

POLICE AND CRIMINAL EVIDENCE ACT 1984

CODE G

**CODE OF PRACTICE FOR THE STATUTORY POWER OF ARREST
BY POLICE OFFICERS**

G

Commencement

This Code applies to any arrest made by a police officer after midnight on
31 December 2005

1. Introduction

- 1.1 This Code of Practice deals with statutory power of police to arrest persons suspected of involvement in a criminal offence.
- 1.2 The right to liberty is a key principle of the Human Rights Act 1998. The exercise of the power of arrest represents an obvious and significant interference with that right.
- 1.3 The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used. Absence of justification for exercising the powers of arrest may lead to challenges should the case proceed to court. When the power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner.
- 1.4 Section 24 of the Police and Criminal Evidence Act 1984 (as substituted by section 110 of the Serious Organised Crime and Police Act 2005) provides the statutory power of arrest. If the provisions of the Act and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.
- 1.5 This code of practice must be readily available at all police stations for consultation by police officers and police staff, detained persons and members of the public.
- 1.6 The notes for guidance are not provisions of this code.

2 Elements of Arrest under section 24 PACE

- 2.1 A lawful arrest requires two elements:

A person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence;

AND

Reasonable grounds for believing that the person's arrest is necessary.

- 2.2 Arresting officers are required to inform the person arrested that they have been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both elements and to inform the custody officer of these on arrival at the police station. See Code C paragraph 3.4.

Involvement in the commission of an offence'

- 2.3 A constable may arrest without warrant in relation to any offence, except for the single exception listed in Note for Guidance 1. A constable may arrest anyone:

- who is about to commit an offence or is in the act of committing an offence
- whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence
- whom the officer has reasonable grounds to suspect of being guilty of an offence which he or she has reasonable grounds for suspecting has been committed
- anyone who is guilty of an offence which has been committed or anyone whom the officer has reasonable grounds for suspecting to be guilty of that offence.

Necessity criteria

- 2.4 The power of arrest is only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph 2.9. It remains an operational decision at the discretion of the arresting officer as to:
- what action he or she may take at the point of contact with the individual;
 - the necessity criterion or criteria (if any) which applies to the individual; and
 - whether to arrest, report for summons, grant street bail, issue a fixed penalty notice or take any other action that is open to the officer.
- 2.5 In applying the criteria, the arresting officer has to be satisfied that at least one of the reasons supporting the need for arrest is satisfied.
- 2.6 Extending the power of arrest to all offences provides a constable with the ability to use that power to deal with any situation. However applying the necessity criteria requires the constable to examine and justify the reason or reasons why a person needs to be taken to a police station for the custody officer to decide whether the person should be placed in police detention.
- 2.7 The criteria below are set out in section 24 of PACE as substituted by section 110 of the Serious Organised Crime and Police Act 2005. The criteria are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be.
- 2.8 In considering the individual circumstances, the constable must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process.

2.9 The criteria are that the arrest is necessary:

- (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

an address is a satisfactory address for service of summons if the person will be at it for a sufficiently long period for it to be possible to serve him or her with a summons; or, that some other person at that address specified by the person will accept service of the summons on their behalf.

- (c) to prevent the person in question –
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury ;
 - (iii) causing loss or damage to property;
 - (iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); or
 - (v) 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.

This may include cases such as:

- (i) Where there are reasonable grounds to believe that the person:
 - has made false statements;
 - has made statements which cannot be readily verified;
 - has presented false evidence;
 - may steal or destroy evidence;
 - may make contact with co-suspects or conspirators;
 - may intimidate or threaten or make contact with witnesses;

- where it is necessary to obtain evidence by questioning; or
- (ii) when considering arrest in connection with an indictable offence, there is a need to:
 - enter and search any premises occupied or controlled by a person
 - search the person
 - prevent contact with others
 - take fingerprints, footwear impressions, samples or photographs of the suspect
- (iii) ensuring compliance with statutory drug testing requirements.
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

This may arise if there are reasonable grounds for believing that

- if the person is not arrested he or she will fail to attend court
- street bail after arrest would be insufficient to deter the suspect from trying to evade prosecution

3 Information to be given on Arrest

(a) *Cautions - when a caution must be given (taken from Code C section 10)*

3.1 A person whom there are grounds to suspect of an offence (see Note 2) must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes e.g.:

- (a) solely to establish their identity or ownership of any vehicle;
- (b) to obtain information in accordance with any relevant statutory requirement;
- (c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search;
- (d) to seek verification of a written record as in *Code C paragraph 11.13*;

- (e) when examining a person in accordance with the Terrorism Act 2000, Schedule 7 and the Code of Practice for Examining Officers issued under that Act, Schedule 14, paragraph 6.
- 3.2 Whenever a person not under arrest is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and are free to leave if they want to.
- 3.3 A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest, see *Note 3*.
- 3.4 A person who is arrested, or further arrested, must also be cautioned unless:
- (a) it is impracticable to do so by reason of their condition or behaviour at the time;
 - (b) they have already been cautioned immediately prior to arrest as in *paragraph 3.1*.
 - (c) Terms of the caution (Taken from Code C section 10)
- 3.5 The caution, which must be given on arrest, should be in the following terms:
- “You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”
- See *Note 5*
- 3.6 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved. See *Note 6*
- 3.7 When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide:
- their name and address when charged may make them liable to detention;
 - particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic Act 1988, may amount to an offence or may make the person liable to a further arrest.

4 Records of Arrest

(a) General

- 4.1 The arresting officer is required to record in his pocket book or by other methods used for recording information:
- the nature and circumstances of the offence leading to the arrest
 - the reason or reasons why arrest was necessary
 - the giving of the caution
 - anything said by the person at the time of arrest
- 4.2 Such a record should be made at the time of the arrest unless impracticable to do. If not made at that time, the record should then be completed as soon as possible thereafter.
- 4.3 On arrival at the police station, the custody officer shall open the custody record (see paragraph 1.1A and section 2 of Code C). The information given by the arresting officer on the circumstances and reason or reasons for arrest shall be recorded as part of the custody record. Alternatively, a copy of the record made by the officer in accordance with paragraph 4.1 above shall be attached as part of the custody record. See *paragraph 2.2 and Code C paragraphs 3.4 and 10.3*.
- 4.4 The custody record will serve as a record of the arrest. Copies of the custody record will be provided in accordance with paragraphs 2.4 and 2.4A of Code C and access for inspection of the original record in accordance with paragraph 2.5 of Code C.

(b) Interviews and arrests

- 4.5 Records of interview, significant statements or silences will be treated in the same way as set out in sections 10 and 11 of Code C and in Code E (tape recording of interviews).

Notes for guidance

- 1 *The powers of arrest for offences under sections 4(1) and 5(1) of the Criminal Law Act 1967 require that the offences to which they relate must carry a sentence fixed by law or one in which a first time offender aged 18 or over could be sentenced to 5 years or more imprisonment*

- 2 *There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.*
- 3 *An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.*
- 4 *Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Criminal Justice and Public Order Act 1994, section 34, if the person was not cautioned.*
- 5 *If it appears a person does not understand the caution, the people giving it should explain it in their own words.*
- 6 *The powers available to an officer as the result of an arrest – for example, entry and search of premises, holding a person incommunicado, setting up road blocks – are only available in respect of indictable offences and are subject to the specific requirements on authorisation as set out in the 1984 Act and relevant PACE Code of Practice.*