

The Serious Organised Crime and Police Act 2005 (SOCPA) and its Effect on the Criminal Justice and Public Order Act 1994

This Act came into effect on the 1st of January 2006 and was widely referred to as the Act which enabled police officers to arrest any person for even minor criminal offences. The following is a brief synopsis of the effect that the new Act has had on investigation.

Arrestable Offences

The main effect for investigators has been the abolition of the terms 'Arrestable Offence' and 'Serious Arrestable Offence', as defined under Ss 24 and 116 of PACE 1984. This change has an effect on both the powers to arrest for police officers and citizens, and in respect of applications for search warrants. It appears that in some pieces of legislation reference to 'arrestable offence' has now been amended to refer to 'relevant offence', which is still defined as an offence for which the sentence is fixed by law, or an offence for which a person aged 18 years or over can be sent to prison for 5 years on conviction. (This is similar to the old definition but removes 'specified arrestable offences' such as taking of a conveyance, for which an arrest could now be made under the new provisions.)

Section 24 of PACE is now substituted through S.110 of SOCPA which reads:

*“(1) A **constable** may arrest without 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 warrant anyone who 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 who he has reasonable grounds for suspecting to be guilty of it.”*

However, the power to arrest ONLY applies if one or more of a number certain criteria are met. The criteria are

1. To enable the name of the person to be ascertained.
2. To enable the address of the person to be ascertained.
3. To prevent the person
 - a. Harming himself or others;
 - b. Suffering harm or injury;
 - c. Causing loss of or damage to property;
 - d. Committing an offence against public decency;
 - e. To allow the prompt and effective investigation of the offence or of the conduct of the person in question;
 - f. To prevent the prosecution for the offence from being hindered by the disappearance of the person in question.

Students would note that the provisions a-d match those of the former Section 25 of PACE (Conditional Powers of Arrest) with the exception of obstruction of the highway.

The important thing to note is that an officer may arrest *“To allow the prompt and effective investigation of the offence or of the conduct of the person in question.”* This is what effectively makes any offence arrestable. If an offence has a defence in law, or intent must be proved, or property remains outstanding (e.g. from a theft), then an arrest is permitted for the simple reason that it could facilitate the prompt and effective investigation, usually through interview, search of property such as houses and vehicles, and so on.

Section 24A of PACE now specifies the arrest powers of ‘other persons’. It states

- “(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 to suspect to be guilty of the offence.”

As in Section 24 (as amended) above, the arrest ‘conditions’ apply, except (d), which is replaced by stating that an arrest can be made to prevent the person ‘making off before a constable can assume responsibility for him’. Other person powers apply only in indictable cases. **For the purposes of the Act, the term indictable INCLUDES offences triable either way (e.g. theft).**

Certain powers of arrest *have* been retained, most pertinently Section 7 of the Bail Act 1971. In most cases, specific arrest powers have been removed because the ‘new’ provisions effectively replace the need for the powers to exist. That is, an arrest power for affray is no longer needed because the criteria for an arrest will almost invariably apply, e.g. to prevent harm to another, prevent damage, allow for a prompt and effective investigation, etc.

Search Warrants

Section 15 of PACE, which relates to search warrants (and which IOs can now seek), now provides for application for a warrant that can be executed on **more than one occasion, and warrants that permit entry to a number of premises**. The section specifies what information and justification for such an application are required, but with the exception of the multiple entry stipulation, pretty much codifies what was practice prior to enactment of SOCPA.

Multiple entry warrant applications must specify the maximum number of occasions upon which authorisation for entry is sought, or state that it is for unlimited entries. Naturally the justification requirements are strict, and each entry must be authorised by an officer of the rank of Inspector or above.

All Premises warrants, which allow officers to enter and search a number of premises without specifying their address, would be issued in a situation where an offender is found, as an investigation proceeds, to have access or responsibility for a number of premises. Rather than

make application after application as each address is identified, police may apply for an all premises warrant. The only caveat is that prior to execution of this warrant at any premises, an officer of the rank of Inspector (or above) must authorise the search.

(Students should note that this piece of legislation is particularly powerful and subject to interpretation for some time to come.)

Warrants formerly issued under Section 8 of PACE – issued to search for evidence during investigation into ‘serious arrestable offences’, rather than for simple property – are now issued only in respect of **indictable offences** and not ‘serious arrestable offences’ (as that term is no longer used). The same potential for multiple entry and all premises warrants apply.

Entry without a Warrant

Police officers used to have a power to enter premises to effect arrest for arrestable offences. Naturally, it is not the intent or desire of this Act to facilitate entry for littering, obscene language, etc, offences for which arrests can now be made subject to the criteria mentioned *ante*.

The Act now stipulates that entry powers are only exercisable if the offence under investigation is **indictable** or **triable either way**.

Other entry and/or search powers (Section 17 and Section 32 searches) also reflect the requirement that the offence under investigation be indictable if a search is lawful.

Criminal Justice and Public Order Act 1994 – the Effect of SOCPA

SOCPA has repealed a number of arrest powers created by the 1994 Act, specifically Sections 68 (trespass intending to obstruct, disrupt or intimidate); 69 (failure to leave or re-entry after being directed to leave land); 61 (trespass for the purpose of residence); 62 (trespass for purpose of residence with vehicles when alternative site available); 63 (persons attending a rave); 65 (power to stop people attending a rave); 76 (residing in vehicles on land).

The specific powers of arrest have been repealed, but the offences have NOT. The effect of this is only that arrests now have to comply with the criteria stated in Section 24 as amended.

THE PACE 1984 CODES OF PRACTICE

These Codes have been amended and a professional investigator or security operative **MUST** obtain a copy of the new Codes and study them to be effective.

It is important, however, that the following changes be mentioned in this publication.

Information to be given on arrest.

When considering an arrest, a constable must now give consideration to not only the legality, but the necessity for the execution of arrest powers. If the investigation can be properly

conducted, or a prosecution effectively undertaken without an arrest being made, then consideration MUST be given to dealing with the offender without the need for his liberty to be restricted.

Once a decision has been made that an arrest is necessary and legally permissible, the offender MUST

- be cautioned as per current practice;
- be told what they are being arrested for (the offence); and the grounds (why them and not someone else).

The arresting officer MUST record in his notebook

- the nature and circumstances of the offence leading to the arrest;
- the reason why the arrest was necessary;
- the giving of the caution; and
- any replies given by the detained person.

The only practical change is that the arrest must be justified in the notebook, i.e. a note must be made of the criterion (under Section 24 as amended, detailed *ante*) applicable in the particular case.

Miscellaneous Provisions

The following statements are additional pertinent amendments to the Codes:

- Police now have a power to take footwear impressions in the same way as they can take fingerprints.
- Intimate and non-intimate samples have now been formally defined, and non-intimate samples now include a skin impression other than a fingerprint, e.g. a foot or ear print.
- Police may now seize and dispose of a motor vehicle if the driver is unlicensed and uninsured.