

POLICE POWERS UNDER SOCPA 2005 - a summary

POWERS OF ARREST

I. Introduction

| | |
|----------------------------|---|
| The principal changes..... | 2 |
| Background and policy..... | 3 |
| Was change needed?..... | 3 |

II. The position of constables

| | |
|---|----|
| Old section 24 PACE..... | 4 |
| New section 24 PACE..... | 4 |
| Reason “for suspecting” versus reason “to suspect”: is there a difference?..... | 5 |
| Primary conditions for making an arrest..... | 5 |
| Statutory reasons for making an arrest..... | 6 |
| An arrest must be necessary..... | 7 |
| Reasons for an arrest must be given..... | 7 |
| Justifying arrest for a minor offence to further a wider investigation: taking a “holistic” view..... | 8 |
| Discussion..... | 9 |
| Further police powers triggered by the fact of arrest..... | 11 |
| Discretion to arrest? To what extent is there still a discretion?..... | 12 |
| Preserved powers of arrest..... | 13 |

III. A citizen’s power of arrest

| | |
|--|----|
| Statutory provisions..... | 14 |
| The position of citizens: the seriousness component in s.24A, PACE..... | 15 |
| “Committing” an offence, and the moment an offence has been “committed”..... | 15 |

POWERS OF SEARCH AND SEIZURE

I. Stop and Search

| | |
|--|----|
| The value of stop and search as a policing tool..... | 17 |
|--|----|

II. Search of premises without a warrant.....

III. Searching for an individual.....

IV. Intimate searches: definitions.....

V. Searches with a warrant

| | |
|---|----|
| Warrants granted under section 8 of PACE..... | 21 |
| “Specific premises” warrants and “all premises” warrants..... | 23 |
| Search Warrants: Safeguards under section 15 PACE..... | 23 |
| Execution of search warrants: section 16..... | 24 |
| Searching persons as well as premises..... | 25 |
| Preventing persons from moving around in premises or leaving..... | 27 |

FINANCIAL REPORTING ORDERS

| | |
|---------------------------|----|
| Statutory provisions..... | 28 |
| Discussion..... | 29 |
| Appendix “A”..... | 30 |
| Appendix “B”..... | 32 |

EXERCISING POWERS OF ARREST UNDER SOCPA 2005 – wither discretion?¹Summary

The framework for arresting suspects has changed dramatically since the 31st December 2005. This part of the paper focuses on the power of constables to make an arrest: it highlights the main changes that have been made to PACE and its Codes of Practice, and it discusses some of the practical difficulties that operational officers are likely to face. The changes are intended to make the power of arrest more ‘straightforward’ and so improve “police efficiency and effectiveness”. The most significant change is the move away from the criterion of seriousness and to require constables to decide – applying an objective test – whether an arrest is necessary. All offences are ‘arrestable’, but much will depend on the circumstances of a given case. The discretion of constables to make an arrest is significantly curtailed.

I. Introduction

1. From January 1, 2006, police powers were substantially altered by the Serious Organised Crime and Police Act 2005 (SOCPA) – particularly in relation to arrest and those powers available to constables following an arrest.² It is not apparent that this presented any difficulty to officers whose shift straddled midnight December 31st 2005, but the changes introduced by SOCPA will have considerable practical effect on all policing.

The principal changes

2. The following points should be noted:
 - The original version of section 24 of the Police and Criminal Evidence Act 1984 (PACE) has been replaced with a new s.24.³
 - The phrase “arrestable offence” has disappeared from the language of PACE.⁴
 - Section 25 PACE (general arrest conditions) ceased to have effect.⁵
 - The definition of a “serious arrestable offence” as it appears in s.116 of PACE, is redundant.⁶
 - Schedule 5 of PACE (serious arrestable offences) also ceased to have effect.⁷
 - Given the above, the distinctions between an “arrestable offence”, a “serious arrestable offence”, and (colloquially) a “non-arrestable offence”, have gone.⁸
 - It follows that all offences are arrestable.⁹
 - Note that s.26 of PACE has not been repealed. That section itself repealed statutory powers of arrest that existed before PACE came into force, but it also specifies statutory powers of arrest that are to be preserved.¹⁰ Understanding the relationship between s.26 of PACE, and

¹ Thanks are due to Professor David Ormerod for his helpful comments and suggestions. He is not to be taken as endorsing any of the views, or points, made herein.

² See *The Serious Organised Crime and Police Act 2005 (Powers of Arrest) (Consequential Amendments) Order 2005*, 2005 No. 3389.

³ See “*Serious Organised Crime and Police Act 2005, A Current Law Statute Guide*, Fortson, Sweet & Maxwell.

⁴ See Part 2 to Schedule 17.

⁵ Section 110(2) of the 2005 Act.

⁶ Para.43(12) to Part 3 of Schd.7 of the 2005 Act.

⁷ Para.43(13) to Part 3 of Schd.7.

⁸ Note that for the purposes of the offences of ‘assisting an offender’ (s.4, Criminal Law Act 1967), and ‘concealing evidence’ (s.5, CLA 1967) for “arrestable offence” read “relevant offence”. A “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): see s.4(1A) CLA 1967 (as amended: see SOCPA 2005,s.111, and Sched. 7, para. 40(1), (2) and (3)).

⁹ It is sometimes said (alluding to the terms of old s.25 PACE) that all offences were arrestable pre-SOCPA, but this is an over simplification. Section 25 PACE provided a “general power of arrest” in limited, prescribed, circumstances.

¹⁰ See schedule 2 of PACE.

the amendments set out in schd.7 of the 2005 Act is not easy, but in this respect, the government's *Explanatory Notes* shed some light:¹¹

“Part 1 of Schedule 7 repeals specific powers of arrest which are now unnecessary following the introduction of a general power of arrest. Part 2 of Schedule 7 provides a gloss for the same purpose on enactments where the power of arrest could not be separated out. A very limited number of specific powers of arrest have been retained in their existing form. These primarily relate to powers of arrest in connection with transport offences. This approach may be contrasted with section 26 of PACE which contained a general repeal of powers of arrest existing before that Act came into force. Some of the specific repeals in Schedule 7 may overlap with the effect of section 26 of PACE. Part 3 of Schedule 7 contains amendments consequential on the repeal of the definitions and concepts of an arrestable offence and a serious arrestable offence. *In general police powers which [are] available in cases involving serious arrestable offences and arrestable offences will now be available in cases involving indictable only or triable either way offences.* Part 4 of Schedule 7 contains purely consequential amendments.” [emphasis added]

3. The exercise of a power of arrest under the new s.24 PACE is subject to (a) the conditions set out in revised s.24 PACE (constables), or s.24A PACE (other persons), and (b) the revised PACE Codes of Practice – particularly Code G.¹²
4. As before, constables have greater powers than citizens to make an arrest, but both groups must now have reasonable grounds for believing that it is *necessary* to make an arrest for any of the reasons set out in s.24(5) [constables], or s.24A(4) [other persons].

Background and policy

5. The changes introduced by SOCPA follow the outcome of the *Report of The Joint Home Office/Cabinet Office Review of the Police and Criminal Evidence Act 1984* (2002), and have regard to responses received by the Government following publication of its Consultation Paper “*Policing: Modernising Police Powers to Meet Community Needs*”.¹³
6. The anticipated benefits of the changes to the powers of arrest were summarised by the authors of the team who prepared the *Serious Organised Crime and Police Bill Summary Regulatory Impact Assessment*:¹⁴

“*Arrest*: Should result in improved police efficiency and effectiveness in terms of the police investigative process and raise the level of successful outcomes to investigations. Enables police to determine on a case by case basis whether or not a person needs to be taken into custody – potential savings on police time and related accommodation issues.”

Was changed needed?

7. For its part, the Review Team found “a high level of satisfaction with the framework of arrest powers, but there are concerns that it is too complicated. Some on the police side wanted to couple simplification with broader and stronger powers”.¹⁵ The Review Team's preferred option was to “create a definitive list of arrestable offences and to codify the powers of arrest”.¹⁶ It will be appreciated that this is not the step that Parliament has taken.
8. The Consultation Paper went further in its criticisms of the pre-SOCPA position, stating that

¹¹ Paragraph 237.

¹² Applies to any arrest made by a police officer after midnight on 31 December 2005.

¹³ Home Office, August 2004.

¹⁴ November 2004; available on the internet.

¹⁵ Paragraph 22

¹⁶ The Review recommended creating a definitive list of powers to arrest, “complemented by information on how they can and should be applied. This should link to enhanced training. More radical ideas about expanding the scope to arrest require further consultation”, page 21.

- a. “the basis of arrest remains diverse – it is not always straightforward or clear to police officers or members of the public when and if the power of arrest exists for offences at the lower end of seriousness. As indicated by the Association of Chief Police Officers in responding to the Joint Review of PACE, there is a ‘myriad of different qualifiers’ to effect arrest” [para.2.2].¹⁷
9. Andrew Roberts describes that claim as “unconvincing” because previous powers of arrest were “clearly demarcated”.¹⁸ In other words, the powers of arrest were demarcated by the explicit identification of specified offences as “arrestable”, or demarcated by definition (i.e. an offence carrying a maximum term of imprisonment of five years or more).
10. The problem - whether an officer had a power of arrest in respect of a particular offence that occupied the lower end of seriousness - arose in cases that were rarely encountered by officers. It is doubtful that this was a significant problem: had it been so, one wonders why the PACE Review Team’s preferred option was for Parliament to enact a definitive list of arrestable offences. The problem typically encountered by officers was not whether a power of arrested existed, but whether it was appropriate to make an arrest.
11. Arrests have significant resource implications both as to time and cost. Deciding whether to arrest involves an application of legal rules, the existence of discretion (an appreciation of the limits of that discretion), and policy. In practice, the new framework does not ease the burden on officers: indeed, for the reasons given below, the burden is increased.

II. The position of constables

Old section 24 PACE and revised section 24

Old s.24(4)-(7), PACE

12. Old section 24 PACE provided (with amendments) that:

- “(4) Any person may arrest without a warrant -
 - (a) anyone who is in the act of committing an arrestable offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.
- (5) Where an arrestable offence has been committed, any person 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.
- (6) 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.
- (7) A constable may arrest without a warrant -
 - (a) anyone who is about to commit an arrestable offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.”

New section 24 PACE

13. Section 24 PACE now provides that:

- “(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.

¹⁷ *The Final Regulatory Impact Assessment Rationalisation of Arrest Powers And Execution of Search Warrants*, states that “(i) The objective: provide clarity on the present myriad of arrest powers under the Police and Criminal Evidence Act (PACE) 1984 and other specific legislation. The aim is to provide clear statement for police, Criminal Justice System and the public on arrest powers” [para. 2(i)].

¹⁸ *Modernising Police Powers*, Criminal Justice Review, 2003-2004, 16th Annual Report, Centre for Criminal Justice Studies, University of Leeds, p.34.

- (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) ...[set out below]
- (6) ...[set out below]

14. It will be seen from the table (below) that the ‘new’ powers are largely derived from the ‘old’ ones, with subtle differences in the wording of s.24 PACE (indicted in italics within [...]).

| <u>Old</u> s.24 | <u>Power</u> | <u>Constables</u> <u>New</u> s.24 | <u>Non-constables</u> <u>[offence must</u> <u>be ‘indictable’]</u> |
|--------------------|--|---|--|
| s.24(4)(a) | Anyone who is in the act of committing an arrestable offence | s.24(1)(b) | s.24A(1)(a) |
| s.24(4)(b) | Anyone whom he has reasonable grounds for suspecting to be committing such an offence. | s.24(1)(d) | s.24A(1)(b) |
| s.24(5)(a) | Anyone who is guilty of the offence | s.24(3)(a) | s.24A(2)(a) |
| s.24(5)(b) | Anyone whom he has reasonable grounds for suspecting to be guilty of it. | s.24(3)(b) | s.24A(2)(b) |
| s.24(6) | [If] 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 <i>[to suspect]</i> for suspecting to be guilty of <i>[it]</i> the offence. | s.24(2) | N/a |
| s.24(7)(a) | Anyone who is about to commit an arrestable offence. | s.24(1)(a) | N/a |
| s.27(7)(b) | Anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence. | s.24(1)(c) | N/a |

Reason “for suspecting” versus reason “to suspect”: is there a difference?

15. Note that in respect of new s.24(2) the wording has changed from “for suspecting”, to “to suspect”. Is the difference important? The answer, it is submitted, is ‘no’. There is no doubt that the phrase “to suspect” imports the requirement that the constable in fact suspects: see *Siddiqui v. Swain*¹⁹ (and see the article by Bailey and Birch, “Recent Developments in the Law of Police Powers”²⁰).

16. It is possible to construe the words “reasonable grounds for suspecting” to mean only that reasonable grounds must exist even if the officer did not in fact entertain a suspicion. However, this would be to overlook the fact that a reasonable suspicion “is the source from which all a police constable’s powers of arrest flow...” (per Bingham LJ., as he then was): *Chapman v. D.P.P.*²¹ and note the commentary to that case. The Court, in *Chapman*, did not draw a distinction between the two phrases: and see *Davis v. D.P.P.*²² *O’Hara v. Chief Constable of the Royal Ulster Constabulary* and the commentary to that case.²³

Primary conditions for making an arrest

17. Under new s.24 PACE, a constable must:
- (i) have reasonable grounds for suspecting that an offence has been committed,

¹⁹ [1979] R.T.R. 458.

²⁰ [1982] Crim.L.R. 547

²¹ [1988] Crim.L.R. 843

²² [1988] Crim.L.R. 249

²³ [1997] 1 Cr.App.R. 447, [1997] Crim.L.R. 432

- (ii) have reasonable grounds to suspect that D is guilty of it,²⁴ and
- (iii) have reasonable grounds for believing that it is necessary to arrest the person in question for any of the reasons mentioned in s.24(5).

18. It is this last requirement that marks a radical departure from the previous framework, and which is likely to present officers with the greatest difficulty. Not only must officers understand what it is that is now required of them, but they also face practical difficulties deciding whether, and when, to arrest.

Statutory reasons for making an arrest

19. The statutory reasons for making an arrest are set out in new s.24(5) and (6) PACE:

“24(5)..

- (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)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.”

20. Section 24(5)(a) and (f) PACE are so broadly drawn that they are capable of justifying arrest in almost any circumstances.

21. *Centrex* has given the following advice in relation to cases where an address given by a suspect is believed to be unsatisfactory for the service of a summons:²⁵

“The fact that an address is believed to be unsatisfactory for the service of a summons is therefore not a reason to arrest but may be used as justifying the grounds for an arrest under Section 24(5)(b). (See Code G para 2.9(b)) In these circumstances officers could also consider the provisions under 24(5)(e) or (f) which appear to be more appropriate.”

22. Code G states that s.24(5)(e) PACE may include cases:

“(i) Where there are reasonable grounds to believe that the person:

- has made false statements;
- has made statements which cannot be readily verified;
- has presented false evidence;
- may steal or destroy evidence;
- may make contact with co-suspects or conspirators;
- may intimidate or threaten or make contact with witnesses;
- where it is necessary to obtain evidence by questioning; or

²⁴ In *Fox, Campbell and Hartley*, Judgment, ECtHR, 26 June 1990, the Court stated, “The ‘reasonableness’ of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5§1(c) (art.5-1-c). The Court agrees with the Commission and the Government that having a ‘reasonable suspicion’ presupposes the existence of facts or information, which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as ‘reasonable’ will however depend upon all the circumstances”.

²⁵ Digest September 2005, *Centrex* (Central Police Training and Development Authority) 2005.

- (ii) when considering arrest in connection with an indictable offence, there is a 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.”

An arrest must be necessary

23. There is a tendency to think that the new arrest provisions will ease the burden on arresting officers, but the introduction to Code G makes it plain that the necessity criteria is not to be treated lightly:²⁶

“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.”

Reasons for an arrest must be given

24. Section 28(3) PACE provides the general rule that “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.” A constable will need to keep in mind *Code G.3.3*, as well as the *Note for Guidance* (Note 3) which state (emphasis supplied):

“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 3.

[Note 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.”

25. The Code is intended to meet the requirements of Art.5.2 of the ECHR,²⁷ but it is arguable that the above goes further than existing case law.²⁸ That is to say, it seems no longer to be enough for an arresting constable merely to give the *ground* for the arrest but he/she must also contextualise it by explaining *why* the arrest is considered *necessary*. This is a major shift, but an inevitable one, given that the criterion of seriousness has been removed. If, for example, P decides to arrest D for the reasons set out in s.24(5)(e) and (f), P will be required to say something along these lines: “I am arresting you for robbery, to allow me to promptly and to effectively investigate the offence, and to prevent a prosecution being hindered because I believe that you will disappear unless I take you into custody”. It may not be practicable to utter such a mouthful of words at the moment of arrest, but P may give his reasons at a later stage: s.28(3) PACE.

²⁶ Introduction: paragraph 2.6.

²⁷ “Paragraph 2 of Article 5 (art. 5-2) contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5 (art. 5): by virtue of paragraph 2 (art. 5-2) any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4 (art. 5-4) (see the *van der Leer* judgment of 21 February 1990, Series A no. 170, p. 13, § 28). Whilst this information must be conveyed “promptly” (in French: “*dans le plus court délai*”), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features.”; *Fox, Campbell and Hartley v. U.K.*, 13 E.H.R.R. 157, para.40 of the judgment.

²⁸ *Christie v Leachinsky* [1947] AC 573, HL, and see *Abbassy and another v. Commissioner of Police of The Metropolis and Others, Taylor v. Chief Constable of Thames Valley Police*; [2004] 3 All E.R.503, CA (Civ. Div.); and see also *Fox, Campbell and Hartley v. U.K.*, 13 E.H.R.R. 157. Previously there usually was no need for an officer to spell out the purpose for which a person had been arrested. Save for the old general arrest conditions under the now repealed s.25 PACE 1984.

26. Just how much information an arresting officer should give to the arrested person is a matter of judgment that must be made on a case-by-case basis. It is submitted that most suspects can be assumed to possess average skills to be able to comprehend why they have been arrested even if the arresting officer's explanation consists of only a few words.²⁹ For example, where a constable seizes a sizeable amount of a substance that he suspects to be heroin, it is surely sufficient for him to say to D who had been in possession of it, "you're under arrest for unlawful possession of drugs and I need to take you into custody in order to investigate the matter fully". The constable has said enough to inform D of the nature of the offence, and the reason why it is 'necessary' to detain him/her, even though the officer did not spell out that the arrest related the "unlawful possession of a controlled drug".

Justifying arrest for a minor offence to further a wider investigation: taking a "holistic" view

27. Suppose a constable ["P"] carried out covert surveillance following a tip-off that D is unlawfully supplying cannabis. The surveillance failed to reveal any evidence of drug dealing by D. One evening, P stopped and searched D who was seen to be loitering in the street and who seemed to be acting under the influence of a controlled drug. D was found to be in possession of a very small amount of cannabis resin, consistent with personal use. P considered whether he could arrest D under s.24(5)(e) PACE for the offence of simple possession of a controlled drug³⁰, but he decided that it was not "necessary" for him to do so. P knew D's identity, and D volunteered a roadside admission that the substance was cannabis for his own use. It was not "necessary" to arrest D for the "proper and effective investigation" of an offence of simple possession. Would it have been open to P to arrest D as part of the wider investigation into alleged drug trafficking by D?
28. One of the government's criticisms of the pre-existing rules was that powers of arrest were based "on the concept of seriousness of the offence and not on the complexity of the investigation".³¹
 "2.5... We should be building on the accrued benefits of PACE and moving towards a straightforward, universal framework which focuses on the nature of an offence in relation to the circumstances of the investigation."
29. In seeking to address concerns that the absence of a criterion of seriousness might result in too many persons being arrested for minor crimes, Baroness Scotland of Asthal (Home Department) said:³²
 "We are not suggesting that the seriousness of the offence is not a consideration when a constable decides to make an arrest. But it is not the sole consideration. Rather it is just one of a number of necessary factors which should be taken into account. However, these powers must be proportionate to the offence...."
30. The above suggests that the decision of a constable must be based on circumstances relevant to the investigation or prosecution of the offence in question, but a statement made by Ms Hazel Blears in the House of Commons might be understood to mean that in some circumstances an officer would be entitled to arrest a person for an offence (were it necessary to do so) in order to take forward a wider investigation:³³
 "I am delighted to confirm that seriousness will remain one of the factors to be used in deciding whether it is necessary to exercise the power. It is an important factor and it will remain a central consideration, because we do not want to deny the basis on which Police and Criminal Evidence Act 1984 provisions have developed. However, a number of other matters will also be taken into account, and that will strengthen the test...seriousness remains one of the factors. We also want to consider the

²⁹ Note that the grounds for arrest must nevertheless be given regardless of whether the ground for the arrest is obvious: s.28(4) PACE 1984.

³⁰ Section 5(2) MDA 1971.

³¹ Consultation Paper: *Modernising Police Powers to Meet Community Needs*, H.O., 2004, para.2.5.

³² *Hansard*, col.758, 6th April 2005.

³³ *Hansard*, col.244, 18th January 2005.

effect on the victim and the way in which we can ensure that the powers are used both to investigate crime and to secure convictions...subsection (5)(e) makes a key addition. There are currently no necessity provisions for the general power of arrest, but paragraph (e) will allow the prompt and effective investigation of the offence or the conduct of the person in question. *That relates to whether one is looking at a serious offence and whether, in a complex investigation, one needs to make an arrest in order to take the matter forward.....*

....We are asking constables to take a more holistic view of the circumstances that face them.... We are asking the constable to take a view on the nature of the offence, the conduct of the person in question and the seriousness of the situation, including whether there is physical injury or loss or damage to property, or whether can he get an [col.246] address. A range of issues are involved, and the constable has to be satisfied that it is right to exercise the power in those circumstances.”
[emphasis added]

31. Note the words “a more holistic view”. This probably means no more than that an officer may roll up his/her reasons for making an arrest. On this basis, one reason for making an arrest might be s.24(5)(e), but it need not be the only one.³⁴ But are the words of Ms Blears to be interpreted as meaning that a constable may also arrest a person for a minor offence in order to further a wider, and more complex, investigation? The answer to this question is obviously important because other powers may be available to police once an arrest is made.³⁵
32. It is submitted that there will be circumstances in which a constable is permitted to arrest a person under the new s.24 PACE on suspicion of committing a minor offence, albeit as part of a wider investigation, but there are significant limits on his/her power to do so. Put shortly, the power of arrest is exercisable only to investigate the circumstances of the offence/conduct for which the person was arrested. The results of that investigation might be relevant to a wider inquiry, but it is submitted that the revised framework is not intended to permit arrests in order to “fish” for information, and this is so for the following reasons:
 - (a) Section 24(5)(e) PACE relates to “*the* offence”, or “of the conduct of the person in question”. The latter expression is probably intended to cater for cases where no offence was actually committed, or where D was not responsible for a crime committed.³⁶
 - (b) Section 24(5)(f) also refers to “the offence”.
 - (c) Powers available to officers following the making of an arrest, are exercisable in respect of an “indictable” offence.³⁷
 - (d) Police powers ought not to intrude into the lives of citizens to an extent greater than is necessary.
33. The so-called “holistic approach” appears to be confined to the circumstances of the offence for which D is liable to be arrested. If this analysis is correct, it follows that, in the above example, P would *not* be entitled to arrest D for the simple possession of cannabis in order to further an investigation into drug dealing.

Discussion

34. There is force in the point made by Andrew Roberts that:³⁸
“If...the police cannot be relied upon to apply the existing powers arrest appropriately, one might reasonably question whether a power of arrest which relies on police officer's judgment of necessity

³⁴ Presumably, by the time the officer decides to arrest, the precise statutory reasons for doing so ought to have crystallised in his mind. This is because the law requires that the arrested person is told both the offence for which he is being arrested, and the arrest condition used to justify the arrest: *Nicholas v. Parsonage* [1987] R.T.R. 199, DC and see *Mullady v. DPP* [1997] C.O.D. 422, DC.

³⁵ See “*The Powers of Arrest Provisions*”, Centrex Digest, September 2005.

³⁶ For example, where there were reasonable grounds to suspect that D had committed an offence but subsequent enquiries revealed that no offence had been committed, or that D could be eliminated from the investigation.

³⁷ See para.43 to Part 3 of schedule 7 of SOCPA 2005.

³⁸ *Modernising Police Powers*, Criminal Justice Review, 2003-2004, 16th Annual Report, Centre for Criminal Justice Studies, University of Leeds, p.34.

would be likely to improve matters or whether it will be even more likely to lead to abuse and inappropriate use.”

35. The issue facing most busy constables is not one of competence, but *uncertainty* whether a decision to arrest might be objectively viewed as unlawful on the grounds that a purported exercise of power was not “necessary”, or that it constituted a disproportionate response (in ECHR terms).
36. Although it seems likely that the courts will afford constables significant flexibility in the exercise of their power to arrest under new s.24 PACE, Code G makes it plain that if the provisions of the Act and the Code are not observed, “both the arrest and the conduct of any subsequent investigation may be open to question” [G.1.4]. It must be stressed that it does not follow that evidence obtained as a result of an improper arrest will necessarily be inadmissible at trial, but such a result is possible.
37. Officers now risk being criticised for arresting either too often, or not often enough. During debates in the House of Lords, when the 2005 Act was then a Bill, Lord Dholakia was fearful that the answer was the former.³⁹ The government’s position was that it must maintain the existing ability of police officers to arrest and to intervene when an offence is about to be committed, and it sought to rationalise the powers of arrest “to ensure that the police have access to effective and proportionate powers to tackle crime when it occurs”, and that revised the Codes of Practice would focus on the reasons that constitute necessity.⁴⁰
38. Understandably, there is concern that the new provisions will make it more likely that officers who arrest for minor offences will face accusations that they are ‘picking’ on particular social groups, or individuals.⁴¹ The same accusation might be made in connection with arrests made during test purchase operations.⁴² To avoid such accusations, officers prefer the comfort of clear legal principles. Clarity enables officers to know whether or not they will be acting within the law should they exercise a particular power. An arrestee will also want to be reassured that the arresting officer acted within his/her powers.
39. Constables are unlikely to find much comfort in the words of the Minister for Crime Reduction, Policing and Community Safety (Ms Blears) who said:⁴³
- “...we are saying that the constable must think carefully, exercising his or her professional discretion, training and skills to reach a decision in the particular circumstances. They will not simply have the automatic power of arrest and be able to arrest someone without thinking about it; they will have to go through the necessity test because it will be looked at in court and perhaps by the Independent Police Complaints Commission, which will have judicial oversight. *Having to go through that process places*

³⁹ “Those conditions are drafted very broadly; it will be very easy for an officer to justify an arrest under one or both of them. Since officers must often make rapid decisions about whether to arrest, it will be natural, particularly for the relatively inexperienced, to err on the side of caution. That will lead to further overcrowding of custody suites and an increased use of police time and resources in dealing with people arrested for minor offences. In addition, we are concerned that there is considerable scope for abuse of those subsections, and that they may be applied arbitrarily or in a discriminatory fashion against certain sections of the community. Article 5 of the convention does not permit arbitrary procedures for arrest” [*Hansard*, 5th April 2005, col.637-638].

⁴⁰ [Baroness Scotland, *Hansard*, 5th April 2005, col.639; see now Code G of the PACE Codes of Practice]

⁴¹ Some commentators have been highly critical of the new arrest provisions. For a particularly strongly worded criticism see “*A Law the Stasi would have loved*”, *The Observer*, Henry Porter, November 6, 2005. In milder tones, the Law Society stated: “We oppose the removal of the seriousness criterion...since it amounts to an important proxy for proportionality...Under the proposals in the paper, the police would have a power of arrest however minor the suspected offence. We do not believe that this represents an appropriate balance between the liberty of the citizen and the needs of the police, and is contrary to the principles embodied in the PACE powers concerning arrestable offences as originally proposed by the Royal Commission on Criminal Procedure.” [*Policing: Modernising Police Powers to Meet Community Needs, Responses*, Home Office]

⁴² There is little cause for concern in this situation because experience has shown that ‘street dealers’ are often not low-level dealers, and it will often be easy to demonstrate that it was necessary to arrest under s.24(5)(e) PACE.

⁴³ *Hansard*, Standing Committee, January 18, 2005, col.238.

*quite a rigorous burden on the constable, given that he or she does not have to go through it at the moment.” [emphasis added]*⁴⁴

Further police powers triggered by the fact of arrest

40. Under the pre-existing framework, the demarcation and identification of offences as ‘arrestable’, ‘serious arrestable’, and ‘non-arrestable’, was relevant to the exercise of other powers (e.g. to search a person, or to seize a person’s property). “Serious arrestable offences” gave constables particularly intrusive powers, and the power to restrict rights afforded to suspects under PACE - subject to appropriate authorisation: e.g. road checks [s.4, PACE], warrants for further detention [s.43, PACE], delaying the right to have someone informed when arrested [s.56, PACE], and delaying access to legal advice [s.58, PACE].
41. Powers that become available to a constable after a person has been arrested, are not to be invoked without cause: the exercise of a power “is either justified or not in the individual case”.⁴⁵
42. The government therefore proposed that the person must be arrested for an offence that is at least “indictable” before powers contingent on arrest, are triggered.⁴⁶ This is the effect of Part 3 to Schd.7 of the 2005 Act, which amends all existing enactments, by substituting the words “indictable offence” for “serious arrestable offence”, and (at times) substituting “indictable” for “arrestable”. These changes have been criticised.⁴⁷
43. Some of the changes are:
 - Section 4 PACE (road checks) – the words ‘serious arrestable offence’ is replaced with the phrase ‘indictable offence’. The consequence is that road checks can be carried out in connection with a wider range of cases.
 - Section 8 (entry and search): warrants under this section can be granted in a wider range of cases than hitherto.
 - Section 17 (power of entry): the purpose of substituting ‘indictable offence’ for ‘arrestable offence’ was presumably to widen the power of constables to enter and arrest for various offences, but in fact the change means that the power is lost in a number of cases: see below.
 - Section 18 PACE (entry and search following an arrest). The section 18 power is now confined to indictable offences with the result that the power is lost in some cases. Note that the simple possession of cannabis⁴⁸ is an indictable offence, but an officer rarely needs to search premises under s.18 PACE merely to investigate that offence.
 - Section 32 (search upon arrest): this power is again now limited to indictable offences.

⁴⁴ Code G.2.6 lends support to that view: “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.”

⁴⁵ Para.2.18, Consultation Paper: *Modernising Police Powers to Meet Community Needs*, H.O., 2004.

⁴⁶ The 2005 Act does not define what “indictable” means, but the Interpretation Act 1978 defines an “indictable offence” as an offence triable only on indictment, or triable “either way”. The government accepts that the effect of these amendments is to, “...bring a wider range of offences within the orbit of the trigger powers currently only available at the ‘serious’ end of the offence range. But as indicated, there are significant safeguards and protections in place before these powers can be exercised. They would remain in place to provide an important safeguard against disproportionate use” [Para.2.18; *Policing: Modernising Police Powers to Meet Community Needs*, H.O, August 2004].

⁴⁷ As part of its response to the HO Consultation Paper, *Liberty* stated “...an officer would need to undertake a detailed rights analysis under the HRA before exercising such powers on a case-by-case basis. It is unclear how this approach will protect the rights of the public to be free from arbitrary and disproportionate interference with their rights; it is also unclear how moving from a structured framework to a case-by-case system will prove more efficient or will free up police resources (in fact, the contrary is surely true).” [*Policing: Modernising Police Powers to Meet Community Needs, Responses*, Home Office].

⁴⁸ Under s.5(2), Misuse of Drugs Act 1971.

- Section 42 (authorisation of continued detention). CENTREX say that the offences that will no longer attract this power “are not normally ones that such authorisation would be sought”.⁴⁹
44. By substituting the expression “indictable offence” for “arrestable offence”, the overall effect is that the threshold of seriousness has been lowered for the purpose of invoking the statutory powers mentioned above, and it follows that those powers might now be exercisable with respect to indictable offences that were not previously “arrestable”: for examples, see **Appendix “B”** to this paper.
 45. It must be noted that some offences will no longer attract the statutory powers mentioned above. The offences in question are those that previously appeared in schedule 1A PACE and which are triable summarily only: see **Appendix “A”** to this paper.
 46. Sections 8, 17, 18, and 32 are considered in greater detail in this paper under the heading “Powers of Search and Seizure”.

Discretion to arrest? To what extent is there still a discretion?

47. Code G, para.2.4, states that the power of arrest is “only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person”, and that:

“it remains an operational decision *at the discretion* of the arresting officer” (emphasis added) as to “- what action he or she may take at the point of contact with the individual; - the necessity criterion or criteria (if any) which applies to the individual; and - whether to arrest, report for summons, grant street bail, issue a fixed penalty notice or take any other action that is open to the officer”.
48. Code G, 2.7, refers to the “*operational discretion* of individual officers”⁵⁰, but in this instance the discretion relates to the circumstances that satisfy the criteria set out in new s.24(5) PACE.
49. It is questionable whether the references in Code G to “discretion” are entirely appropriate because what is required of an officer is judgment. An officer must weigh-up whether the statutory criteria for making an arrest, under s.24 PACE, are met. An officer might decide that it is not practicable to arrest D (e.g. because a more serious incident occurs that requires his immediate attention), and therefore D is not arrested notwithstanding that the officer could justify an arrest under s.24. In that sense, the officer retains an executive discretion to arrest, but it is discretion curtailed by the provisions of SOCPA.⁵¹
50. There is no doubt that the pre-existing framework gave constables a greater degree of executive discretion than is now available to them. The diminishment of discretion becomes apparent if one sketches the history of the summary power of arrest for constables from 1967. Section 2(4) of the Criminal Law Act 1967 provided that “Where a constable, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence”. That provision - by the use of the word “may” - gave a constable discretion to arrest a person if he had reasonable cause to do so, but the officer was not bound to make an arrest. If there was reasonable cause to arrest, an officer’s motive or purpose for exercising his discretion to arrest was subject to the principles stated in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*:⁵² see, for

⁴⁹ Digest September 2005, Centrex (Central Police Training and Development Authority) 2005.

⁵⁰ Emphasis added.

⁵¹ See *Shaaban bin Hussein v Chong Fook Kam* [1970] AC 942, and *Al-Fayed v Commissioner of Police for the Metropolis (No.3)* [2004] EWCA Civ 1579, for a discussion regarding a constable’s executive discretion to make an arrest pre SOCPA.

⁵² *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 K.B. 223

example, *Holgate-Mohammed v. Duke*⁵³ (and see the commentary to that case in [1984] Crim.L.R. 419).

51. In *Holgate*, a police constable, exercising his powers of arrest pursuant to section 2(4) of the CLA 1967, arrested H on suspicion of having committed a burglary. H was interrogated at the police station and she maintained her innocence. She was released a few hours later and never charged. The officer had arrested H in the belief that she was more likely to respond truthfully to questions put to her while under arrest at the police station, than if, without arresting her, she was questioned at her own home from which she could order him to depart at any moment. Their Lordships observed that an officer was given -

“... an executive discretion whether to arrest...or not. Since this is an executive discretion expressly conferred by statute upon a public officer, the constable making the arrest, the lawfulness of the way in which he has exercised it in a particular case cannot be questioned in any court of law except upon those principles laid down by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223” [per Lord Diplock].
52. *Holgate* was decided pre-PACE, at a time when the actions of police officers investigating offences were less heavily regulated, but even s.24 of PACE 1984, as originally drafted, conferred upon an officer an executive discretion to arrest: see *Fayed v Metropolitan Police Commissioner* [2004].
53. The question that arises is whether new s.24 of PACE has altered the position. It is submitted that new s.24 continues to confer upon a constable discretion to arrest, but what *has* changed is that an officer’s motive or purpose for doing so is now relevant to the question whether the arrest was lawful. Suppose an officer has reasonable grounds to suspect that an offence has been committed, and that he reasonably suspects D to be guilty of it [s.24(2)]. In addition, the officer has reasonable grounds for believing (and he does believe) that it is necessary to arrest the person to allow the prompt investigation of the offence [s.24(5)(e)]. It is submitted that even at that point the officer is not *obliged* to arrest D. He still has discretion *not* to do so. He might not do so if a major incident occurs that requires the officer’s urgent attention, and the police decide to deal with D in some other (albeit less satisfactory) way. However, if the decision is taken to arrest D, because the officer believes that it is necessary to do so (based on s.24(5)(e)), it is open to the court to enquire into the officer’s reasoning. The question becomes not one of discretion but whether the power of arrest was available to the officer at all.
54. The changes introduced to SOCPA does not mean that “executive discretion” concerning a constable’s power of summary arrest is a thing of the past: there is merely less room for the exercise of discretion. In the Privy Council case of *Hussein v. Chong Fook Kam*,⁵⁴ Lord Devlin (giving the judgment of the Board, p.498) said,

“To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police inquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar.”
55. If we take away the references to “executive discretion”, the factors mentioned by Lord Devlin, will often be relevant today: see Code G of PACE.

Preserved powers of arrest

56. Note that s.26 of PACE has not been repealed. That section repealed statutory powers of arrest that existed before PACE came into force, but it also specified in schedule 2 of PACE, powers of

⁵³ (1984) 79 Cr.App.R. 120, HL

⁵⁴ [1970] A.C. 492

arrest under various enactments that were to be preserved. Schedule 2 of PACE survives, but SOCPA has pruned the list of offences, as follows:

| Preserved Power of Arrest | Repeal |
|--|---|
| Section 17(2) of the Military Lands Act 1892. | Pt.2, schd.7 |
| Section 12(1) of the Protection of Animals Act 1911. | Para.11, schd.7 and schd.17 |
| Section 2 of the Emergency Powers Act 1920. | |
| Section 7(3) of the Public Order Act 1936. | Para.13, schd.7, and schd.17 |
| Section 49 of the Prison Act 1952. | |
| Section 13 of the Visiting Forces Act 1952. | |
| Sections 186 and190B of the Army Act 1955. | |
| Sections 186 and190B of the Air Force Act 1955. | |
| Sections 104 and105 of the Naval Discipline Act 1957. | |
| Section 1(3) of the Street Offences Act 1959. | Para.14, schd.7, and schd.17 |
| Section 32 of the Children and Young Persons Act 1969. | |
| Section 24(2) of the Immigration Act 1971 and paragraphs 17,24 and33 of Schedule 2 and paragraph 7 of Schedule 3 to that Act. | |
| Section 7 of the Bail Act 1976. | |
| Sections 6(6),7(11),8(4),9(7) and10(5) of the Criminal Law Act 1977. {query whether this should be s.7(4)?} [s.10(5): omit the words ‘a constable in uniform’] | Para.19, schd.7, and schd.17 |
| Schedule 5 to the Reserve Forces Act 1980. | |
| Sections 60(5) and 61(1) of the Animal Health Act 1981. | Para.21, schd.7, and schd.17 [re s.61(1)] |
| Rule36 in Schedule 1 to the Representation of the People Act 1983. | |
| Sections 18,35(10),36(8),38(7),136(1) and138 of the Mental Health Act 1983. | |
| Section 5(5) of the Repatriation of Prisoners Act 1984. | |

III. A citizen’s power of arrest

Statutory provision – s.24A PACE

57. Section 24A PACE provides:

- “(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 to prevent the person in question -
- (a) causing physical injury to himself or any other person;
 - (b) suffering physical injury;
 - (c) causing loss of or damage to property; or
 - (d) making off before a constable can assume responsibility for him.]”

58. See the table at paragraph 14 above for a comparison of the new provisions against the terms of s.24 PACE as originally drafted.

The position of citizens: the seriousness component in s.24A, PACE

59. Under pre-existing rules, a citizen's arrest was exercisable only in respect of an 'arrestable offence'. In addition there is a common law power to deal with or prevent a breach of the peace. Under the new scheme for citizens, the criterion of seriousness is retained, but whereas under old s.24 a citizen could only arrest in respect of an 'arrestable offence', the new powers encompass 'indictable' offences – i.e. those that are triable only on indictment, or triable 'either way'.
60. The government has denied suggestions that it has broadened powers of arrest for non-constables as part of its wider reforms of the police service by using more civilians to assist in the administration of law enforcement.⁵⁵
61. The inclusion of the criterion of seriousness in s.24A PACE was added to the Bill as it was being scrutinised in Parliament. It was not a requirement when the Bill was first printed in November 2004: see cl.101(1). The omission led to much criticism [*Research Paper 04/88*, pages 11-12]:
 "... removing the threshold of seriousness would mean that citizens' arrests would be lawful in relation to any offence, not just those currently defined as arrestable. The Police Federation was not in favour of expanding the power in this way, pointing out that police officers have "accountability, training and experience, all of which are not available to ordinary members of the public". Similar points were made by the Law Society, who felt that the proposed powers "would be no easier for a member of the public to understand, and would therefore continue to place a member of the public who effects an arrest at risk of doing so unlawfully". The Bar Council called the proposals "a significant extension of the power of a private citizen to carry out an arrest".
62. A negative aspect of the SOCPA reforms is that non-constables will be unlikely to know which offences are indictable, and which are not. A non-constable must also satisfy the condition that he/she has reasonable grounds for believing that it is necessary to arrest the person for one of the reasons set out in s.24A(4): see s.24A(3).

"Committing" an offence, and the moment an offence has been "committed"

63. In the Green Paper "*Policing: Modernising Police Powers to Meet Community Needs*"⁵⁶ it is said that the "...concept of the citizen's power of arrest is widely known but poorly understood" [para. 2.8]. That is true, but unhappily there is nothing in the Green Paper that raises the level of understanding.
64. A citizen's power of arrest is confined to cases where someone has actually committed the offence for which D was arrested: consider *Graham Self* (1992),⁵⁷ and *Walters v WH Smith* [1914]⁵⁸. But if a person other than a constable seeks to justify an arrest under s.24A(1) PACE [i.e. committing an indictable offence], in circumstances where the offence was *completed* by the time the arrest was made, is the arrest unlawful?
65. The issue remains relevant because the powers of arrest for a person other than a constable under s.24A(1), (2), broadly mirror those that were available under old s.24 PACE.
 In *Self*, S was accused of shoplifting. S was observed putting a bar of chocolate into his pocket. He looked at some Christmas cards, and then left the shop without paying for the chocolate. A store detective, a shop assistant and an onlooker pursued him. S threw away the chocolate bar. The onlooker, and the shop assistant, effected a citizen's arrest: a struggle ensued. At his trial, S claimed that he had forgotten about the chocolate, panicked, and threw the bar away. He was acquitted of theft, but convicted on two counts of assault with intent to resist arrest.

⁵⁵ See *Hansard*, January 18, 2005.

⁵⁶ H.O, August 2004

⁵⁷ 95 Cr App R 42

⁵⁸ [1914] 1 K.B. 595

His appeal against his convictions for assault was allowed. Pursuant to s.24(5) PACE, the commission of an arrestable offence was a condition precedent to the making of a citizen's arrest, but as S had been acquitted of theft, no valid citizen's arrest had been made, and accordingly, the two offences of assault with intent to resist arrest could not be committed: [*Walters v. W. H. Smith & Son Ltd.* considered].

66. It is to be noted that *Self* is a case where the contention was that old s.24(5) PACE gave the onlooker and the store assistant the power to arrest S. That argument was hopeless (subject to one point⁵⁹) as the opening words to s.24(5) state in terms that the power exists where the offence has been committed.

67. In *Self* the court considered old s.24(4) and (5) PACE. The court said:

“...it is said on behalf of the Crown that the court should not be assiduous to restrict the citizen's powers of arrest and that, by going back to subsection (4) and looking at the words there, ‘anyone who was in the act of committing an arrestable offence,’ perhaps those words can be used to cover the sort of situation that arose in this case where somebody is apparently making good his escape.

Having committed the offence of theft, can it be said, asks Mr. Sleeman, that the thief is not in substance still committing the offence while running away? He asks, rhetorically, should the court have to enquire into the exact moment when the ingredients of theft come together - dishonesty, appropriation, intention permanently to deprive - when to analyse the offence carefully may produce absurd results so that in one set of circumstances the offence may be complete and the situation fall within subsection (5) and in another be still being committed and fall within subsection (4).

The view of this Court is that little profit can be had from taking examples and trying to reduce them to absurdity. The words of the statute are clear and applying those words to this case there was no arrestable offence committed.”

68. Where D has dishonestly appropriated goods and then makes good his escape, it might be said that a citizen can justify an arrest under s.24A(1) but not under s.24A(2) because the offence was completed at the moment D appropriated the goods. It is submitted that this is an argument of academic interest only. Offences can continue to run: X may rob a bank and get into an unoccupied car, and attempt to drive away with the gun and the proceeds. If Y disables the car, and makes a citizen's arrest, is the arrest unlawful (for the purposes of s.24A(1)(b)), because the robbery had by then been committed? The suggested answer is ‘no’. The late Professor Sir John Smith Q.C., stated in his commentary to *Self*:⁶⁰

“It might have been more arguable that the arrest was justified under section 24(4)(b) - that this was an arrest of a person suspected to be committing an arrestable offence. *Hale* (1978) 68 Cr.App.R. 415 shows that theft is not an instantaneous act and the thief may still be in the course of stealing after he has assumed the rights of an owner over the property. Arguably, the theft continues while he is "on the job" and he is still in the course of stealing while he is fleeing down the street in the immediate vicinity of the premises where he assumed ownership.”

69. It is difficult to see why – on the facts in *Self* – it would have been *more* arguable that the arrest was justified under what was s.24(4)(b) [now s.24A(1)(b)]. *Self* had been acquitted of theft and therefore he was not a thief “still in the course of stealing while he is fleeing down the street”.

⁵⁹ The point that remains is whether, in civil proceedings, a verdict or finding of “not guilty” is conclusive proof for the purposes of what is now s.24A(2) PACE [old s.24(5)]. According to the Vice Chancellor in *Stanley v Benning (T/as Temptation Clothing)* CCRTF/97/1640/2; July 14, 1998 the answer is that as “a matter of principle” no one in civil law can be debarred from alleging that an acquittal was incorrect [see Bailey, Harris and Jones, on *Civil Liberties*]. However, in the context of criminal proceedings, including those in the Court of Appeal (Criminal Division), the answer is likely to be that the finding or verdict is decisive of the issue.

⁶⁰ [1992] Crim.L.R. 572-2.

POWERS OF SEARCH AND SEIZURE

I. Stop and Search

The value of stop and search as a policing tool.

1. See now revised Code A (PACE Codes of Practice). Stop and search powers are contentious with the public, but they have always been viewed by the police as a very valuable tool: and see “*The Future of Stop and Search*”, Laurence Lustgarten;⁶¹ and “*The Revised PACE Codes of Practice: A Further Step Towards Inquisitorialism*”, Ed Cape;⁶² and “*From PC Dixon to Dixon PLC: Policing and Police Powers Since 1954*” Tim Newburn & Robert Reiner.⁶³
2. The data (such as it is) has produced mixed responses as the effectiveness of stop and search in detecting and preventing crime. The *2002 Pace Review Report of the Joint Home Office/Cabinet Office* was lukewarm, commenting, “the evidence suggests it has a small impact on detecting and preventing crime”. The authors of the Review added:

“Research shows that searches based on solid grounds, drawing on up-to-date and accurate intelligence, are most likely to be effective, lawful, and secure public confidence. It will nevertheless be important to keep this difficult area under review, to ensure that officers are as clear as possible about the circumstances under which they can search someone, and that the guidance promotes as effective a use of the power as possible. Use must be based as far as possible on objective assessments informed by accurate and current information.”
3. The *Runciman Independent Inquiry Report* was more positive:

“Stop and search is an important means of detecting offenders. The Metropolitan Police Service examined over 8000 arrest records taken from a two-month period in five London divisions [Stop and Search: Renewing the tactic. Interim Report. Metropolitan Police Service, August 1998]. Almost 850, or just over 10%, had arisen from a stop and search. One-third of these were for drugs offences. When crimes cleared up were examined it was found that a quarter of all clear-ups for possessing drugs with intent to supply and two-thirds of those for possession had been achieved after an initial stop and search. Over 60% of all arrests following a stop and search led to a charge or caution, in 19% no further action was taken. The remaining 21% were dealt with in various other ways.” [chap.6; para.7]
4. In a series of important passages, the *Runciman Report* said:

“Clearly demographic factors play some part in explaining the far larger proportions of members of ethnic minorities searched in inner cities as compared to the rest of England and Wales. The differential impact of stop and search may also be as much socio-economic as racial. In our meetings with young people we were struck by how much more often young people from the inner London boroughs had been in contact with the police than young people in outer London. A proportion of stops and searches arise from action taken in response to information from the public, which may be consciously or unconsciously biased.

11 We accept that the power to stop and search is essential to enforcing the law on drugs and we have made no recommendations for any diminution of police powers in this respect. Stop and search is a crucial evidence-gathering power. It may also disrupt local markets and visible policing is important where trafficking is a nuisance. But stop and search is, as the Advisory Council on the Misuse of Drugs pointed out in 1994, one of the most controversial powers as well as one of the most important [*Drug Misusers and the Criminal Justice System, Part II: Police, Drug Misusers and the Community*, London, HMSO 1994. Paragraph 3.6].

12 The evidence to us continues to confirm the controversial nature of the power. It is intrusive, gives opportunities for discrimination and can undermine police community relations. Members of the public often take exception to the manner in which stops and searches are conducted and young people, who are particularly prone to being stopped, see it as an unjustified interference in their freedom of movement. It is frequently suggested that the police use their stop and search powers as a substitute for the former ‘sus’ laws. The most recent research suggests that the police may sometimes use the power for intelligence gathering but that this can seem like harassment of people who have come to police

⁶¹ [2002] Crim.L.R. 603

⁶² [2003] Crim.L.R. 355

⁶³ [2004] Crim.L.R. 601

notice in the past. The power may also be used as a form of social control for breaking up or moving on groups of young people. None of these purposes is covered by the PACE Codes [M. Fitzgerald, *Final Report into stop & search*, Metropolitan Police Service, 1999].

13 As much resentment may be caused by the manner in which stops are made as the fact that they take place at all. Code A has been amended to give guidance to police officers on this point as follows:-

‘...in general a brief conversation or exchange may be desirable, not only as a means of avoiding unsuccessful searches, but to explain the grounds for the stop/search, to gain co-operation and reduce any tension there may be surrounding the stop/search.’

We share the view of the Advisory Council on the Misuse of Drugs that the main need is for quality control and close monitoring of the outcomes of stop and search. The importance of monitoring and supervision is also now recognised in a recent amendment to Code A as follows:

‘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 that any such evidence should be addressed. Supervising officers should take account of the information about the ethnic origin of those stopped and searched which is collected and published under section 95 of the Criminal Justice Act 1991.’

We support the current efforts by the police to manage the tactic more fairly and effectively. The aim should be to have fewer stops and searches but a higher proportion of them with successful outcomes. Such steps are also necessary in order to ensure that powers of stop and search are compatible with the European Convention on Human Rights, since that requires powers of detention to be proportionate and objectively justifiable.”

II. Search of premises without a warrant

5. Section 18 of PACE now provides:⁶⁴

“18(1) 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 offence which is connected with or similar to that offence.
- (2) A constable may seize and retain anything for which he may search under subsection (1) above.
- (3) The power to search conferred by subsection (1) above is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.
- (4) Subject to subsection (5) below, the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.
- (5) A constable may conduct a search under subsection (1) -
- (a) before the person is taken to a police station or released on bail under section 30A, and
 - (b) without obtaining an authorisation under subsection (4), if the condition in subsection (5A) is satisfied.
- (5A) The condition is that the presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.
- (6) If a constable conducts a search by virtue of subsection (5) above, he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.
- (7) An officer who -
- (a) authorises a search; or
 - (b) is informed of a search under subsection (6) above,
- shall make a record in writing -
- (i) of the grounds for the search; and
 - (ii) of the nature of the evidence that was sought.

⁶⁴ As amended by s.107(1) and Sched. 7, para. 9(1) of the Police (Reform) Act 2002; and the CJA 2003, s.12, and Sched. 1, paras 1 and 2; and by SOCPA, s.111, sched.7, Part 3, para.43(5), which substitutes “indictable offence” for “arrestable offence”. The amendments came into force on the 1st January 2006: *The Serious Organised Crime and Police Act 2005 (Commencement No. 4 and Transitory Provision) Order 2005*, SI 2005/3495.

- (8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.”
6. At common law there was no right vested in the police or anyone else to enter a private house without a warrant to investigate a crime, no matter how serious: see *McLorie v. Oxford*,⁶⁵ a decision reversed by section 18(1) of PACE.
 7. Section 18 now applies in cases where a person has been arrested in connection with an “indictable offence”. SOCPA 2005 does not define what “indictable” means: the answer is found in the Interpretation Act 1978 [s.5 and schd.1]. In short, an “indictable offence” is one that is triable only on indictment, or it is triable “either way”.
 8. The government accepts that the effect of this amendment is to “bring a wider range of offences within the orbit of the trigger powers currently only available at the ‘serious’ end of the offence range. But there are significant safeguards and protections in place before these powers can be exercised. They would remain in place to provide an important safeguard against disproportionate use”.⁶⁶
 9. The reference to “safeguards” is a reference to the PACE Codes of Practice and to internal notes for guidance drafted by prosecuting authorities, law enforcement agencies, and (no doubt) other bodies. As Professor Spencer Q.C. has pointed out, this seems to be a case of enacting a statutory scheme today, and installing limits on its operation later.⁶⁷
 10. It should be noted that the use of the s.18 power has been lost in respect of offences triable summarily only, but which were nonetheless arrestable by reason of their inclusion in schedule 1A to PACE [see **Appendix A**]. It is too early to say whether the absence of the power in these cases will make the task of the police more difficult.
 11. Irrespective of whether a person arrested is a danger to himself or to others, a constable, under section 18 of PACE, may only enter and search any premises occupied or controlled by that person if he has reasonable grounds for suspecting that there is evidence on premises relating to the offence or another similar offence.⁶⁸
 12. Before invoking section 18, the constable needs the written authorisation of an officer of at least the rank of inspector unless the presence of the arrested party at the premises is “necessary for the effective investigation of the offence” [s.18(5)) and see *Badham* (1987)⁶⁹]. This would presumably include a person who had stashed drugs, and items relevant to the offence, and who would therefore be able to assist the police (if he wishes to do so) to find them.
 13. For a search under section 18 to be lawful, the arrest must also be lawful: see *R. (on the application of Odewale) v. DPP*.⁷⁰ There are also limits on the extent to which an officer may enter by force: see *Linehan v. DPP*.⁷¹

⁶⁵ [1982] Q.B. 1290

⁶⁶ See paragraph 2.18; *Policing: Modernising Police Powers to Meet Community Needs*, H.O, August 2004.

⁶⁷ *Hansard*, referred to in the speech of Lord Wedderburn of Charlton, April 6, 2005, col.755.

⁶⁸ If a person is arrested by police in any premises, and that person is a danger to himself or to others, the police are perfectly within their rights to search those premises but only for evidence relating to the offence for which he has been arrested (s.32(2)(b) of PACE) and only to the extent that the search is reasonably required (s.32(3)) but there must be reasonable grounds to believe that there is relevant evidence on the premises (s.32(6)).

⁶⁹ [1987] Crim. L.R. 202.

⁷⁰ [2001] 2 *Archbold News* 2, DC

⁷¹ [2000] Crim.L.R. 861

III. Searching for an individual

14. Section 17 of PACE has been amended by SOCPA 2005 by replacing the word “arrestable” with “indictable”⁷² and now reads as follows:⁷³

“17(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);
 - ~~(iiia) section 163 of the Road Traffic Act 1988 (failure to stop when required to do so by a constable in uniform);~~
 - [(iiia) section 4 (driving etc. when under influence of drink or drugs) or 163 (failure to stop when required to do so by constable in uniform) of the Road Traffic Act 1988;
 - (iiib) section 27 of the Transport and Works Act 1992 (which relates to offences involving drink or drugs);]
 - (iv) section 76 of the Criminal Justice and Public Order Act 1994 (failure to comply with interim possession order);
- (ca) 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 23(1) of that Act;
- [(caa) 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 whatsoever who is unlawfully at large and whom he is pursuing; or
- (e) of saving life or limb or preventing serious damage to property.

15. A constable in uniform (s.17(3) of PACE) may enter and search any premises without a warrant if the object of gaining entry is (*inter alia*) to execute a warrant of arrest, or to arrest a person for an indictable offence (s.17), providing there are reasonable grounds to believe that the person is on the premises (s.17(2)(a)) and only if it is reasonably required for the purpose of finding the person concerned.

16. All former rules of common law, which emerged to give a constable power to enter premises without a warrant, were abolished by section 17(5) of PACE. It follows that section 17 is a codifying provision (cf. *Thomas v. Sawkins*;⁷⁴ *Davis v. Lisle*;⁷⁵ *Robson v. Hallett* ⁷⁶).

⁷² Section 111, sched.7, Part 3, para.43(4), and see the comments relating to this change in the context of s.18 PACE, above. The amendments came into force on the 1st January 2006: The *Serious Organised Crime and Police Act 2005 (Commencement No. 4 and Transitory Provision) Order 2005*, SI 2005/3495.

⁷³ As amended and repealed (in part) by the Public Order Act 1986,s.40(2) and Sched.2, para.7; the CJPOA 1994,s.168(2) and Schedule 1, para. 53; the Prisoners (Return to Custody) Act 1995, s.2(1); the PCC(S)A2000,s.165(1), and Schedule 9, para. 95; and the Police Reform Act 2002,s.49(2); and as amended, as from a day to be appointed, by the SOCPA 2005,s.111, and Schedule7, paras 43(1) and(4), and paragraph 58.

⁷⁴ [1935] 2 K.B. 249

⁷⁵ [1936] 2 K.B. 434

⁷⁶ [1967] 2 Q.B. 939

17. The power under s.17 has been increased to the extent that offences triable either way (i.e. indictable) but which do not attract a maximum sentence of 5 years' imprisonment or more, come within the reach of the section: see **Appendix "B"**.
18. However, the power is lost in respect of those offences that are no longer arrestable and which are triable summarily only: see **Appendix "A"**.
19. CENTREX point out that a number of offences have been added to section 17 PACE, for the following reasons:⁷⁷
 - ◆ Section 4 Road Traffic Act 1988; (driving etc when under influence of drink or drugs). The actual power of arrest for this offence will be repealed on the implementation of Part 1 Schedule 7 SOCAP which also repealed the statutory power of entry to arrest under the Road Traffic Act 1988, hence the inclusion of a power of entry to arrest for this offence into Section 17 PACE. The power of arrest for this offence will come under Section 24 PACE.
 - ◆ Section 27 of the Transport and Works Act 1992 (Offences involving drink or drugs on transport systems). This offence relates to specified persons e.g. drivers, guards, conductors, signalmen, maintenance workers, who work on a transport system.
 - ◆ Section 61 of the Animal Health Act 1981 (rabies offences). Schedule 7 part 1 para 21 of SOCAP repeals the statutory power of arrest and power to enter and search in respect of rabies offences in the Animal Health Act 1981. The power of arrest in relation to those offences will come under the new Section 24 of PACE, the power of entry to arrest will come under Section 17(1)(caa) PACE."

IV. Intimate searches: definitions

20. Section 65(1) PACE defines the following expressions:

"intimate sample" 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 any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth; [a swab taken from a person's body orifice other than the mouth];*

"intimate search" means a search which consists of the physical examination of a person's body orifices other than the mouth;

"non-intimate sample" means –

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) *a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample; [a swab taken from any part of a person's body including the mouth but not any other body orifice];*
- (d) saliva;
- (e) a skin impression;

21. Note that the words in [...] have been deleted and the new wording (italicised) substituted by s.119 of SOCPA 2005.

V. Searches with a warrant

22. Warrants may be obtained under a number of different enactments, but only one is dealt with here, namely, section 8 of PACE (which is radically amended by SOCPA 2005).

Warrants granted under section 8 of PACE

23. Section 8 of PACE has been amended by s.114 of SOCPA 2005. Words added by SOCPA are indicated in italics within [...]:

⁷⁷ CENTREX Digest, September 2005, page 13.

8. *Power of justice of the peace to authorise entry and search of premises*

- (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.
- (6) This section applies in relation to a relevant offence (as defined in section 28D of the Immigration Act 1971) as it applies to a ~~serious arrestable offence~~ [*an indictable offence*].

[Subs. (6) was inserted by the Immigration and Asylum Act 1999, s.169(1) and Sched. 14, para. 80(1) and(2); and by SOCPA 2005.]

24. Note that "an indictable offence" reflects changes introduced by s.111 and Sch.7 of the 2005 Act.
25. When the amendments are put in place it will immediately be seen that two major changes have been introduced. First, the power to obtain a warrant from a Justice of the Peace is extended to "indictable offences". The 2005 Act does not define an "indictable offence" because the expression is already defined by the Interpretation Act 1978. Secondly, the power in s.8 is increased to enable a constable to obtain an "all premises warrant" from the court.

“Specific premises” warrants and “all premises” warrants

26. This type of warrant will allow the police access to all premises that are occupied or controlled by a person, and this will be so whether the premises are specified in the application for a warrant, or not. The additional powers enable police officers to investigate an offence in connection with a person who either is known to have more than one property that the police wish to search, or the person is known to roam from place to place with the result that items of interest are located at several premises, or the same items are moved from one set of premises to another. The amendments were the subject of consultation in the Green Paper “*Policing: Modernising Police Powers to Meet Community Needs*” [H.O, August 2004]. The government elaborated on its proposals following consultation:⁷⁸

“...police forces and individual officers gave broad support to the proposals, welcoming the operational benefits that the proposals bring both in terms of the process for applying for warrants and the operational benefits in tackling crime and gathering evidence....The police also welcomed proposals on extending time limits of warrants and allowing multiple entry applications would be of great practical benefit to investigations and ACPO believe that the present one-month rule is unnecessary and impracticable. Several respondents raised the issue of police accountability in relation to warrants. The police themselves recognised the need to retain the judicial oversight of warrants both in terms of applying for warrants and returning the endorsed warrant when it expires. Although there was broad support for using technology to improve the efficiency of applying for a warrant some groups were concerned that this could reduce the process of applying to a court to an administrative exercise. Some felt that the appearance in person of the applicant before a magistrate was an important and vital safeguard in order to be able to respond in person to any queries that may arise in considering the application. The main worries related to the scope of the warrants, in terms of duration and their compatibility with the individual’s human rights, particularly in relation to repeated entry and clarification on which properties could be searched under a ‘multi-premises’ or ‘all premises’ warrant. A number of respondents also queried the definition of ‘accessible’ within multi-premises warrants. The SOCAP Bill proposes the need for an officer to seek written approval to an officer of at least the rank of Inspector not involved in the investigation before seeking to gain entry to a named property on the warrant on a second or subsequent occasion; and to seek the same written approval before entering a premise in an ‘all premises’ warrant.”

27. These changes have broadly come to pass:-

- (a) Section 113(7) of the 2005 Act amends s.15 of PACE (safeguards) in respect of applications for search warrants by inserting new s.15(2A). That provision requires the matters there stated to be included in an application for a “specific premises warrant” or an “all premises warrant”: see below.
- (b) Section 16 PACE is amended by s.113(9) of the 2005 Act and requires in the case of an “all premises warrant”, an officer of at least the rank of inspector, to authorise in writing any entry into premises which have not been specified in the warrant (see below). A judge cannot issue an “all premises warrant” unless there are reasonable grounds for believing it is necessary to search more than one set of premises occupied or controlled by a particular person, and that it is not reasonably practicable to specify them all: see s.113(14) which inserts a new para.12A into schd.1.
- (c) Note also other amendments to schd.1 made by s.113(11), (12), (13) and (15) of the 2005 Act. The government successfully resisted an amendment (later withdrawn) that applications for an “all premises warrant” should be heard by a circuit judge or by a High Court judge.⁷⁹

Search Warrants: Safeguards under section 15 PACE

28. Section 15 PACE (as amended by s.113, SOCPA 2005; indicated in *italics*), provides:

15(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

⁷⁸ *Modernising Police Powers: responses.*

⁷⁹ *Hansard*, January 18, 2005, col.260.

- 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;
 - (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 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 it 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) *each set of premises to be searched, or (in the case of an all premises warrant) 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 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.

Execution of search warrants: section 16

29. Section 16 (as amended by s.113, s.114, SOCPA; amendments in italics) provides:⁸⁰

- 16(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.

⁸⁰ As amended by the Access to Justice Act 1999, s.90(1), and Sched. 13, para. 126; and the CJA 2003, s.2; and, as from a day to be appointed, by the Courts Act 2003, s.109(1), and Sched. 8, para. 281 (omission of words indicted by striking through, insertion of words in square brackets); and by SOCPA 2005, s.113, and 114.

- (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 *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.*
- (11) A warrant which is returned under subsection (10) above shall be retained for 12 months from its return-
- (a) by the ~~chief executive to the justices~~ [designated officer for the local justice area], if it was returned under paragraph (i) of that subsection; and
 - (b) by the appropriate officer, if it was returned under paragraph (ii).
- (12) If during the period for which a warrant is to be retained the occupier of *premises* to which it relates asks to inspect it, he shall be allowed to do so.”

30. Note that schedule 1 in relation to special material is also amended by SOCPA 2005.

Searching persons as well as premises

31. A number of cases have dealt with the questions whether, and in what circumstances, police officers may detain and search persons found on premises, during the course of a search of those premises. May an officer stop a person leaving premises, even though that person has not been arrested, and then proceed to search him/her? A good example concerns section 23(3) of the

Misuse of Drugs Act 1971 which empowers the police to apply to a justice of the peace for a warrant that expressly authorises the police to search “any person found therein”.⁸¹

In *DPP v Meaden*,⁸² police officers executed a search warrant issued under s.23 of the MDA, and s.15 of PACE. Note that the warrant authorised the police to search both the premises and persons found therein, on the basis of a suspicion that controlled drugs, or relevant documents might be found there. The defendant was searched, and then went into the bathroom. He asked to go downstairs, but the police officer refused, and the defendant became abusive, and allegedly obstructive. He was later charged with wilfully obstructing the officer in the execution of his duty contrary to s.89(2) of the Police Act 1996. He was also arrested for assaulting an officer in the execution of his duty, contrary to s.89(1) of the 1996 Act, after the defendant was said to have thrown a cigarette lighter at him. The justices acceded to a submission of no case to answer, on the grounds that as the police officers had not arrested him, they were acting outside their duty.

The prosecution appealed by way of case stated, submitting that the justices had failed to take into account the powers in s.117 of PACE under which where any provision of the Act conferred a power on a constable, the officer had power to use reasonable force if necessary in the exercise of that power.

The Divisional Court allowed the prosecutor’s appeal.

Police officers, executing a search warrant of a property, were acting within the execution of their duty if they asked individuals to go into and remain in certain rooms whilst they were searching other rooms in the property. The officers were entitled to prevent individuals from leaving the property altogether subject to the police being able to show (and the burden upon them was a heavy one) that the use of force was necessary and reasonable. Section 117, PACE, conferred the power to use reasonable force for the purpose of executing the warrant. Whether, in a particular case, the force used was reasonable, depended on the particular facts and had to be gauged in the context of the purpose for which the force was being used. In the present case, the warrant authorised a search of premises and persons for controlled drugs and documents connected with drugs offences. That authority, to be meaningful, had to enable the search to be effective. The matter was remitted to the justices to continue the hearing.

32. In *Meaden*, the Court distinguished *Hepburn v Chief Constable of Thames Valley*,⁸³ but note that in the latter case, the warrant did not expressly authorise the police to search persons – a material difference: and read the very helpful commentary to this case by Professor David Ormerod.

33. Note that in *King v. R.*,⁸⁴ the Privy Council held that a warrant, granted under Jamaican legislation, was unlawful if it did not expressly authorise the search of persons as well as premises. In that case, Lord Hodson said (after stating the facts):

“In these circumstances the search was not on the face of it justified by the warrant nor, in their Lordships’ opinion, can authority for the search of any person be implied from the language of the section without express authorisation. In a South African case on consideration of a statutory provision as to the issue of warrants to search premises, persons not being mentioned, it was held at first instance that a search warrant covered persons as well as premises where premises only were mentioned, since to hold the opposite would lead to the defeat of the objects of search warrants because persons on the premises would only have to take material documents and conceal them on their persons and defeat the objects of the search. This decision was reversed on appeal by the Transvaal Provincial Division in the case of *Seccombe and Others v. Att.-Gen. and Others* (1919) S.A.L.R. 270. Their Lordships see no reason to take a different view of the Act in question here which, by referring to persons as well as premises, strengthens the argument that if a warrant is to cover persons it must say so in terms.”

34. In *Hammond v. Howdle*,⁸⁵ it was held that it is permissible for the warrant to say that one of its objects is to search “persons” on premises even if the police do not know who is going to be on premises at the time of the search. The Court said:

“What is required is that there should be reasonable grounds for suspecting that ‘a person’ on the premises concerned is in possession of controlled drugs. It is not necessary that a view should be formed as to precisely who that person may be. The name of the person is not important. . . . Nor is it

⁸¹ If police wish to search persons on premises, then it is important that the warrant should be applied for on that basis.

⁸² [2004] Crim.L.R. 587

⁸³ [2002] EWCA Civ 1841

⁸⁴ [1969] 1 A.C. 304, (1968) 52 Cr.App.R. 353

⁸⁵ 1996 S.L.T. 1174

important that in any other way the individual or individuals should be identified. The crucial point is the connection between controlled drugs and the premises, and the existence of a reasonable ground for suspecting that a person on the premises, whoever he or she may be, is in possession of the controlled drugs.”

35. This author respectfully agrees with Professor Ormerod that:

“There are strong arguments against reading into the statutory powers to search premises an implied power to search all individuals present on the premises. First, a search of a person involves a qualitatively different intrusion of privacy from a search of premises. Such intrusions should always require express statutory authority.” [Commentary to *Meaden* in the Criminal Law Review]

Preventing persons from moving around in premises or leaving

36. Searches also need to be effective: consider *R. (on the application of Collman) v DPP* where Maurice Kay J. held that:⁸⁶

“the precise methodology of the search [of a person] is not a matter of statutory prescription ... of necessity a degree of judgement has to be left to those carrying out the search, although of course, always constrained within the bounds of what is reasonable in all the circumstances.”

37. Professor Ormerod makes the following points, in relation to the power to restrict the movement of persons within premises being searched:

“The officer’s power to restrict the movement of those present on the premises is expressly provided for under s.23, so there is little difficulty on the facts (although arguably s.23 could be challenged as too broad under Art.5(1)(b) as interpreted in *McVeigh v United Kingdom* (1983) 5 E.H.R.R. 71). Such a power to be able to detain occupants to affect the search as expeditiously as possible has a pragmatic appeal, subject to a requirement of proportionality, especially if the search would otherwise be frustrated. Thus, if the search is for something that could not be secreted about the person, there might be no need for occupants to be dealt with in this way. A similar power has been recognised in other circumstances, e.g. *Murray v Ministry of Defence* [1988] 1 W.L.R. 692. However, that involved the exercise of power under s.14(3)(a) of the Northern Ireland (Emergency Provisions) Act 1978, and the need to remove individuals to a specific area is perhaps necessary in all terrorist cases for the sake of safety. The European Court of Human Rights in *Murray v United Kingdom* (1995) 19 E.H.R.R. 193 relied heavily upon that terrorist context to conclude that the action was not disproportionate to the operation (at [92]). Code B does not provide any explicit assistance, but it is submitted that the absence of any guidance cannot be seen as support for such an implied power. At best, reliance can be placed on Code B’s consistent recognition that the search powers cannot be frustrated by the actions of the occupier. Similarly, the ECHR jurisprudence is not especially enlightening as Art.5 is not generally engaged by such limited restrictions on movement (as opposed to detention proper): *Guzzardi v Italy* (1981) 3 E.H.R.R. 333. However, it is submitted that such a power to detain in a single room should not be implied without express statutory authorisation. There are numerous problems with implying such a power, one being that it might constitute a deprivation of liberty without statutory authority (cf. Art.5). The illegality of restricting movement confirmed by the fact that following *Murray*, the government felt it necessary to provide legislative confirmation of the power to act in this way: see the Prevention of Terrorism (Temporary Provisions) Act 1989 s.21 (and see *Walker*, (1989) 40 N.I.L.Q. 1). The express provision of such a power in the Terrorism Act 2000, Sch.10, para.4 suggests that in the absence of any such statutory power the action is illegal. Further, objections to implying such a power include that an occupier might legitimately claim a right to witness or have another witness the search under Code B para.6.11, (but even this is subject to it not seriously hindering the search). Moreover, in practical terms, the power might involve shepherding many people (e.g. between rooms in a nightclub). It would also be unclear for what duration such a power applied, and whether it extended only to restriction of movement within the premises or also a power to detain the person on the premises. Given these difficulties, it is submitted that any such power deserves Parliamentary scrutiny. Related issues could also be dealt with such as the use by occupiers of mobile phones during the course of the search.”

⁸⁶ [2003] EWHC 1452 (Admin)

FINANCIAL REPORTING ORDERS

Statutory provisions

1. Sections 76 and 79 SOCPA 2005, provide as follows:⁸⁷

Section 76

Financial reporting orders: making

- (1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.
- (2) But it may do so only if it is satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.
- (3) The offences are-
 - (a) an offence under any of the following provisions of the Theft Act 1968 (c. 60)-
section 15 (obtaining property by deception),
section 15A (obtaining a money transfer by deception),
section 16 (obtaining a pecuniary advantage by deception),
section 20(2) (procuring execution of valuable security, etc.),
 - (b) an offence under either of the following provisions of the Theft Act 1978 (c. 31)-
section 1 (obtaining services by deception),
section 2 (evasion of liability by deception),
 - (c) any offence specified in Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (lifestyle offences).
- (4) The Secretary of State may by order amend subsection (3) so as to remove an offence from it or add an offence to it.
- (5) A financial reporting order-
 - (a) comes into force when it is made, and
 - (b) has effect for the period specified in the order, beginning with the date on which it is made.
- (6) If the order is made by a magistrates' court, the period referred to in subsection (5)(b) must not exceed 5 years.
- (7) Otherwise, that period must not exceed-
 - (a) if the person is sentenced to imprisonment for life, 20 years,
 - (b) otherwise, 15 years.

Section 79 – Effect

79. Financial reporting orders: effect

- (1) A person in relation to whom a financial reporting order has effect must do the following.
- (2) He must make a report, in respect of-
 - (a) the period of a specified length beginning with the date on which the order comes into force, and
 - (b) subsequent periods of specified lengths, each period beginning immediately after the end of the previous one.
- (3) He must set out in each report, in the specified manner, such particulars of his financial affairs relating to the period in question as may be specified.
- (4) He must include any specified documents with each report.
- (5) He must make each report within the specified number of days after the end of the period in question.
- (6) He must make each report to the specified person.
- (7)
- (8) In this section, "specified" means specified by the court in the order.
- (9)
- (10) A person who without reasonable excuse includes false or misleading information in a report, or otherwise fails to comply with any requirement of this section, is guilty of an offence and is liable on summary conviction to-
 - (a) imprisonment for a term not exceeding-

⁸⁷ In force, from April 1, 2006: *Statutory Instrument 2006 No. 378 (C.9), The Serious Organised Crime and Police Act 2005 (Commencement No. 5 and Transitional and Transitory Provisions and Savings) Order 2006.*

- (i) in England and Wales, 51 weeks,
 - (ii) in Scotland, 12 months,
 - (iii) in Northern Ireland, 6 months, or
- (b) a fine not exceeding level 5 on the standard scale, or to both.

Discussion

2. Financial Reporting Orders may be made in respect of persons convicted of an offence particularised in the 2005 Act (typically a “criminal lifestyle” offence, set out in Schedule 2 of the Proceeds of Crime Act 2002) where the risk of re-offending is sufficiently high to justify making the order.
3. The list of offences in subs.(3) is short, but the list of so-called ‘life style offences’ in sch.2 to the Proceeds of Crime Act 2002 is long. It follows that many offences fall within s.76 SOCPA. There is nothing in s.76 that limits its application to serious offences only.
4. A Financial Reporting Order is an order that the offender provide particulars of his financial affairs to a specified person (probably a police officer), for such periods and in such detail as the court directs. The order may endure for a maximum of five years if made in a Magistrates' Court, 15 years if made in a higher court, or 20 years if the defendant was sentenced to life imprisonment.
5. The Lord Chief Justice was “helpful in his suggestion” that the reports should not be at fixed intervals throughout the course of the order, and the Bill was accordingly amended to allow the sentencer to direct when reports are to be served [*Hansard*, April 7th, 2005, col.1585].
6. The government has said that financial reporting orders will act as a deterrent to reoffending [*Hansard*, March 14, 2005, col.1080], but there is no evidence that this will be so. The real purpose is to increase the fund of knowledge held by the law enforcement agencies.

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APPENDIX “A”**Schedule 1A offences under PACE 1984 prior to its repeal by SOCPA 2005**

| | Schedule 1A | Specific Offences Which Were Arrestable Offences Under PACE | Summary only |
|------|---|---|---------------------|
| 1 | Customs and Excise Acts | An offence for which a person may be arrested under the customs and excise Acts (within the meaning of the Customs and Excise Management Act 1979). | |
| 2 | Official Secrets Act 1920 | An offence under the Official Secrets Act 1920 which is not an arrestable offence by virtue of the term of imprisonment for which a person may be sentenced in respect of them. | |
| 2ZA | Criminal Justice Act 1925 | An offence under section 36 of the Criminal Justice Act 1925 (untrue statement for procuring a passport). | |
| 2A. | Wireless Telegraphy Act 1949 | An offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way). | |
| 3 | Prevention of Crime Act 1953 | An offence under section 1(1) of the Prevention of Crime Act 1953 (prohibition of carrying offensive weapons without lawful authority or excuse). | |
| 4 | [Repealed by Sexual Offences Act 2003,s.140, and Sched. 7.] | | |
| 5 | Obscene Publications Act 1959 | An offence under section 2 of the Obscene Publications Act 1959 (publication of obscene matter). | |
| 5A | Firearms Act 1968 | An offence under section 19 of the Firearms Act 1968 (carrying firearm or imitation firearm in public place) in respect of an air weapon or imitation firearm. | Yes |
| 6 | Theft Act 1968 | (a) section 12(1) of the Theft Act 1968 (taking motor vehicle or other conveyance without authority etc.); or | Yes |
| | Theft Act 1968 | (b) section 25(1) of that Act (going equipped for stealing etc.). | |
| 6A. | Misuse of Drugs Act 1971 | An offence under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) in respect of cannabis or cannabis resin (within the meaning of that Act). | |
| 7 | Theft Act 1978 | An offence under section 3 of the Theft Act 1978 (making off without payment). | |
| 8 | Protection of Children Act 1978 | An offence under section 1 of the Protection of Children Act 1978 (indecent photographs and pseudo-photographs of children). | |
| 9 | Wildlife and Countryside Act 1981 | An offence under section 1(1) or (2) or 6 of the Wildlife and Countryside Act 1981 (taking, possessing, selling etc. of wild birds) in respect of a bird included in Schedule 1 to that Act or any part of, or anything derived from, such a bird. | Yes |
| 10 | Wildlife and Countryside Act 1981 | (a) section 1(5) of the Wildlife and Countryside Act 1981 (disturbance of wild birds); | |
| | Wildlife and Countryside Act 1981 | (b) section 9 or 13(1)(a) or (2) of that Act (taking, possessing, selling etc. of wild animals or plants); or | |
| | Wildlife and Countryside Act 1981 | (c) section 14 of that Act (introduction of new species etc.). | |
| 11. | Civil Aviation Act 1982 | An offence under section 39(1) of the Civil Aviation Act 1982 (trespass on aerodrome). | |
| 11A. | Civil Aviation Act 1982 | An offence of contravening a provision of an Order in Council under section 60 of that Act (air navigation order) where the offence relates to – (a) a provision which prohibits specified behaviour in an aircraft towards or in relation to a member of the crew, or (b) a provision which prohibits a person from being drunk in an aircraft, in so far as it applies to passengers. | |
| 12 | Aviation Security Act 1982 | An offence under section 21C(1) or 21D(1) of the Aviation Security Act 1982 (unauthorised presence in a restricted zone or on an aircraft). | |
| 13 | Sexual Offences Act 1985 | An offence under section 1 of the Sexual Offences Act 1985 (kerb-crawling). | Yes |
| 14. | Public Order Act 1986 | An offence under section 19 of the Public Order Act 1986 (publishing etc. material likely to stir up racial or religious hatred). | |
| 15 | Criminal Justice Act 1988 | Common assault. | Yes |
| | Criminal Justice Act 1988 | (a) section 139(1) of the Criminal Justice Act 1988 (offence of having article with a blade or point in public place); or | |

POLICE and COURT POWERS UNDER SOCPA – a summary

| | Schedule 1A | Specific Offences Which Were Arrestable Offences Under PACE | Summary only |
|------|--|--|--------------|
| | Criminal Justice Act 1988 | (b) section 139A(1) or (2) of that Act (offence of having article with a blade or point or offensive weapon on school premises). | |
| 16. | Road Traffic Act 1988 | An offence under section 103(1)(b) of the Road Traffic Act 1988 (driving while disqualified). | Yes |
| 17. | Road Traffic Act 1988 | An offence under subsection (4) of section 170 of the Road Traffic Act 1988 (failure to stop and report an accident) in respect of an accident to which that section applies by virtue of subsection (1)(a) of that section (accidents causing personal injury). | Yes |
| 17A. | Road Traffic Act 1988 | An offence under section 174 of the Road Traffic Act 1988 (false statements and withholding material information). | |
| 18. | Official Secrets Act 1989 | An offence under any provision of the Official Secrets Act 1989 other than subsection (1),(4) or (5) of section 8 of that Act. | |
| 19. | Football Spectators Act 1989 | An offence under section 14J or 21C of the Football Spectators Act 1989 (failing to comply with requirements imposed by or under a banning order or a notice under section 21B). | Yes |
| 20. | Football (Offences) Act 1991 | An offence under any provision of the Football (Offences) Act 1991. | Yes |
| 21. | Criminal Justice and Public Order Act 1994 | (a) section 60AA(7) of the Criminal Justice and Public Order Act 1994 (failing to comply with requirement to remove disguise); | Yes |
| | Criminal Justice and Public Order Act 1994 | (b) section 166 of that Act (sale of tickets by unauthorised persons); or | Yes |
| | Criminal Justice and Public Order Act 1994 | (c) section 167 of that Act (touting for car hire services). | Yes |
| 22. | Police Act 1996 | An offence under section 89(1) of the Police Act 1996 (assaulting a police officer in the execution of his duty or a person assisting such an officer). | Yes |
| 23. | Protection from Harassment Act 1997 | An offence under section 2 of the Protection from Harassment Act 1997 (harassment). | Yes |
| 24. | Crime and Disorder Act 1998 | An offence falling within section 32(1)(a) of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment). | |
| | Criminal Justice and Police Act 2001 | (a) section 12(4) of the Criminal Justice and Police Act 2001 (failure to comply with requirements imposed by constable in relation to consumption of alcohol in public place); or | Yes |
| | Criminal Justice and Police Act 2001 | (b) section 46 of that Act (placing of advertisements in relation to prostitution). | Yes |
| 26. | [Licensing Act 2003 | An offence under section 143(1) of the Licensing Act 2003 (failure to leave licensed premises, etc.) | Yes |
| 27. | Sexual Offences Act 2003 | (a) section 66 of the Sexual Offences Act 2003 (exposure); | |
| | Sexual Offences Act 2003 | (b) section 67 of that Act (voyeurism); | |
| | Sexual Offences Act 2003 | (c) section 69 of that Act (intercourse with an animal); | |
| | Sexual Offences Act 2003 | (d) section 70 of that Act (sexual penetration of a corpse); or | |
| | Sexual Offences Act 2003 | (e) section 71 of that Act (sexual activity in a public lavatory). | Yes |
| 27A. | Prevention of Terrorism Act 2005 | An offence under section 9(3) of the Prevention of Terrorism Act 2005. | |

APPENDIX “B”**Examples of indictable offences****Maximum penalty less than 5 years’ imprisonment: not previously arrestable**

| Example | Statute | Offence | Penalty |
|----------------|---|--|----------------|
| 1 | Sexual Offences Act 2003, ss.64 | Sex with an adult relative: penetration | 2 yrs |
| 3 | Protection from Eviction Act 1977, s.1 | Interim possession orders: false or misleading statements | 2 yrs |
| 4 | Enterprise Act 2002, s.210 | Intentionally obstructs a person in the exercise of his powers | 2 yrs |
| 5 | Perjury Act 1911, s.1A | False unsworn statement under Evidence (Proceedings in Other Jurisdictions) Act 1975 | 2 yrs |
| 6 | Financial Services and Markets Act 2002, s.98 | Advertisements etc. in connection with listing applications | 2 yrs |
| 7 | Honours (Prevention of Abuses) Act 1925, s.1 | Inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour | 2 yrs |
| 8 | Knives Act 1997, ss.1 | Unlawful marketing of knives | 2 yrs |
| 9 | Petroleum Act 1987 | Various offences | 2 yrs |
| 11 | Obscene Publications Act 1959, s.2 | Publication of obscene matter | 3 yrs |
| 12 | Theatres Act 1968, s.2 | Presentation of obscene performances of plays | 3 yrs |