

POLICE POWERS

STOP AND SEARCH

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

Under s1(2) PACE 1984, “a constable (a) may search (i) any person or vehicle; (ii) anything which is in or on a vehicle, for stolen or prohibited articles ...; and (b) may detain a person or vehicle for the purpose of such a search.”

“If in the course of such a search a constable discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, he may seize it”: s1(6). An article is prohibited if it is (a) an offensive weapon; or (b) an article made or adapted for use in the course of or in connection with burglary, theft, taking motor vehicle or other conveyance without authority or obtaining property by deception: s1(7) and (8).

A constable may exercise any power conferred by s1 in any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission: s1(1).

Section 1 does not give a constable power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles: s1(3).

Reasonable suspicion can never be supported on the basis of personal factors alone without supporting intelligence or information. For example, a person’s colour, age, hairstyle or manner of dress, or the fact that he is known to have a previous conviction for possession of an unlawful article, cannot be used alone or in combination with each other as the sole basis on which to search that person. Nor may it be founded on the basis of stereotyped images of certain persons or groups as more likely to be committing offences: Code A, 1.7.

“If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search him in the exercise of the power conferred by this section unless the constable has reasonable grounds for believing – (a) that he does not reside in the dwelling; and (b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling”: s1(4).

“Neither the power conferred by section 1 above nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed – (a) as authorising a constable to require a person to remove any of his

clothing in public other than an outer coat, jacket or gloves; or (b) as authorising a constable not in uniform to stop a vehicle”: s2(9).

Road checks

Where there is a reasonable suspicion that a person who has committed a serious arrestable offence is at large in a particular area, s4 gives permission for road checks to be made in that area. A road check allows all vehicles in the particular locality to be stopped.

Duty to make records concerning searches

Where a constable has carried out a search, he shall make a record of it in writing unless it is not practicable to do so: s3(1). If it is not practicable to make the record on the spot, he shall make it as soon as practicable after the completion of the search: s3(2).

The record of a search of a person or a vehicle shall (a) state the object of the search; the grounds for making it; the date and time when it was made; the place where it was made; whether anything, and if so what, was found; whether any, and if so what, injury to a person or damage to property appears to the constable to have resulted from the search; and (b) identify the constable making it: s3(6).

A note of the person’s ethnic origin must always be included in the record of the search: Code A, 4.5. Supervising officers, in monitoring the exercise of officers’ stop and search powers, should consider in particular whether there is any evidence that officers are exercising their discretion on the basis of stereotyped images of certain persons or groups contrary to the provisions of this code. It is important such evidence should be addressed: Code A, 4DA.

If a constable who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of 12 months beginning with the date on which the search was made: s3(7) and (9).

Note: powers to stop and search have also been given under other Acts, eg s23 of the Misuse of Drugs Act 1971, the Prevention of Terrorism (Temporary Provisions) Act 1989 and s60 of the Criminal Justice and Public Order Act 1994.

SEARCH PREMISES

Power of justice of the peace to authorise entry and search of premises

Section 8 provides:

- (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 has been committed; and
 - (b) that there is material on premises specified in the application which is likely to be of substantial value ... 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 ...; and
 - (e) that any of the conditions specified in subsection (3) below applies,

he may issue a warrant authorising a constable to enter and search the premises.

- (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.

Execution of warrants

Section 16 provides:

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

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

- (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 ...
- (b) shall produce the warrant to him; and
- (c) shall supply him with a copy of it.

- (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.

Executed and unexecuted warrants must be returned to the clerk to the justices: s16(10).

Entry for purpose of arrest, etc.

Under s17(1), a constable may enter and search any premises for the purpose:

- (a) of executing a warrant of arrest;
- (b) of arresting a person for an arrestable offence;
- (c) of arresting a person for various offences under the Public Order Act 1936, the Criminal Law Act 1977, the Public Order Act 1986, the Criminal Justice and Public Order Act 1994, and the Children and Young Persons Acts 1933 and 1969;
- (d) of recapturing any person whatsoever who is unlawfully at large and whom he is pursuing; or
- (e) of saving life or limb or preventing serious damage to property.

“Except for the purpose specified in paragraph (e) of subsection (1) above, the powers of entry and search conferred by this section are only exercisable if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises ...”: s17(2).

Entry and search after arrest

A constable may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence that relates to that offence or to some other arrestable offence which is connected with or similar to that offence: s18(1).

A constable may seize and retain anything for which he may search: s18(2).

Search upon arrest

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

A constable shall also have power in any such case (a) to search the arrested person for anything which he might use to assist him to escape from lawful custody or which might be evidence relating to an offence; and (b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested: s32(2).

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

The powers under s32 do not authorise a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves but they do authorise a search of a person's mouth: s32(4).

Note: A constable may also enter premises to prevent a breach of the peace: *Albert v Lavin* [1981] 3 All ER 878. Breach of the peace was defined by Watkins LJ in *R v Howells* [1981] 3 All ER 383:

We cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a persons, or in his presence his property, or is likely to cause such harm, or which puts somebody in fear of such harm being done.

ARREST

With a warrant

Section 1(1) of the Magistrates' Courts Act 1980 provides that, "Upon an information being laid before a justice of the peace ... that any person has, or is suspected of having, committed an offence, the justice may, ... (a) issue a summons directed to that person requiring him to appear before a magistrates' court ... to answer to the information, or (b) issue a warrant to arrest that person and bring him before a magistrates' court ..."

Arrest without warrant for arrestable offences

Any person may arrest without a warrant (a) anyone who is in the act of committing an arrestable offence; or (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence: s24(4).

Where an arrestable offence has been committed, any person may arrest without a warrant (a) anyone who is guilty of the offence; or (b) anyone whom he has reasonable grounds for suspecting to be guilty of it: s24(5).

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

A constable may arrest without a warrant (a) anyone who is about to commit an arrestable offence; or (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence: s24(7).

Arrestable offences are defined in s24(1)-(3). Section 24(1) states: "The powers of summary arrest conferred by the following subsections shall apply (a) to offences for which the sentence is fixed by law; (b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years ...; and (c) to the offences to which subsection (2) below applies ...". Subsection (2) then lists a further 15 statutory offences.

General arrest conditions

Section 25(1) provides:

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

The general arrest conditions are, under s25(3),:

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

Voluntary attendance at police station

Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested - (a) he shall be entitled to leave at will unless he is placed under arrest; and (b) he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will: s29.

Information to be given on arrest

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

No arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest: 28(3).

Section 28(5) provides that: “Nothing in this section is to be taken to require a person to be informed (a) that he is under arrest; or (b) of the ground for the arrest, if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given”.

A person must be cautioned upon arrest for an offence unless: (a) it is impracticable to do so by reason of his condition or behaviour at the time; or (b) he has already been cautioned immediately prior to arrest: Code C, 10.3. The caution shall be in the following terms: ‘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 say may be given in evidence.’ Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved: Code C, 10.4.

Arrest elsewhere than at a police station

Section 30 states that: “... where a person – (a) is arrested by a constable for an offence; or (b) is taken into custody by a constable after being arrested for an offence by a person other than a constable, at any place other than a police station, he shall be taken to a police station by a constable as soon as practicable after the arrest.”

DETENTION

Limitations on police detention

If at any time a custody officer (a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and (b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of PACE, it shall be the duty of the custody officer to order his immediate release from custody: s34(2).

Duties of custody officer before charge

Where a person is arrested for an offence without a warrant or under a warrant not endorsed for bail, the custody officer shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so: s37(1).

If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him: s37(2).

Responsibilities in relation to persons detained

It shall be the duty of the custody officer at a police station to ensure (a) that all persons in police detention at that station are treated in accordance with PACE and any code of practice issued under it and relating to the treatment of persons in police detention; and (b) that all matters relating to such persons which are required by PACE or codes of practice to be recorded are recorded in the custody records relating to such persons: s39.

The custody officer is responsible for the accuracy and completeness of the custody record: Code C, 2.3.

When a person is brought to a police station the custody officer must tell him clearly of the following rights and of the fact that they are continuing rights which may be exercised at any stage during the period in custody. (i) the right to have someone informed of his arrest ... (ii) the right to consult privately with a solicitor and the fact that independent legal advice is available free of charge; and (iii) the right to consult the codes of practice: Code C, 3.1. In

addition the custody officer must give the person a written notice setting out the above three rights, the right to a copy of the custody record and the caution: Code C, 3.2.

If the person is a juvenile (a person under the age of 18), is mentally handicapped or suffers from a mental disorder then the custody officer must, as soon as practicable, inform an appropriate adult of the grounds for his detention and his whereabouts and ask the adult to come to the police station to see the person: Code C, 3.9

Conditions of Detention

Cells in use must be adequately heated, cleaned, ventilated and adequately lit. Access to toilet and washing facilities must be provided. At least two light meals and one main meal shall be offered in any period of 24 hours. Drinks should be provided at meal times and upon reasonable request between meal times. People detained shall be visited every hour: Code C, 8.

Review of police detention

Section 40 states:

- (1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section-
 - (a) in the case of a person who has been arrested and charged, by the custody officer; and
 - (b) in the case of a person who has been arrested but not yet charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.
- (2) The officer to whom it falls to carry out a review is referred to in this section as a "review officer".
- (3) Subject to subsection (4) below-
 - (a) the first review shall not be later than six hours after the detention was first authorised;
 - (b) the second review shall not be later than nine hours after the first;
 - (c) subsequent reviews shall be at intervals of not more than nine hours.
- (4) A review may be postponed -
 - (a) if, having regard to all the circumstances ... it is not practicable to carry out the review at that time;

- (b) without prejudice to the generality of paragraph (a) above –
- (i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
 - (ii) if at that time no review officer is readily available.

(5) If a review is postponed under subsection (4) above it shall be carried out as soon as practicable after the latest time specified for it in subsection (3) above.

Limits on period of detention without charge

“Subject to the following provisions of this section and to sections 42 and 43 below, a person shall not be kept in police detention for more than 24 hours without being charged”: s41(1).

The time from which the period of detention of a person is to be calculated shall be the time at which that person arrives at the relevant police station; or 24 hours after the time of that person’s arrest, whichever is the earlier: s41(2).

Authorisation of continued detention

Section 42(1) provides:

Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that-

- (a) the detention of that person without charge is necessary to secure or preserve relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

Note: “Serious arrestable offence” is defined in s116 (and Parts I and II of Schedule 5). It includes, among others: treason, murder, manslaughter, rape, kidnapping, incest with a girl under the age of 13, buggery with a boy under the age of 16 or a person who has not consented, and indecent assault which constitutes an act of gross indecency.

Warrants of further detention

Section 43 states:

(1) Where, on an application on oath made by a constable and supported by an information, a magistrates’ court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.”

(11) Subject to subsection (12) below, the period stated in a warrant of further detention shall be such period as the magistrates’ court thinks fit, having regard to the evidence before it.

(12) The period shall be no longer than 36 hours.

Extensions of warrants of further detention

Section 44 provides:

(1) ... a magistrates’ court may extend a warrant of further detention issued under section 43 above if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3) below, the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not -

- (a) be longer than 36 hours; or
- (b) end later than 96 hours after the relevant time.

Detention after charge

Section 46 states that where a person is charged with an offence, and after being charged is kept in police detention, he shall be brought before a magistrates’ court as soon as is practicable and in any event not later than the first sitting after he is charged with the offence.

Right to have someone informed when arrested

Section 56 provides:

- (1) Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.
- (2) Delay is only permitted –
 - (a) in the case of a person who is in police detention for a serious arrestable offence; and
 - (b) if an officer of at least the rank of superintendent authorises it.
- (3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) above within 36 hours from the relevant time, as defined in section 41(2) above.
- (5) ... an officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest –
 - (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
 - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (c) will hinder the recovery of any property obtained as a result of such an offence.

Access to legal advice

Section 58 states:

- (1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.
- (2) ... a request under subsection (1) above and the time at which it was made shall be recorded in the custody record.
- (4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this section.

- (5) In any case he must be permitted to consult a solicitor within 36 hours from the relevant time ...
- (6) Delay in compliance with a request is only permitted –
 - (a) in the case of a person who is in police detention for a serious arrestable offence; and
 - (b) if an officer of at least the rank of superintendent authorises it.
- (8) An officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) above at the time when the person detained desires to exercise it –
 - (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
 - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (c) will hinder the recovery of any property obtained as a result of such an offence.

Where a person has been permitted to consult a solicitor, the solicitor must be allowed to be present while he is interviewed: Code C, 6.8. The solicitor may only be required to leave the interview if his conduct is such that the investigating officer is unable properly to put questions to the suspect: Code C, 6.9.

Right to see Code of Practice

The code of practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public: Code C, 2.1.

SEARCHES, FINGERPRINTING & SAMPLES

Searches of detained person

Section 54 provides:

- (1) The custody officer at a police station shall ascertain and record or cause to be recorded everything which a person has with him when he is –
 - (a) brought to the station after being arrested elsewhere ...; or
 - (b) arrested at the station ...
- (2) In the case of an arrested person the record shall be made as part of his custody record.

Strip searches

A strip search may take place only if it is considered necessary to remove an article which a person would not be allowed to keep, and the officer reasonably considers that the person might have concealed such an article. Strip searches shall not be routinely carried out where there is no reason to consider that articles have been concealed: Code C, 10. People who are searched should not normally be required to have all their clothes removed at the same time, for example, a man shall be allowed to put on his shirt before removing his trousers, and a woman shall be allowed to put on her blouse and upper garments before further clothing is removed: Code C, 11(d).

Intimate searches

Section 55 states:

- (1) ... if an officer of at least the rank of superintendent has reasonable grounds for believing –
 - (a) that a person who has been arrested and is in police detention may have concealed on him anything which –
 - (i) he could use to cause physical injury to himself or others; and
 - (ii) he might so use while he is in police detention or in the custody of a court; or
 - (b) that such a person –
 - (i) may have a Class A drug concealed on him; and
 - (ii) was in possession of it with the appropriate criminal intent before his arrest,he may authorise an intimate search of that person.

(2) An officer may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4) above, an intimate search shall be by way of examination by a suitably qualified person unless an officer of at least the rank of superintendent considers that this is not practicable.

(7) A constable may not carry out an intimate search of a person of the opposite sex.

“Intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth: s65.

Fingerprinting

No person’s fingerprints may be taken without consent: s61(1). However, the fingerprints of a person detained at a police station may be taken without consent (a) if an officer of at least the rank of superintendent authorises them to be taken; or (b) if he has been charged with a recordable offence: s61(3).

An officer may only give an authorisation under s61(3)(a) if he has reasonable grounds (a) for suspecting the involvement of a person whose fingerprints are to be taken in a criminal offence; and (b) for believing that his fingerprints will tend to confirm or disprove his involvement: s61(4).

Intimate samples

An intimate sample may be taken from a person in police detention only if (a) a police officer of at least the rank of superintendent authorises it to be taken; and (b) if the appropriate consent is given: s62(1). “Intimate sample” is defined in s65 and means (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair; (b) a dental impression; (c) a swab taken from a person’s body orifice other than the mouth.

An officer may only give an authorisation if he has reasonable grounds (a) for suspecting the involvement of the person from whom the sample is to be taken is a recordable offence; and (b) for believing that the sample will tend to confirm or disprove his involvement: s62(2).

An intimate sample, other than a sample of urine or a dental impression, may only be taken from a person by a registered medical practitioner and a dental impression may only be taken by a registered dentist: s62(9).

Where consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence (a) the court, in determining (i) whether to commit that person for trial; or (ii) whether there is a case to answer; and (b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper: s62(10).

Other samples

Under s63 a non-intimate sample may not be taken from a person without consent. However, a non-intimate sample may be taken from a person without consent if he is in police detention and an officer of at least the rank of superintendent authorises it to be taken: s63(3).

An officer may only give authorisation if he has reasonable grounds (a) for suspecting the involvement of the person from whom the sample is to be taken in a serious arrestable offence; and (b) for believing that the sample will tend to confirm or disprove his involvement.

“Non-intimate sample” is defined in s65 and means: (a) a sample of hair other than pubic hair; (b) a sample taken from a nail or under a nail; (c) a swab taken from any part of a person’s body including the mouth but not any other body orifice; (d) saliva; (e) a footprint or a similar impression of any part of a person’s body other than a part of his hand.

POLICE INTERVIEWS

A juvenile or a person who is mentally disordered or mentally handicapped, must not be interviewed or asked to provide or sign a written statement in the absence of an appropriate adult: Code C, 11.14. The exceptions are where delay would be likely to (a) harm evidence, (b) alert other suspects, or (c) hinder the recovery of property: Code C, 11.1

A person must be cautioned before any questions are put: Code C, 10

No police officer may try to obtain answers to question or to elicit a statement by the use of oppression: Code C, 11.3

If a police officer wishes to interview, or conduct enquiries which require the presence of a detained person, the custody officer is responsible for deciding whether to deliver him into his custody: Code C, 12.1.

In any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption by police officers in connection with the investigation concerned. This period should normally be at night. The period of rest may not be interrupted or delayed, except at the request of the person, his appropriate adult or his legal representative, unless there are reasonable grounds for believing that it would: (i) involve a risk of harm to people or serious loss of, or damage to, property; or (ii) delay unnecessarily the person’s release from custody; or (iii) otherwise prejudice the outcome of the investigation: Code C, 12.2.

There should be breaks from interviewing at meal times and short breaks for refreshment approximately every 2 hours subject to the interviewing officer’s discretion to delay a break if there are reasonable grounds for believing it would involve a risk of harm to people or property; delay the person’s release from custody; or prejudice the investigation: Code C, 12.7.

Tape-recording of interviews

Section 60 provides that it shall be the duty of the Secretary of State (a) to issue a code of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and (b) to make an order requiring the tape-recording of interviews to be in accordance with the code.

Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview: Code E, 2.1.

At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish: Code E, 4.14.

Confessions

Section 76 states:

If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained –

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

Exclusion of unfair evidence

Section 78(1) provides:

In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

Effect of accused's failure to mention facts when questioned or charged

Section 34 of the Criminal Justice and Public Order Act 1994 states:

- (1) Where, in any proceedings against a person for an offence, evidence is given that the accused –
 - (a) at any time before he was charged with the offence, on being questioned under caution by a constable trying to discover whether or by

whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) below applies.

- (2) Where this subsection applies ... the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failures as appear proper.

Effect of accused's silence at trial

See s35 of the Criminal Justice and Public Order Act 1994:

The court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences as appear proper from the failure of the accused to give evidence or his refusal, without good cause, to answer any question: s35(3).

Effect of accused's failure or refusal to account for objects, substances or marks

Section 36 of the Criminal Justice and Public Order Act 1994 provides:

- (1) Where –
 - (a) a person is arrested by a constable, and there is –
 - (i) on his person; or
 - (ii) in or on his clothing or footwear; or
 - (iii) otherwise in his possession; or
 - (iv) in any place in which he is at the time of his arrest,
- any object, substance or mark, or there is any mark on any such object; and
- (b) that or another constable investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the constable; and
- (c) the constable informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) below applies.

- (2) Where this subsection applies –
...
(d) the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure or refusal as appear proper.

Effect of accused's failure or refusal to account for presence at a particular place

Section 37 of the Criminal Justice and Public Order Act 1994 states:

- (1) Where –
(a) a person arrested by a constable was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and
(b) that or another constable investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence; and
(c) the constable informs the person that he so believes, and requests him to account for that presence; and
(d) the person fails or refuses to do so,
then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.
- (2) Where this subsection applies –
...
(d) the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure or refusal as appear proper.