Pace Codes of Practice
NOTES

The changes to PACE as shown in this update reflect amendments to PACE in the Serious Organised Crime and Police Act (SOCPA) 2005. Please note that other changes to PACE have been made, but are not included in this update. For the purposes of the 2006 exams, you are only required to know the following changes.

All new wording is shown in square brackets and underlined. Where wording is deleted or substituted it is shown in italics.

Only the paragraphs of the Codes of Practice that have been changed are shown below.

All changes come into force after midnight on 31 December 2005.

PACE Code of Practice for Searches of Premises by Police Officers and the Seizure of Property found by Police Officers on Persons or Premises (Code B)

See General Police Duties, Appendix 4.2.

2 General

Notes for guidance

2A PACE sections 15 and 16 apply to all search warrants issued to and executed by constables under any enactment, e.g. search warrants issued by a:

(a) justice of the peace under the:
   - Theft Act 1968, section 26—stolen property;
   - Misuse of Drugs Act 1971, section 23—controlled drugs;
   - PACE, section 8—evidence of serious arrestable [an indictable] offence;
   - Terrorism Act 2000, Schedule 5, paragraph 1;

(b) circuit judge of the High Court, a Circuit judge, a Recorder or a District judge under the:
   - PACE, Schedule 1;
   - Terrorism Act 2000, Schedule 5, paragraph 11.

3 Search warrants and production orders

(b) Making an application

3.6 A search warrant application must be supported in writing, specifying:

(a) the enactment under which the application is made, see Note 2A;

(b) (i) whether the warrant is to authorise entry and search of:
   - one set of premises, or
   - if the application is under PACE section 8, or Schedule 1, paragraph 12, more than one set of specified premises or all premises occupied or controlled by a specified person, and
   - (ii) the premises to be searched;

(c) the object of the search, see Note 3B;

(d) the grounds for the application, including, when the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;

(da) Where the application is under PACE section 8, or Schedule 1, paragraph 12 for a single warrant to enter and search:
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(i) more than one set of specified premises, the officer must specify each set of premises which it is desired to enter and search.

(ii) all premises occupied or controlled by a specified person, the officer must specify:

- as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify,
- the person who is in occupation or control of those premises and any others which it is desired to search,
- why it is necessary to search more premises than those which can be specified,
- why it is not reasonably practicable to specify all the premises which it is desired to enter and search.

(db) Whether an application under PACE section 8 is for a warrant authorising entry and search on more than one occasion, and if so, the officer must state the grounds for this and whether the desired number of entries authorised is unlimited or a specified maximum.

(e) there are no reasonable grounds to believe the material to be sought, when making application to a:

- (i) justice of the peace or a judge of the High Court, a Circuit judge, a Recorder or a District judge, consists of or includes items subject to legal privilege;
- (ii) justice of the peace, consists of or includes excluded material or special procedure material;

Note: this does not affect the additional powers of seizure in the Criminal Justice and Police Act 2001, Part 2 covered in paragraph 7.7, see Note 3B.

(f) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant, see Note 3C.

4 Entry without warrant—particular powers

(b) Search of premises where arrest takes place or the arrested person was immediately before arrest

4.2 The powers of an officer to search premises where that officer arrested a person or where the person was immediately before being arrested are set out in PACE, section 32. [When a person has been arrested for an indictable offence, a police officer has power under PACE, section 32 to search the premises where the person was arrested or where the person was immediately before being arrested.]

(c) Search of premises occupied or controlled by the arrested person

4.3 The specific powers to search premises occupied or controlled by an arrested person in person arrested for an indictable offence] are set out in PACE, section 18. They may not be exercised, except if section 18(5) applies, unless an officer of inspector rank or above has given written authority. That authority should only be given when the authorising officer is satisfied the necessary grounds exist. If possible the authorising officer should record the authority on the Notice of Powers and Rights and, subject to paragraph 2.9, sign the Notice. The record of the grounds for the search and the nature of the evidence sought as required by section 18(7) of the Act should be made in:

- the custody record if there is one, otherwise
- the officer’s pocket book, or
- the search record.
6 Searching premises—general considerations

(a) Time of searches

6.1 Searches made under warrant must be made within one calendar month of the date of the warrant’s issue.

6.2 Searches must be made at a reasonable hour unless this might frustrate the purpose of the search.

6.3 A warrant authorises an entry on one occasion only. When the extent or complexity of a search mean it is likely to take a long time, the officer in charge of the search may consider using the seize and sift powers referred to in section 7.

6.3A A warrant under PACE, section 8 may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued. No premises may be entered or searched on any subsequent occasions without the prior written authority of an officer of the rank of inspector who is not involved in the investigation. All other warrants authorise entry on one occasion only.

8 Action after searches

8.2 On each occasion when premises are searched under warrant, the warrant authorising the search on that occasion shall be endorsed to show:

(i) if any articles specified in the warrant were found [and the address where found];

(ii) if any other articles were seized;

(iii) the date and time it was executed [and if present, the name of the occupier];

(iv) subject to paragraph 2.9, the names of the officers who executed it and any authorised persons who accompanied them;

(v) if a copy, together with a copy of the Notice of Powers and Rights, was:

• handed to the occupier; or

• endorsed as required by paragraph 6.8; and left on the premises and where.

8.3 Any warrant shall be returned within one calendar month of its issue or sooner on completion of the search(es) authorised by that warrant, if it was issued by a:

• justice of the peace, to the clerk to the justices for the petty sessions area concerned [to the designated officer for the local justice area in which the justice was acting when issuing the warrant; or]

• judge, to the appropriate officer of the court concerned.

PACE Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C)

See Evidence and Procedure, Appendix 2.4
1 General

1.14 If a power conferred on a designated person:

(a) allows reasonable force to be used when exercised by a police officer, a person exercising that power has the same entitlement to use force; or

(b) includes power to use force to enter any premises, that power is not exercisable by that designated person except:

(i) in the company, and under the supervision, of a police officer;

(ii) for the purpose of:

• saving life or limb; or
• preventing serious damage to property.

[1.14 Designated persons are entitled to use reasonable force as follows:—

(a) when exercising a power conferred on them which allows a police officer exercising that power to use reasonable force, a designated person has the same entitlement to use force; and

(b) at other times when carrying out duties conferred or imposed on them that also entitle them to use reasonable force, for example:

• when at a police station carrying out the duty to keep detainees for whom they are responsible under control and to assist any other police officer or designated person to keep any detainee under control and to prevent their escape;

• when securing, or assisting any other police officer or designated person in securing, the detention of a person at a police station;

• when escorting, or assisting any other police officer or designated person in escorting, a detainee within a police station;

• for the purpose of saving life or limb; or
• preventing serious damage to property.]

3 Initial action

Notes for guidance

3D The right to consult the Codes of Practice does not entitle the person concerned to delay unreasonably any necessary investigative or administrative action whilst they do so. Examples of action which need not be delayed unreasonably include:

• procedures requiring the provision of breath, blood or urine specimens under the Road Traffic Act 1988 or the Transport and Works Act 1992;

• searching detainees at the police station;

• taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.

15 Reviews and extensions of detention

15.2A Section 42(1) of PACE as amended extends the maximum period of detention for arrestable [indictable] offences from 24 hours to 36 hours. Detaining a juvenile or mentally vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person’s:

(a) special vulnerability;
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(b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;
(c) the need to consult and consider the views of any appropriate adult; and
(d) any alternatives to police custody.

ANNEX A—INTIMATE AND STRIP SEARCHES

A Intimate search

(a) Action

2. Body orifices other than the mouth may be searched only:

[a)] if authorised by an officer of inspector rank or above who has reasonable grounds for believing that the person may have concealed on themselves:
   (i) anything which they could and might use to cause physical injury to themselves or others at the station; or
   (ii) a Class A drug which they intended to supply to another or to export and an intimate search is the only means of removing those items; [and]

[b] if the search is under paragraph 2(a)(ii) (a drug offence search), the detainee’s appropriate consent has been given in writing.

2A. The reasons an intimate search is considered necessary shall be explained to the person before the search begins, and if the search is to take place under paragraph 2(a)(ii), the detainee must also be told:

[a] that the authority to carry out the search has been given;
[b] the officer’s grounds for giving the authorisation.

2B. Before a detainee is asked to give appropriate consent to a search under paragraph 2(a)(ii) (a drug offence search) a police officer must warn them that if they refuse without good cause their refusal may harm their case if it comes to trial, see Notes A6 and A7. If the detainee is not legally represented, they must also be reminded of their entitlement to have free legal advice, see Code C, paragraph 6.5, and the reminder noted in the custody record.

(b) Documentation

7. In the case of an intimate search the custody officer shall as soon as practicable record:

[a] for searches under paragraphs 2(a)(i) and (ii):
   • which parts of the detainee’s body were searched
   • who carried out the search
   • who was present
   • the reasons for the search including the reasons to believe the article could not otherwise be removed
   • the result.

[b] for searches under paragraph 2(a)(iii):
   • the authorisation to carry out the search
   • the officer’s grounds for giving the authorisation
   • the giving of the warning required by paragraph 2B
   • the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any).
Notes for guidance

[6 In warning a detainee who is asked to consent to an intimate drug offence search, as in paragraph 28, the following form of words may be used:

"You do not have to allow yourself to be searched, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

ANNEX B—DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE

A Persons detained under PACE

1. The exercise of the rights in Section 5 or Section 6, or both, may be delayed if the person is in police detention, as in PACE, section 118(2), in connection with a serious arrestable [an indictable] offence, has not yet been charged with an offence and an officer of superintendent rank or above, or inspector rank or above only for the rights in Section 5, has reasonable grounds for believing their exercise will:

(i) lead to:
   • interference with, or harm to, evidence connected with a serious arrestable [an indictable] offence; or
   • interference with, or physical harm to, other people; or

(ii) lead to alerting other people suspected of having committed a serious arrestable [an indictable] offence but not yet arrested for it; or

(iii) hinder the recovery of property obtained in consequence of the commission of such an offence.

2. These rights may also be delayed if the serious arrestable offence is [officer has reasonable grounds to believe that]:

(i) a drug trafficking offence and the officer has reasonable grounds for believing the detainee has benefited from drug trafficking, and the recovery of the value of the detainee’s proceeds from drug trafficking will be hindered by the exercise of either right;

(ii) an offence to which the Criminal Justice Act 1988, Part VI (confiscation orders) applies and the officer has reasonable grounds for believing the detainee has benefited from the offence, and the exercise of either right will hinder the recovery of the value of the:
   • property obtained by the detainee from or in connection with the offence
   • pecuniary advantage derived by the detainee from or in connection with it.

B Persons detained under the Terrorism Act 2000

8. The rights as in sections 5 or 6 may be delayed if the person is detained under the Terrorism Act 2000, section 41 or Schedule 7, has not yet been charged with an offence and an officer of superintendent rank or above has reasonable grounds for believing the exercise of either right will:

(i) lead to:
   • interference with, or harm to, evidence connected with a serious arrestable [an indictable] offence;
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- interference with, or physical harm to, other people; or
- lead to the alerting of other people suspected of having committed a serious arrestable [an indictable] offence but not yet arrested for it; or
- hinder the recovery of property:
  - obtained in consequence of the commission of such an offence; or
  - in respect of which a forfeiture order could be made under that Act, section 23;
- lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or
- by alerting any person, make it more difficult to prevent an act of terrorism or secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.

9. These rights may also be delayed if the officer has reasonable grounds for believing [that]:

(a) the detainee:
  - has committed an offence to which the Criminal Justice Act 1988, Part VI (confiscation orders) applies;
  - has benefited from the offence; and
(b) the exercise of either right will hinder the recovery of the value of that benefit.
  - the person detained has benefited from their criminal conduct (decided in accordance with Part 2 of the Proceeds of Crime Act 2002); and
  - the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.

PACE Code of Practice for the Identification of Persons by Police Officers (Code D)

See Evidence and Procedure, Appendix 2.5

1 Introduction

[1.3A Identification using footwear impressions applies when a person’s footwear impressions are taken to compare with impressions found at the scene of a crime.]

2 General

2.16 References to:

- ‘taking a photograph’, include the use of any process to produce a single, still [or moving] visual image
- ‘photographing a person’, should be construed accordingly
- ‘photographs’, ‘films’, ‘negatives’ and ‘copies’ include relevant visual images recorded, stored, or reproduced through any medium
- ‘destruction’ includes the deletion of computer data relating to such images or making access to that data impossible.
3 Identification by witnesses

(f) Destruction and retention of photographs and images taken or used in identification procedures

3.30 PACE, section 64A, [see paragraph 5.12,] provides powers to take photographs of suspects detained at police stations and allows these photographs to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the United Kingdom [for the enforcement of a sentence]. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes.

4 Identification by fingerprints [and footwear impressions]

[(C) Taking footwear impressions in connection with a criminal investigation]

(a) Action

4.16 Impressions of a person’s footwear may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.17 applies. If the person is at a police station consent must be in writing.

4.17 PACE, section 61A, provides power for a police officer to take footwear impressions without consent from any person over the age of ten years who is detained at a police station:

(a) in consequence of being arrested for a recordable offence, see Note 4A, or if the detainee has been charged with a recordable offence, or informed they will be reported for such an offence; and

(b) the detainee has not had an impression of their footwear taken in the course of the investigation of the offence unless the previously taken impression is not complete or is not of sufficient quality to allow satisfactory analysis, comparison or matching.

4.18 Reasonable force may be used, if necessary, to take a footwear impression from a detainee without consent under the power in paragraph 4.17.

4.19 Before any footwear impression is taken with, or without, consent as above, the person must be informed:

(a) of the reason the impression is to be taken;

(b) that the impression may be retained and may be subject of a speculative search against other impressions, see Note 4B, unless destruction of the impression is required in accordance with Annex F, Part (a); and

(c) if their footwear impressions are required to be destroyed, they may witness their destruction as provided for in Annex F, Part (a).

(b) Documentation

4.20 A record must be made as soon as possible, of the reason for taking a person’s footwear impressions without consent. If force is used, a record shall be made of the circumstances and those present.
4.21 A record shall be made when a person has been informed under the terms of paragraph 4.19(b) of the possibility that their footwear impressions may be subject of a speculative search.

Notes for guidance

4B Fingerprint[s], footwear impression[s] or a DNA sample (and the information derived from it) taken from a person arrested on suspicion of being involved in a recordable offence, or charged with such an offence, or informed they will be reported for such an offence, may be subject of a speculative search. This means the fingerprint[s], footwear impression[s] or DNA sample may be checked against other fingerprint[s], footwear impression[s] and DNA records held by, or on behalf of, the police and other law enforcement authorities in, or outside, the UK, or held in connection with, or as a result of, an investigation of an offence inside or outside the UK. Fingerprint[s], footwear impression[s] and samples taken from a person suspected of committing a recordable offence but not arrested, charged or informed they will be reported for it, may be subject to a speculative search only if the person consents in writing. The following is an example of a basic form of words:

‘I consent to my fingerprints, footwear impressions and DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.

I understand that my fingerprints, footwear impressions or DNA sample may be checked against other fingerprint[s], footwear impression[s] and DNA records held by or on behalf of relevant law enforcement authorities, either nationally or internationally.

I understand that once I have given my consent for my fingerprints, footwear impressions or DNA sample to be retained and used I cannot withdraw this consent.’

See Annex F regarding the retention and use of fingerprints [and footwear impressions] taken with consent for elimination purposes.

5 Examinations to establish identity and the taking of photographs

(A) Detainees at police stations

(b) Photographing detainees at police stations [and other persons elsewhere than at a police station]

5.12 Under PACE, section 64A, an officer may photograph a detainee at a police station:

(a) with their consent; or
(b) without their consent if it is:

(i) withheld; or

(ii) not practicable to obtain their consent.

See Note SE and paragraph 5.6 applies to the retention and use of photographs taken under this section as it applies to the retention and use of photographs taken under section 54A, See Note SB.

[a] any person whilst they are detained at a police station; and

[b] any person who is elsewhere than at a police station and who has been:

(i) arrested by a constable for an offence;
6 Identification by body samples and impressions

(A) General

6.1 References to:

(a) an ‘intimate sample’ mean a dental impression or sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a swab taken from any part of a person’s genital, or from a person’s body orifice other than the mouth;

(b) a ‘non-intimate sample’ means:

(i) a sample of hair, other than pubic hair, which includes hair plucked with the root, see Note 64;

(ii) a sample taken from a nail or from under a nail;

(iii) a swab taken from any part of a person’s body excluding the mouth but not any other body orifice other than a part from which a swab taken would be an intimate sample;

(iv) saliva;

(v) a skin impression which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of the skin pattern and other
physical characteristics or features of the whole, or any part of, a person’s foot or of any other part of their body.

ANNEX A—VIDEO IDENTIFICATION

(a) General

2. The set of images must include the suspect and at least eight other people who, so far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect shall appear in any set unless there are two suspects of roughly similar appearance, in which case they may be shown together with at least twelve other people.

ANNEX F—FINGERPRINTS, FOOTWEAR IMPRESSIONS AND SAMPLES—DESTRUCTION AND SPECULATIVE SEARCHES

(a) Fingerprints, footwear impressions and samples taken in connection with a criminal investigation

1. When fingerprints, footwear impressions or DNA samples are taken from a person in connection with an investigation and the person is not suspected of having committed the offence, see Note F1, they must be destroyed as soon as they have fulfilled the purpose for which they were taken unless:
   (a) they were taken for the purposes of an investigation of an offence for which a person has been convicted; and
   (b) fingerprints, footwear impressions or samples were also taken from the convicted person for the purposes of that investigation.
   However, subject to paragraph 2, the fingerprints, footwear impressions and samples, and the information derived from samples, may not be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to the destruction of the fingerprints, footwear impressions and samples, see Note F2.

2. The requirement to destroy fingerprints, footwear impressions and DNA samples, and information derived from samples, and restrictions on their retention and use in paragraph 1 do not apply if the person gives their written consent for their fingerprints, footwear impressions or sample to be retained and used after they have fulfilled the purpose for which they were taken, see Note F1.

3. When a person’s fingerprints, footwear impressions or sample are to be destroyed:
   (a) any copies of the fingerprints and footwear impressions must also be destroyed;
   (b) the person may witness the destruction of their fingerprints, footwear impressions or copies if they ask to do so within five days of being informed destruction is required;
   (c) access to relevant computer fingerprint data shall be made impossible as soon as it is practicable to do so and the person shall be given a certificate to this effect within three months of asking; and
   (d) neither the fingerprints, footwear impressions, the sample, or any information derived from the sample, may be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to its destruction.

4. Fingerprints, footwear impressions or samples, and the information derived from samples, taken in connection with the investigation of an offence which are not required to be destroyed, may be retained after they have fulfilled the purposes for which they were taken but may be used only for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution in, as well
as outside, the UK and may also be subject to a speculative search. This includes checking them against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside, the UK.

Notes for guidance

F1 Fingerprints, footwear impressions and samples given voluntarily for the purposes of elimination play an important part in many police investigations. It is, therefore, important to make sure innocent volunteers are not deterred from participating and their consent to their fingerprints, footwear impressions and DNA being used for the purposes of a specific investigation is fully informed and voluntary. If the police or volunteer seek to have the fingerprints, footwear impressions or samples retained for use after the specific investigation ends, it is important the volunteer’s consent to this is also fully informed and voluntary.

Examples of consent for:

- DNA/fingerprints/footwear impressions—to be used only for the purposes of a specific investigation;
- DNA/fingerprints/footwear impressions—to be used in the specific investigation and retained by the police for future use.

To minimise the risk of confusion, each consent should be physically separate and the volunteer should be asked to sign one or the other, not both each consent.

(a) DNA:

(i) DNA sample taken for the purposes of elimination or as part of an intelligence-led screen and to be used only for the purposes of that investigation and destroyed afterwards:

‘I consent to my DNA/mouth swab being taken for forensic analysis. I understand that the sample will be destroyed at the end of the case and that my profile will only be compared to the crime stain profile from this enquiry. I have been advised that the person taking the sample may be required to give evidence and/or provide a written statement to the police in relation to the taking of it.’

(ii) DNA sample to be retained on the National DNA database and used in the future:

‘I consent to my DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.’

‘I understand that this sample may be checked against other DNA records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.’

‘I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent.’

(b) Fingerprints:

(i) Fingerprints taken for the purposes of elimination or as part of an intelligence-led screen and to be used only for the purposes of that investigation and destroyed afterwards:

‘I consent to my fingerprints being taken for elimination purposes. I understand that the fingerprints will be destroyed at the end of the case and...’
that my fingerprints will only be compared to the fingerprints from this enquiry. I have been advised that the person taking the fingerprints may be required to give evidence and/or provide a written statement to the police in relation to the taking of it.

(ii) Fingerprints to be retained for future use:

'I consent to my fingerprints being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.'

'I understand that my fingerprints may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.'

'I understand that once I have given my consent for my fingerprints to be retained and used I cannot withdraw this consent.'

[c] Footwear impressions:

(i) Footwear impressions taken for the purposes of elimination or as part of an intelligence-led screen and to be used only for the purposes of that investigation and destroyed afterwards:

'I consent to my footwear impressions being taken for elimination purposes. I understand that the footwear impressions will be destroyed at the end of the case and that my footwear impressions will only be compared to the footwear impressions from this enquiry. I have been advised that the person taking the footwear impressions may be required to give evidence and/or provide a written statement to the police in relation to the taking of it.'

(ii) Footwear impressions to be retained for future use:

'I consent to my footwear impressions being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution, either nationally or internationally.'

'I understand that my footwear impressions may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.'

'I understand that once I have given my consent for my footwear impressions to be retained and used I cannot withdraw this consent.'

F2 The provisions for the retention of fingerprints, footwear impressions and samples in paragraph 1 allow for all fingerprints, footwear impressions and samples in a case to be available for any subsequent miscarriage of justice investigation.

[Code of Practice for the Statutory Power of Arrest by Police Officers]

Code G

"New Code"

Commencement

This Code applies to any arrest made by a police officer after midnight on 31 December 2005.
1 Introduction

1.1 This Code of Practice deals with statutory power of police to arrest persons suspected of involvement in a criminal offence.

1.2 The right to liberty is a key principle of the Human Rights Act 1998. The exercise of the power of arrest represents an obvious and significant interference with that right.

1.3 The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means.

1.4 Section 24 of the Police and Criminal Evidence Act 1984 (as substituted by section 110 of the Serious Organised Crime and Police Act 2005) provides the statutory power of arrest. If the provisions of the Act and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.

1.5 This code of practice must be readily available at all police stations for consultation by police officers and police staff, detained persons and members of the public.

1.6 The notes for guidance are not provisions of this code.

2 Elements of Arrest under section 24 PACE

2.1 A lawful arrest requires two elements:

- A person’s involvement or suspected involvement or attempted involvement in the commission of a criminal offence;
- Reasonable grounds for believing that the person’s arrest is necessary.

2.2 Arresting officers are required to inform the person arrested that they have been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both elements and to inform the custody officer of these on arrival at the police station. See Code C paragraph 3.4.

‘Involvement in the commission of an offence’

2.3 A constable may arrest without warrant in relation to any offence, except for the single exception listed in Note for Guidance 1. A constable may arrest anyone:

- who is about to commit an offence or is in the act of committing an offence;
- whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence;
- whom the officer has reasonable grounds to suspect of being guilty of an offence which he or she has reasonable grounds for suspecting has been committed;
- anyone who is guilty of an offence which has been committed or anyone whom the officer has reasonable grounds for suspecting to be guilty of that offence.

Necessity criteria

2.4 The power of arrest is only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph 2.9. It remains an operational decision at the discretion of the arresting officer as to:

- what action he or she may take at the point of contact with the individual.
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- the necessity criterion or criteria (if any) which applies to the individual; and
- whether to arrest, report for summons, grant bail, issue a fixed penalty notice or take any other action that is open to the officer.

2.5 In applying the criteria, the arresting officer has to be satisfied that at least one of the reasons supporting the need for arrest is satisfied.

2.6 Extending the power of arrest to all offences provides a constable with the ability to use that power to deal with any situation. However applying the necessity criteria requires the constable to examine and justify the reason or reasons why a person needs to be taken to a police station for the custody officer to decide whether the person should be placed in police detention.

2.7 The criteria below are set out in section 24 of PACE as substituted by section 110 of the Serious Organised Crime and Police Act 2005. The criteria are exhaustive. However, the circumstances that may satisfy these criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be.

2.8 In considering the individual circumstances, the constable must take into account the situation of the victim, the nature of the offence, the circumstances of the offender and the needs of the investigative process.

2.9 The criteria are that the arrest is necessary:

(a) to enable the name of the person in question to be ascertained (in the case where the person 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;

an address is a satisfactory address for service of summons if the person will be at it for a sufficiently long period for it to be possible to serve him or her with a summons; or, that some other person at that address specified by the person will accept service of the summons on their behalf;

(c) to prevent the person in question;

(i) causing physical injury to himself or any other person,

(ii) suffering physical injury;

(iii) causing loss or damage to property;

(iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); 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.

This may include cases such as:

(i) Where there are grounds to believe that the person has made false statements;

(ii) has made statements which cannot be readily verified;

(iii) has presented false evidence;

(iv) may steal or destroy evidence;

(v) may make contact with co-suspects or conspirators;

(vi) may intimidate or threaten or make contact with witnesses; or
(iii) when considering arrest in connection with an indictable offence, there is an
operational need to:
• enter and search any premises occupied or controlled by a person
• search the person
• prevent contact with others
• take fingerprints, footwear impressions, samples or photographs of the suspect
(iii) ensuring compliance with statutory drug testing requirements.

(d) to prevent any prosecution for the offence from being hindered by the disappearance
of the person in question. This may arise if there are reasonable grounds for believing
that
• if the person is not arrested he or she will fail to attend court
• street bail after arrest would be sufficient to deter the suspect from trying to evade
prosecution.

3 Information to be given on Arrest

(a) Cautions—when a caution must be given (taken from Code C section 10)

3.1 A person whom there are grounds to suspect of an offence (see Note 2) must be cau-
tioned before any questions about an offence, or further questions if the answers provide
the grounds for suspicion, are put to them if either the suspect’s answers or silence (i.e.
failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in
a prosecution. A person need not be cautioned if questions are for other necessary purposes
e.g.,
(a) solely to establish their identity or ownership of any vehicle;
(b) to obtain information in accordance with any relevant statutory requirement;
(c) in furtherance of the proper and effective conduct of a search, e.g. to determine the
need to search in the exercise of powers of stop and search or to seek co-operation while
carrying out a search;
(d) to seek verification of a written record as in Code C paragraph 11.13;
(e) when examining a person in accordance with the Terrorism Act
2000, Schedule 7 and the Code of Practice for Examining Officers issued under that Act,
Schedule 14, paragraph 6.

3.2 Whenever a person not under arrest is initially cautioned, or reminded they are under
cautions, that person must at the same time be told they are not under arrest and are free
to leave if they want to.

3.3 A person who is arrested, or further arrested, must be informed at the time, or as soon
as practicable thereafter, that they are under arrest and the grounds for their arrest, see
Note 2.

3.4 A person who is arrested, or further arrested, must also be cautioned unless:
(a) it is impracticable to do so by reason of their condition or behaviour at the time;
(b) they have already been cautioned immediately prior to arrest as in paragraph 3.1.

(b) Terms of the caution (taken from Code C section 10)

3.5 The caution, which must be given on arrest, should be in the following terms:
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“You do not have to say anything. But it may harm your defence if you do
not mention when questioned something which you later rely on in Court.
Anything you do say may be given in evidence.”

See Note 5

3.6 Minor deviations from the words of any caution given in accordance with this Code
do not constitute a breach of this Code, provided the sense of the relevant caution is pre-
served. See Note 6

3.7 When, despite being cautioned, a person fails to co-operate or to answer particular
questions which may affect their immediate treatment, the person should be informed of
any relevant consequences and that those consequences are not affected by the caution.
Examples are when a person’s refusal to provide:

• their name and address when charged may make them liable to detention.
• particulars and information in accordance with a statutory requirement, e.g. under the
  Road Traffic Act 1988, may amount to an offence or may make the person liable to a
  further arrest.

4 Records of Arrest

(a) General

4.1 The arresting officer is required to record in his pocket book or by other methods used
for recording information:

• the nature and circumstances of the offence leading to the arrest
• the reason or reasons why arrest was necessary.
• the giving of the caution
• anything said by the person at the time of arrest

4.2 Such a record should be made at the time of the arrest unless impracticable to do. If
not made at that time, the record should then be completed as soon as possible thereafter.

4.3 On arrival at the police station, the custody officer shall open the custody record (see
paragraph 1.1A and section 2 of Code C). The information given by the arresting officer on
the circumstances and reason or reasons for arrest shall be recorded as part of the custody
record. Alternatively, a copy of the record made by the officer in accordance with paragraph
4.1 above shall be attached as part of the custody record.

4.4 The custody record will serve as a record of the arrest. Copies of the custody record
will be provided in accordance with paragraphs 2.4 and 2.4A of Code C and access for
inspection of the original record in accordance with paragraph 2.3 of Code C.

(b) Interviews and arrests

4.5 Records of interview, significant statements or silences will be treated in the same way
as set out in sections 10 and 11 of Code C and in Code E (tape recording of interviews).

Notes for guidance

1 The offences of assisting offenders under section 4(1) and concealing offences under
section 5(1) of the Criminal Law Act 1967 carry the power of arrest. However, these offences
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relate only to assisting or concealing offences for which (a) the sentence is fixed by law, or
(b) a first time offender aged 18 or over could be sentenced to five years imprisonment.

2 There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.

3 An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence’s nature, when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.

4 Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Criminal Justice and Public Order Act 1994, section 34, if the person was not cautioned.

5 If it appears a person does not understand the caution, the people giving it should explain it in their own words.

6 The powers available to an officer as the result of an arrest—for example, entry and search of premises, holding a person incommunicado, setting up road blocks—are only available in respect of indictable offences and are subject to the specific requirements on authorisation as set out in the 1984 Act and relevant PACE Code of Practice.)
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