

The Police and Criminal Evidence Acts 1984-provides an effective balance between the powers of the police and safe guards provided for suspects

One of the fundamental civil liberties is the right to freedom of your person from detention, and your property from seizure, without lawful cause. Recognition if this right goes back centuries in the history of Britain. Its fundamental expression is in the statement that we live in a country where one of the basic principles of the constitution is that our affairs shall be carried on under "the rule of law". In *Entick v Carrington* (1765) 19 St Tr 1030 Lord Chief Justice Camden set out the basic principle that anyone who invades another's private property is guilty of an offence unless they can show a justification for having done so.

The recognition of the right to liberty of the person, and freedom from interference with private property, underpins the torts of trespass to land and trespass to the person. It also underlies the defence to a charge of assault that the person was acting in self-defence against an unlawful detention. False imprisonment is based on the idea that there must be no deprivation of personal liberty without lawful authority.

The powers given to the police to act to maintain public order and to prevent criminal acts and to apprehend and bring forward for punishment those who commit criminal acts, pose the greatest threat to liberty of the person. In their pursuit of evidence of wrongdoing, the police also have wide-ranging powers to enter and search private premises - in what would, barring the consent of the owner/occupier, otherwise amount to trespass - and to seize and take away private property found there.

It is essential that if the police are to be given wide-ranging powers to interfere with personal liberty and private property, they should have to exercise these powers under strict controls so that the interference goes no further than the minimum required to satisfy the competing public interest. The individual's personal rights regarding their property and personal freedom must be respected though.

The Police and Criminal Evidence Act (PACE 1984)

There was a great deal of criticism of the government's legislative proposals. The central question was whether the Law provided, as the government claimed, sufficiently strong safeguards in the form of detailed procedures to be complied with if the police action was to be regarded as lawful. This doubt was justified when the Maxwell Confait case in the 1970's came to light to the public:

Maxwell was a male prostitute, found dead-strangled with electrical flex. Three teenage boys-ages 16-17 (mental age of around 13)-were bought in for questioning. After police questioned them they confessed to the murder. They were charged and sent to prison.

Just 6 months after, the boys were released from prison-evidence proved that it was impossible for the boys to have committed the crime. This miscarriage of justice demanded a change to be made in the law over the amount of powers that the police hold.

Significance of this case on the image of the British police system:

Before the 1970's the image of the police was idealistic-they were portrayed to have good social skills etc. The British police were the only group of police officers that did not carry around a gun, this suggests that the police doesn't have to resort to violence to stop crimes.

The Maxwell Confait case was broadcast nationally, and this shattered the image of the police. They were no longer respected and this caused major riots etc. A change was to have to be made to repair the damage that had been done to the police reputation:

The Phillips commission in 1981:

This looked at the balance between powers for the police and safe guards for the suspects. However, by the time the report was completed a number of changes had been made in society and the importance of this case had been diminished.

Subsequently PACE was formed, it replaced the confusing mixture of common law, legalisation and local by-laws on pre-trial procedure.

The reason PACE was brought into being was because police used excessive methods when arresting and detaining suspects. The police at the time would have viewed it as reducing their ability to investigate crime. But a balance must always be reached between the rights of suspects and the ability to obtain convictions as was demonstrated in the Maxwell Confait case, sometimes-incorrect convictions could result.

The main sections of this act are as follows:

Powers to Stop and Search

‘A police officer may search any person or vehicle, anything which is in or on a vehicle, for stolen or prohibited articles and may detain a person or vehicle for the purpose of such a search.

In any place to which at the time when he proposes to exercise this power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission. Or in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

This section does not allow a constable to do any of the above unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles.’

The right of freedom of movement must be maintained within this section. The police officer must have reasonable grounds for stopping a suspect. This prevents officers randomly disrupting people without reason. Reasonable force may then be used to detain the suspect for the search if necessary, the police need this power, without it a suspect could physically resist taking part in a search. The search must take place in public, this provides many witnesses to see that the search is being carried out appropriately.

Powers of Entry, Search and Seizure

With regards to powers of entry, search and seizure the act states:

‘If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing:

- that a serious arrestable offence has been committed; and
- that there is material on premises specified in the application which is likely to be of substantial value to the investigation of the offence; and
- that it does not consist of or include items subject to legal privilege, excluded material or special procedure material.

If a warrant is issued authorizing a constable to enter and search the premises: a constable may seize and retain anything for which a search has been authorised.

It can only be authorised for the entry and search of premises if:

- it is not practicable to communicate with any person entitled to grant entry to the premises;
- 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;
- the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

To enter or search of premises under a warrant is unlawful unless it complies with the section below:

Where a constable applies for a warrant, it shall be his duty:

- to state the ground on which he makes the application: and
- to state the enactment under which the warrant would be issued;
- to specify the premises which it is desired to enter and search;
- to identify, so far as is practicable, the article or persons to be sought.

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

The warrant shall authorise an entry on one occasion only.

A warrant to enter and search premises may be executed by any constable, entry and search under a warrant must be within one month from the date of its issue. 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. When the occupier of the premises is present, the constable:

- shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;
- shall produce a warrant to him,
- shall supply him with a copy of it.

A constable who is lawfully on any premises may seize anything on the premises if he has reasonable grounds for believing:

- that it has been obtained in consequence of the commission of an offence: and
- that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed;
- that it is evidence in relation to an offence which he is investigating or any other offence.

Anything which has been seized by a constable or taken away by a constable may be retained as long as is necessary, unless a photograph or copy would be sufficient for the purpose.'

A magistrate can issue a search warrant, and a duty magistrate can issue warrants at hours other than when the courts are open. They must have the address and name of owner and what they are looking for. When the officer discloses this information to obtain the warrant, he is under oath. The warrant must be used within one month of it being issued and can only be used once. This is important because without it, the police could re-use the same warrant as many times as they wished or could dig up an old warrant that was no longer applicable to a case and search the premises. The search must be carried out at a reasonable hour, but this is flexible, if there is a just reason why this is not appropriate and would be ineffective then the warrant may be carried out at a different time. Without this illegal goods could be removed before it was deemed a reasonable hour for a search to take place. Only 12% of searches are carried out under a search warrant. There are circumstances when a search can be carried out without a warrant e.g. in the execution of an arrest warrant.

Arrest

With regards to arrest the act states:

‘Without a warrant:

- offences for which the sentence is fixed by law,
- offences for which a person of 21 years of age or over may be sentenced to imprisonment for a term of five years,
- conspiring to commit an offence,
- attempting to commit an offence,
- inciting, aiding, abetting, counselling or procuring the commission of an offence,
- anyone who is in the act of committing an arrestable offence,
- anyone whom he has reasonable grounds for suspecting to be committing such an offence,
- anyone whom he had reasonable grounds for suspecting to be guilty of it.

General arrest conditions are:

- that the name of the relevant person is unknown to, they cannot be readily ascertained by, the constable,
- that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;
- the person has failed to furnish a satisfactory address;
- that the constable has reasonable grounds for believing that arrest is necessary to prevent the relevant person:
 - causing physical injury to himself or any other person;
 - suffering physical injury;
 - causing loss or damage to property;
 - committing an offence against public decency, or
 - causing an unlawful obstruction of the highway.

A constable may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others. The constable searching the person may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

A magistrate can issue an arrest warrant, this means that it is issued by someone who is not involved with the case and would have no bias opinions. The officer must give good reason for the need for this warrant before it can be issued. The officer must also be under oath and state the reason for the warrant and its details. Most arrests take place without a warrant, this is necessary because it is not always practical for an officer to obtain one. They can arrest a suspect without an arrest warrant for an arrestable offence: crimes with fixed sentences or with a sentence of more than 5 years.

Detention

PACE has increased the amount of time that suspects can be detained before taking them to court. But only 5% of suspects are held more than 24 hours. The suspects must also be informed of their rights, this is very important, it enables them to have someone informed of their arrest, their right to a lawyer and their right to a responsible adult. These are necessary because the police are keen to get a confession out of a suspect, as it is cheaper and quicker than getting forensic evidence and a confession is more compelling to a jury in court. So police must be refrained from using extensive questioning or unreasonable methods to gain a

confession. But only 25% of people ask for a lawyer, then only 25% of them are qualified lawyers and in 66% of cases the legal representative said nothing and in only 9% of cases did the lawyer intervene on the suspects behalf. The right to a lawyer and the right to have someone informed of your arrest can be delayed for up to 36 hours.

Questioning and Treatment of Persons by Police

With regards to questioning and treatment of persons by police the act states:

The police may interview you about your suspected involvement in an offence, before any charge. This will be tape-recorded. You are entitled to have your legal representative present during the interview. At the start of the interview, you must be reminded of this right, and cautioned. The caution states that you do not have to say anything unless you wish to do so, and that what you say may be given in evidence at court.

The caution then goes on to warn you that it may harm your defence if you fail to mention anything at the police station, which you later rely on in court. This last part of the caution reflects recent changes in the law, which have undermined the so-called right of silence. The obvious conclusion a court may draw against you if you remain silent at the police station and then give evidence at court is that you have made up your account of events since being interviewed by the police.

It is important to remember that this problem only arises when you are charged with an offence and plead not guilty at court. There is still no legal requirement to answer police questions, and, where by doing so you would incriminate yourself, it may often be better to make no comment to the police during interview.

If the evidence against you is already strong, however, and you hope to be given a warning or caution by the police, rather than prosecuted in the courts, it may be best to admit the offence from the start. You may also receive credit in court for co-operating with the police.

Conversely, if you have a strong defence to an accusation, putting it on the record straight away may lead to your avoiding being charged, or strengthen your defence when your case is heard in court. The decision whether or not to answer questions is often a difficult one, and it is best to take legal advice before making it.

It is necessary to obtain a balance between protecting individual liberty and preventing/detecting crime, Parliament has tried to regulate this area of the law and the main police powers were set out in this Police and Criminal Evidence Act 1984. By looking at all these sections of the Police and Criminal Evidence Act 1984 I believe a satisfactory balance has been made between the Police powers and the Public's rights. However, exceptional cases do appear from time to time that tip this balance-for example it was seen that young black males were the cause of most crimes committed, and therefore have been targeted. Obviously there is problem with this. But generally, I believe there is a suitable balance.

After the race riots of the 80's, it was felt that police powers had been diminished too extensively, so, the Criminal Justice and Public Order Act 1994, was introduced, it significantly extended police powers.