

The rights of defendants are given considerable protection under the Police and Criminal Evidence Act 1984 (PACE). Using appropriate case law to support your view, discuss the extent to which you consider this to be an accurate statement. (25 marks)

The police under the PACE Act 1984, is given a number of powers, these powers include the right to stop suspects, to search them, to arrest and interview people when necessary and to take fingerprints and samples (such as blood) for scientific analysis. Without powers such as these it would be impossible to investigate crime. However, it is important at the same time, ordinary people are not unnecessarily harassed by the police and that suspects and defendants are protected from overzealous methods.

*Police powers to stop and search people and vehicles are set out in sections 1 to 7 of PACE. Section 1 gives the police the right to stop and search people and vehicles in a public place. But, to use this power under PACE a police officer must have reasonable grounds for suspecting that the person is in possession of (or vehicle contains) stolen goods or prohibited articles. As these powers are very wide there are safeguards, in that the police officer must give his name and station and the reason for the search. This was shown in **Osman v. DPP (1999)** where the officers did not give their names and station. The Queens Bench Divisional Court held this made the search of Mr Osman unlawful and so he could not be guilty of assaulting the police in execution of their duty. If the officer fails to give a reason for his search, then that search is unlawful. If the search is in public, the police can only request that the suspect removes outer coat, jacket and gloves section 2(9). The police officer must make a written report as soon as possible after the search. The police can enter premises without the occupiers permission to make a search; if a search warrant authorizing the search has been issued by the magistrate. Such a warrant will be issued under section 8 of PACE. A warrant must specify the premises to be searched and as far as possible, the articles or the person to be sought. The warrant only authorizes only one entry on one occasion. The police is also required to identify themselves as police officers-except for certain cases in **R v. Longman (1988)**, where the police who had a warrant to search premises for drugs, knew that it would be difficult to gain entry. They therefore arranged for a plain dresses police woman to pose as a delivery girl from Interflora and get the occupants of the premises to open the door. Once the door was opened the police burst into the premises without identifying themselves as police officers or showing the search warrant. Whenever the police makes an arrest, they should at time of, or as soon as practicable after, tell the person arrested that they are under arrest*

and the reason for it, even if it is perfectly obvious why they are being arrested. There is no set form of words to be used.

Once a person has been arrested and taken to the police station there are rules setting out very strict time limits on how long they may be held there. These limits are longer if the offence being investigated is a serious arrestable offence. There are also rules about the treatment of people in detention, these are contained in PACE as amended by the Criminal Justice and Public Order Act 1994, together with Code of Practice C. For most offences the police may only detain a person for a maximum of 24 hours and must then either charge them with an offence or release them. For serious arrestable offences the police may detain the person for an initial period of 36 hours and may then apply to Magistrate's Court for permission to detain him for up to a maximum of 96 hours. The detainee has the right to be represented and oppose such an application.

Detainees must be told their rights by the custody officers. These rights include; having someone informed of the arrest, being told that independent legal advice is available free and being allowed to consult privately with a solicitor and lastly being allowed to consult the code of practice.

The right to have someone informed of the arrest is given by section 56 of PACE. The arrested person can nominate any friend, relative or any other person who they think is likely to take an interest in their welfare. The person nominated by the detainee must be told of the arrest and where the person is being held. This should normally be done as soon as practicable, but, in the case of a serious arrestable offence a senior police officer may authorize that there be a delay of up to 36 hours. This can only be done if there are reasonable grounds for believing that telling the named person will lead to; interference, harm to evidence or to other persons; the altering of others involved in the offence or hinder the recovery of property obtained through the offence. Code C states, that in indication to the right to have someone informed of the arrest, a detained person should be allowed to speak on the telephone' for a reasonable time to one person'. If the suspect is under the age of 18 the police must also contact a person responsible for his welfare and inform them of the arrest.

Then the right to legal advice; a detained person may either contact their own solicitor, or they can use the system of duty solicitors which is provided free for anyone under arrest. In fact the code of practice tries to make sure that detained people are aware of their right to legal advice. Under the code the custody officer, when authorizing the detention of someone at the police station, must get the suspect to sign the custody record at that time saying whether he wished to have legal advice. Police stations must have posters prominently displayed advertising the right to

free legal advice, and arrested suspect must not only be told orally of his right, but also given a written notice of it.

It is possible for a senior officer to authorize delay to a suspects right to see a solicitor in the case of a serious arrestable offence for up to 36 hours. However, this can only occur if there are reasonable grounds for believing that giving access to a solicitor will lead to interference or harm to evidence or other persons.

In matter of interviews, suspects have a right to have solicitor present at any interview. If the suspect is under the age of 17 or is mentally handicapped then there must be an appropriate adult present during all interviews.

Section 76 of PACE states that courts shall not allow statements which have been obtained through oppression to be used as evidence. Code C also gives protection to suspects/defendants who are being questioned in regard to the physical conditions of the interview. For example the code states that interview rooms must be adequately lit, heated and ventilated and that suspects must be given adequate breaks for meal, refreshments and sleep.

Lastly the defendants could refuse to answer any questions without any adverse conclusion being drawn on their silence of the case came to trial .

So under the PACE Act of 1984 rights of defendants to a certain extent are given considerable protection.