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35 The Serious Organised Crime and Police Act (SOCPA) 2005

35.1 Introduction

The Serious Organised Crime and Police Act 2005 (SOCPA) came into force on 1 January 2006. It introduced changes to immigration legislation but **only in regard to police officers powers.**

It made **no** changes to

- an IOs power to arrest;
- an IOs power to search;
- the provisions of s28B of the Immigration Act 1971 (the 1971 Act); search and arrest by warrant; or
- UK Border Agency enforcement arrest teams operating without police assistance.

SOCPA does not therefore have a direct impact upon arrest team activity but does have an indirect impact upon enforcement operations with the police and non-arrest trained officers.

The 3 main areas within SOCPA that enforcement officers will need to be aware of are sections 110 & 179 and Schedule 7.

Section 110. This substituted sections 24 & 24A of the Police and Criminal Evidence (PACE) Act 1984 amending the powers of arrest for police constables and other persons. The concept of an ‘arrestable’ offence no longer exists and under section 24 of PACE a constable may arrest anyone without a warrant for any offence as long as it can be shown to be necessary. See 35.1.3.

Section 179. This sets out the extent of the Act. The whole Act extends to England & Wales, certain sections also extend to Scotland & Northern Ireland and other sections extend only to Scotland & Northern Ireland.

Schedule 7. Paragraph 53 amended immigration legislation so that a police constable (in England & Wales) no longer has a specific power of arrest under:

- section 28A of the 1971 Act (arrest without warrant).

Paragraph 63 amended immigration legislation so that a constable (in England & Wales) no longer has a specific power of arrest under:

- section 2 (10) of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 (the 2004 Act) (entering the UK without a passport etc); and
- section 35 (5) of the 2004 Act (deportation or removal; co-operation with redocumentation).

Additionally, paragraph 43 (5) and (6) amended police officers' power to search following arrest under s18 or s32 of PACE (see 35.1.5).

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35.1.1 Impact – England & Wales

If arrest trained IOs are present they can arrest under immigration powers and use the appropriate power of search afterwards. An arrest under s28A gives a power to search premises under s28E, in a place where the person was when, or immediately before, he was arrested. An arrest under paragraph 17(1) of schedule 2 gives a power to search certain premises under paragraph 25A for documents related to nationality. This is provided all the conditions in the respective sections are met. The SOCPA amendments do not affect this.

If the person is arrested by a police officer on suspicion of committing an indictable or triable-either-way offence (see 35.1.7) (and this meets the necessity test under s24(5) of

PACE), then the police can exercise their search powers under s18 or s32 of PACE in order to find relevant evidence.

If the police arrest under s24 of PACE for a summary offence, they have no attendant power to search for relevant evidence under sections 18 or 32 of PACE. If the police are accompanied by non-arrest trained officers only then neither the police, nor the non-arrest trained officers, will be able to search for and seize relevant evidence. However, the police officers may be able to seize evidence which is in plain view under section 19 of PACE where they are lawfully on the premises.

For immigration purposes a summary only offence would include overstaying, working in breach and entry without leave; offences under s24 of the 1971 Act.

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35.1.2 Impact - Scotland & Northern Ireland

Section 179 of SOCPA limits its application to England & Wales subject to a few provisions which extend to Scotland and/or Northern Ireland.

The changes brought about by s110 and schedule 7 are not extended to Scotland & Northern Ireland so the police power to arrest under s28A of the 1971 Act, s2(10) & s35(5) of the 2004 Act remain within these jurisdictions.

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35.1.3 Necessity Test

An arrest by a police officer will only be justified if it can be shown to be necessary for the reasons set out in s24 of PACE.

Under s24(5) of PACE the necessity criteria are:

- (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;
 - causing physical injury to himself or any other person;
 - suffering physical injury;
 - causing loss of, or damage to, property;
 - committing an offence against public decency (subject to subsection (6)); or
 - 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.

IOs **do not** have the power to arrest under s24 of PACE. Instead IOs have their own powers of arrest under the Immigration Acts (IAs). As a result, when an IO exercises a power of arrest under the IAs, they are not required to justify this with reference to the necessity criteria listed in s24(5) of PACE. Similarly, while IOs must have regard to the relevant parts of the PACE Codes which apply by directions made under section 145 of the Immigration and Asylum Act 1999 (the 1999 Act), Code G (which governs the statutory power of arrest under s24) does not apply to them.

However, even though the specific 'necessity criteria' of s24 of PACE are not imported into the IAs, IOs must remember that any arrest or detention they make must be 'necessary' in the more general sense of the word, so as to comply with Article 5 of the European Convention on Human Rights (ECHR). See 35.1.4.

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35.1.4 Article 5 of the ECHR

Article 5 of the ECHR requires any deprivation of liberty to be necessary (and proportionate) to achieve one of its specific aims, specified in Article 5(1), which include the lawful arrest or detention of a person on suspicion of a criminal offence, pending deportation or extradition, or to prevent unlawful entry. This means that an IO can only lawfully arrest if it is necessary to do so. In practical terms, IOs may find it useful to bear in mind the s24 PACE necessity criteria when evaluating whether an arrest is necessary in all of the circumstances.

The overall effect of the new s24 of PACE and Article 5 of the ECHR is that while IOs are not legally required to justify an arrest with reference to s24 of PACE, Article 5 ECHR considerations, including necessity, must always be taken into account before making an arrest.

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35.1.5 Search Powers

SOCPA also changed police officers' power to search under PACE (in England and Wales).

Section 17 (Entry for purpose of arrest). In subsection 1 (b) 'arrestable' was substituted for 'indictable'.

Section 18 (Entry and search after arrest). In subsection 1 'arrestable' was substituted for 'indictable' in both places.

This means that the police entry and search powers above have been extended so that they now cover all 'indictable' and 'triable either way' offences and not just the previous 'arrestable' offences. Section 18 will not allow a police constable to search premises occupied or controlled by the arrested person following arrest for a 'summary' offence (see 35.1.7).

Section 32 (Search upon arrest). Subsection (2) (b) was substituted for 'if the offence for which he has been arrested is an indictable offence, to enter and search any premises in which he was when he was arrested or immediately before he was arrested for evidence relating to the offence.'

This limits police officers' powers to enter and search premises after arrest **only** to where the person has been arrested for an 'indictable' offence (see 35.1.7).

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35.1.6 Seizure

A police officer also has a general power of seizure under s19 of PACE. If a police officer is lawfully on any premises and he sees evidence of an offence (regardless of whether he is investigating the offence at the time), he is empowered to seize that item as evidence. However, unlike sections 8, 18 and 32 of PACE section 19 **does not** confer a power to search so the item that the police officer believes to be evidence of an offence **must** be in plain view.

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35.1.7 Types of Offences

Summary offences. These are the least serious offences and are tried in the Magistrates' Court. The maximum sentence for a summary offence is 6 months imprisonment, a fine of up to £5000 (£2000 in Northern Ireland) or a combination of the two. They are tried before 2 or 3 magistrates sitting without a jury and both the verdict and sentence are pronounced.

Triable either way offences. These can be regarded as the middle range of crimes. These can be tried in either the Magistrates' Court or Crown Court as long as the court in question accepts jurisdiction.

Indictable offences. These are the more serious crimes. All indictable offences must be tried at the Crown Court, but the first hearing is dealt with at the Magistrates' Court. If a guilty plea is entered at the Magistrates Court, sentencing will take place at the Crown Court. The magistrate will decide if the defendant should be given bail. If a not guilty plea is entered, the case is transferred to the Crown Court for trial.

Further information can be found in chapter 16.2 of the EIG.

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