

## STOP AND SEARCH

Lord Bingham ( **R (GILLAN) v MPC** ): 'It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a criminal offence.'

## NO DUTY TO ANSWER QUESTIONS

Members of the public are not obliged to answer questions, nor to go to the police station or be detained at a police station unless that are lawfully arrested - **RICE v CONNOLLY**. Lord Parker CJ: the duty to help the police was social or moral in character but not legal. Applied in **R (NEALE) v DPP**. **BUT** It might be different if run away or a refuse to answer questions, accompanied with hostile and abusive behaviour - **SEKFALI v DPP**; **RICKETTS v COX**; **SOUTHARD v DPP**; **SOUTHARD v DPP**; and **HARVEY v DPP**. **NOTE** Stop and Account and **DIEDRICK**.

## STATUTORY AUTHORITY

### 1. Police and Criminal Evidence Act 1984 (PACE) & CODE A

The powers to stop and search are mainly governed by PACE which also contains Codes of Practice drawn up by the Home Office under section 66 of the Act. **NOTE** These Codes are not laws; however, breach of them is a serious matter and evidence obtained from such a breach - a confession, for example - may be excluded in a criminal trial.

**Section 1** - a constable may search a person or vehicle in public, for stolen or prohibited articles, for example weapons. Stolen or prohibited articles may be seized.

**Section 117** and **3.2 CODE A** - allow the policeman to use reasonable force - **JAMES v DPP**.

**2. Criminal Justice and Public Order Act 1994 ( CJ&POA) - section 60 - whether or not reasonable grounds**. Provides that if a senior police officer reasonably believes that incidents involving serious violence may take place in any locality in his area, then he may authorise his constables to stop and search persons and vehicles at any place within that locality for offensive weapons.

### 3. Misuse of Drugs Act 1971

Section 23 gives the power of stop and search to a police officer if he reasonably suspects that any person is in possession of a controlled drug.

### 4. Customs and Excise Management Act 1979 ( CEMA)

Section 164 permits customs to stop and search for excise goods (e.g. tobacco and alcohol) on which no duty has been paid.

### 5. Terrorism Act 2000 (TA) - ss 1, 47A and Schedule 7 - whether or not reasonable grounds

Ss 44-47 provided extensive stop and search powers. **GILLAN AND QUINTON v UK** - repealed by Protection of Freedoms Act 2012. **BEGHAL v DPP** (Sch 7); **R (MIRANDA) v HS** (s. 1).

**NOTE** Police stop and search powers are regularly extended e.g. s.1 Criminal Justice Act 2003 extended powers to offences under s.1 Criminal Damage Act 1971 (destroying or damaging property).

## LIMITATIONS

### Reasonable suspicion

All the statutes (with 1 exception) require **reasonable grounds** for suspecting the commission of the particular offence e.g. s.1(3) PACE provides that this power can only be used where the police have 'reasonable grounds for suspecting that they will find stolen or prohibited articles'. **Exceptions** (1) s.60 CJ&POA: **R (ROBERTS) v COMMISSIONER OF THE METROPOLITAN POLICE** (2) CEMA - **HOVER SPEED v HM CUSTOMS** (trend or profile).

The requirement is intended to protect individuals from being subject to stop and search on a random basis, such as age or racial group, and CODE A provides guidance on the meaning of 'reasonable grounds for suspecting'. **NOTE** Government figures have shown that black people are seven times more likely to be stopped and searched than white people, while Asians are twice as likely. **SAMUELS v MPC**. **NOTE** Government report, Police Powers of Stop and Search Summary of Consultation Responses and Conclusions [2014] HO, proposes to revise Code A 'to make clear what constitutes reasonable grounds for suspicion'

### Extent of search

Under paragraph 3.5 of CODE A, a person cannot be required to remove any clothing in public, except for an outer jacket or gloves (and a disguise - see section 60AA CJ&POA).

### Formalities must be complied with

**IMPORTANT** This applies to powers of stop and search given under any statute. Before the policeman goes about searching a person he must, under section 2(2) & (3) of PACE and para 3.8 of CODE A provide the following information: (1) his name and the name of the police station to which he is based; (2) the object of the proposed search; and (3) the grounds for the search. If this is not done, he will have no power of search - **OSMAN v DPP**; **BONNER v DPP**; **R v BRISTOL**; **MICHAELS v HIGHBURY CORNER MC**.

### A new Code of Conduct

In August 2014 all 43 police forces in England and Wales signed up to a new voluntary Code of Conduct for how they use their stop and search powers. (1) Officers will need **higher authorisation** than at present to deploy section 60 powers. (2) Police will also allow **public observers** to watch stop and search in operation. (3) **Better records** will be kept of each stop and search and published online. (4) In 2015 police will start **mapping** stop and searches so people can see if one area is targeted more than others, and the public will be entitled to know **why** this is the case.