

Police and Criminal Evidence Act 1984



AN INTRODUCTION TO UK LEGISLATION | JULY 2020 | FIRST EDITION

The **Police and Criminal Evidence Act 1984** sets out the powers and duties of the police and the gathering of criminal evidence. This guide provides a general overview of the legislation for those who are new to the subject.

OVERVIEW OF THE LAW

The **Police and Criminal Evidence Act 1984** (the 'Act') came in to force on 1 January 1986 and provides a legal framework governing the powers and conduct of the police.

The Act covers:

- stop and search powers;
- search of premises;
- arrest, detention, investigation and interview of suspects;
- identification of evidence; and
- the taking of personal samples.

The Act seeks to provide the police with guidelines for investigations while balancing these powers with the rights of the individual. It has been repeatedly revised to reflect changing considerations of society and the relationship between the police, individuals and the investigation of crime.

WHO DOES IT APPLY TO?

The Act and its associated codes of practice apply to police officers (including the British Transport Police and Ministry of Defence Police) as well as persons 'other than police officers who are charged with the duty of investigating offences or charging offenders'. These include:

- Serious Fraud Office officers;
- HMRC officers;
- Trading Standards officers;
- RSPCA inspectors;
- store detectives or other similar security officers; and
- others acting under statutory powers.

It will be a question of fact as to whether an individual meets this criteria, but the legal duty can also include one provided for by contract.

If you are ever in doubt about whether conduct falls within the scope of the legislation, always seek appropriate legal advice.

OTHER RELEVANT LEGISLATION

Other legislation has amended or provided further provisions to the Act including:

- Criminal Justice and Public Order Act 1994;
- Human Rights Act 1998;
- Criminal Justice and Police Act 2001;
- Criminal Justice Act 2003;
- Serious Organised Crime and Police Act 2005;
- Police (Detention and Bail) Act 2011; and
- Policing and Crime Act 2017.

CODES OF PRACTICE

There are eight **codes of practice** which regulate the conduct of persons charged with the duty of investigating offences. These cover different aspects of police powers as follows:

- powers to search a person or vehicle prior to an arrest (Code A);
- powers to search premises and seize property (Code B);
- detention and questioning of suspects in police custody (Code C);
- process of identifying suspects and recording that information (Code D);
- audio recording of interviews with suspects (Code E);
- visual recording of interviews with suspects (Code F);
- powers of arrest (Code G); and
- detention and questioning of terrorism suspects (Code H).

RISKS OF NON-COMPLIANCE

Non-compliance with the codes of practice by a police officer does not automatically give rise to any criminal or civil liability. The consequences of non-compliance or breaches of the codes of practice may include their introduction or exclusion as evidence in criminal and civil proceedings. This may substantially weaken a criminal prosecution with the exclusion of evidence against a defendant or for that evidence to be deemed as having limited importance.

Non-compliance with the legislation may lead to both criminal liability and civil actions for damages. Police actions that are unauthorised under the Act, such as an unlawful arrest where force is used, could amount to an assault. Equally, a civil action for false imprisonment may arise following an arrest where no reasonable suspicion of criminal conduct exists.

In extreme circumstances where lethal force is used against an individual, this may give rise to a prosecution of a police officer for murder or manslaughter.

OVERSIGHT

The **Independent Office for Police Conduct** oversees the system of police complaints in England and Wales. The IOPC investigates the most serious matters (such as deaths following police contact) and also sets the standards for how the police handle complaints.

A person who is dissatisfied with a police force can complain directly to the relevant force or via the IOPC who will refer the complaint to the organisation involved.

Certain designated bodies such as charities or advocacy groups¹ can make a '**super-complaint**' in the public interest about trends or patterns in policing. These are made to **Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services**.

PRIVATE SECTOR CONSIDERATIONS

While the Act sets out a framework for the police to undertake investigations, the Codes of Practice can also provide a useful model for the private sector to conduct their own investigations. This is especially true where investigations involve professional investigators and/or are conducted with a view to possible criminal proceedings.

Organisations contemplating workplace investigations may wish to consider the following investigative steps while bearing in mind the health and well-being of the individual under suspicion:

- whether an investigation is necessary and what its terms of reference are;
- identify an appropriate impartial investigator who should then prepare a plan of investigation. This plan should look for evidence and witnesses which may both support and point against the guilt of the party investigated;
- undertake the evidence gathering process of witness statements and collection of documentary and digital evidence;
- plan and undertake an investigatory meeting which seeks to establish facts; and
- report the investigatory findings in the case to the organisation or refer to the police.

Conducting interviews

It is important to identify in company or workplace interviews the precise purpose of the interview. If the interview is to establish facts it will be regarded as an investigatory interview. If the interview is a disciplinary hearing, it will consider the consequences of facts already established in an investigatory interview. When conducting an investigatory interview it is advisable to have regard to the principles contained in codes C and E.

Code C deals with questioning. Interviews must be conducted fairly, without pressure and ensuring that the interviewee has an opportunity to put forward their account of events. The individual may also wish to have a representative or legal adviser present. The interview should be carefully planned to cover a review of the known and available evidence.

Code E covers the requirement to have an audio record of interviews. This may not be commonplace in private sector

investigations, but it is clearly desirable to produce a clear contemporaneous record of the questions and answers recorded in an investigatory interview.

A paginated interview bundle should also be prepared for the interview of an individual which can then be readily located and referenced in any further report, court or disciplinary proceedings.

Collecting evidence

The collection of evidence in building a case is fundamental to any investigation and the investigator will need to prepare an effective plan of the collation of evidence. This will involve identifying relevant witnesses, compiling their witness statements and notes which should then be contemporaneously signed and dated. Once the evidence is gathered, it is vital that the tracking and movement of each document and object recovered in any search is possible along with the secure storage of all items seized.

Physical

There may be physical evidence such as CCTV, computer or phone evidence which can be lawfully obtained without breaching employees' employment contracts. An employer will need to be careful to ensure that the amount of evidence collected is both necessary and proportionate to the type and extent of the investigation being carried out.

Digital

The collection of digital evidence can be one of the most important initial steps in any investigation. There are many different types of digital media, from computers to phones and cameras, which hold data. Evidence may also be held online or stored in cloud accounts.

One key aspect of the handling of digital data is to ensure that such information is not altered, the person accessing such data is competent to do so, an audit trail of the work undertaken to collect the evidence is made, and the devices are capable of similar verification to ensure principles of fairness are observed.

Storing evidence

Organisations conducting investigations may require secure storage of their own for the evidence gathered during the course of an investigation. This will ensure the integrity of all evidence for the investigation and allow additional time for any appeals and legal challenges after the investigation has concluded.

FURTHER INFORMATION

See the **resources** section of our website.

Notes

¹ Individuals cannot make super-complaints.

This helpsheet was kindly prepared by David Wilson at Red Lion Chambers.

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