



BRIEFING PAPER

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Introduction to police powers

By Jennifer Brown

Contents:

1. Overview
2. Investigation powers
3. Prevention powers
4. Disposal powers



Contents

Summary	3
1. Overview	4
1.1 Which police personnel have powers?	5
Powers of police support officers & PCSOs	5
Powers reserved for police officers	5
1.2 Guidance on police powers	6
Statutory guidance	6
Authorised Professional Practice (APP)	6
Operational guidance	7
2. Investigation powers	8
2.1 PACE powers	8
Power of arrest	8
2.2 Digital evidence	8
3. Prevention powers	10
3.1 Public order powers	10
3.2 Use of force	10
Recording the use of force	11
3.3 Anti-social behaviour powers	12
4. Disposal powers	14
4.1 Charging powers	14
4.2 Out of court disposals	14
Cautions	14
Penalty notices	15

Summary

The information in this briefing relates to England and Wales only

The core duty of the police service is to protect the public and detect and prevent crime. This duty is established in common law (precedents set by decisions of the courts) and the police have common law powers to execute it.¹ They also have specific powers set out in legislation which help them to carry out their duty.

The use of police powers must be compatible with human rights and equalities legislation.² Police personnel are personally responsible for ensuring that the use of their powers is lawful, proportionate and necessary.³

Police powers can be grouped into three categories:

- **Powers to investigate crime.** This includes a range of powers to collect evidence needed to identify suspects and ensure that they can be prosecuted at trial.
- **Powers to prevent crime.** This includes a range of powers to maintain public order and prevent anti-social behaviour.
- **Powers to 'dispose' of criminal cases.** These powers allow police officers to formally reprimand those who have committed minor criminal offences or to charge suspects with serious offences so they can be prosecuted through the courts.

How to use this briefing

This briefing is designed to complement the Research Briefing [Policing in the UK](#). Together, these briefings provide a 'beginners' guide' to police services in the UK. 'Policing in the UK' provides an overview of the governance and operations of police services. This briefing discusses the powers of police personnel. It is divided into four sections:

Overview: describes which police personnel have powers. It also discusses the types of guidance issued to police personnel on their powers.

Investigation powers: provides an overview of the *Police and Criminal Evidence Act 1986* and the *Investigatory Powers Act 2016*.

Prevention powers: provides an overview of police powers to maintain public order and tackle anti-social behaviour.

Charging powers: provides an overview of how the police 'dispose' of criminal cases. It describes their powers to issue cautions and penalty notices for minor offences and how they work with the Crown Prosecution Service to issue charges to those accused of serious criminal offences.

Other Library briefings about police powers

This briefing is part of a series on police powers. Other Research Briefings in this series include:

[Police stop and search powers](#) (updated September 2019)

[Policing of protests](#) (updated August 2019)

[Constituency casework: Anti-social behaviour in England and Wales](#) (updated June 2018)

[The retention and disclosure of criminal records](#) (updated May 2019)

¹ Halsbury's Laws, Vol 84 (Police and Investigatory Powers), para 1 and 40; Rice v Connolly [1966] 2 Q.B. 414.

² [s6\(1\)](#), *Human Rights 1998* and [s149](#), *Equality Act 2010*

³ Card, R & English J, *Police Law*, fifteenth edition, p35

1. Overview

The core duty of the police service is to protect the public and detect and prevent crime. This duty is established in common law (precedents set by decisions of the courts) and the police have common law powers to execute it.⁴ They also have specific powers set out in legislation which also help them to carry out their duty.

Police officers are individually responsible for ensuring they exercise their powers in accordance with the law.⁵ The use of police powers should be necessary, proportionate and compatible with human rights and equalities legislation.⁶ The government and police leaders publish official guidance to officers which helps them use their powers lawfully and effectively.

The police are not the only public authority responsible for reducing and reprimanding crime. They operate within the criminal justice system in which other public services have powers and responsibilities.

The Criminal Justice System (CJS)

<p>Home Office</p> <p>Responsible for setting policing policy nationally. Also responsible for immigration and borders policy.</p>	<p>The police</p> <p>Divided into 43 operationally independent police forces. Responsible for investigating and preventing crime.</p>
<p>Ministry of Justice</p> <p>Responsible for setting justice policy nationally.</p>	<p>Crown Prosecution Service</p> <p>Responsible for prosecuting criminal cases that have been investigated by the police (or other relevant investigative organisation).</p> <p>The courts</p> <p>Responsible for administering criminal, civil, family and employment cases. Magistrates courts deal with less serious criminal cases. Youth courts are specialist magistrates courts that deal with all but the most serious cases against children. Crown courts deal with the most serious offences which are triable by judge and jury.</p> <p>The prison and probation service</p> <p>Responsible for carrying out sentences given by the courts in custody or the community. They are responsible for rehabilitating offenders through education and employment.</p>

⁴ Halsbury's Laws, Vol 84 (Police and Investigatory Powers), para 1 and 40; Rice v Connolly [1966] 2 Q.B. 414.

⁵ Card, R & English J, Police Law, fifteenth edition, p35

⁶ Ibid. See also: [s6\(1\)](#), *Human Rights 1998* and [s149](#), *Equality Act 2010*

1.1 Which police personnel have powers?

There are four types of police personnel who have different powers:

- **Police officers** have almost all the relevant police powers. Some powers (notably authorisation powers) are reserved for police officers at higher ranks.
- **Police specials** (volunteer police officers) have the same powers as paid police officers.
- **Police support** and **police community support officers (PCSOs)** have certain powers designated to them depending on the type of support function they serve.
- **Civilian staff** do not have any police powers. These staff perform administrative functions that do not require them to have powers.

Powers of police support officers & PCSOs

Chief Constables (the most senior police officer in a police force) choose which powers to designate to support and community support officers. Chief Constables can designate whichever powers they want **except** for powers explicitly reserved for regular officers.⁷

Police support officers and PCSOs have some powers irrespective of what has been designated to them by their Chief Constable:

- Certain types of support officers have specific powers set out in legislation. For example, custody officers (also known as 'detention officers') have powers under the *Police and Criminal Evidence Act 1987* to decide whether arrested suspects should be released on bail or held in the police detention.
- There are certain powers which 'police community support officers' (PCSOs) have that regular police officers do not have. For example, powers associated with the policing of anti-social behaviour and powers to act whilst they wait for the arrival of a police officer.⁸ Chief Constables can designate PCSOs with other powers, but they have these powers regardless of what has been designated to them.⁹

Powers reserved for police officers

There are certain powers which **cannot** be designated to support and community support officers and are therefore reserved for regular police officers. These are

- The power to make an arrest,
- The power to stop and search any individual or vehicle,
- Any police power reserved for officers of certain ranks,
- The power of a police officer to perform the duty of a custody officer when a custody officer is not available,

⁷ [s38\(4\), Police and Crime Act 2017](#)

⁸ [Schedule 11, Policing and Crime Act 2017](#)

⁹ Ibid

- Any power given to police officers under terrorism legislation or the *Official Secrets Act 1911* and the *Official Secrets Act 1989*; and,
- The power of a police officer to make an application under section 19 or 21 of the *Investigatory Powers Act 2016*.¹⁰

1.2 Guidance on police powers

Police guidance provides officers with advice on when and how to use their powers. Most police guidance is discretionary which means that officers can deviate from it if they can demonstrate a clear rationale for doing so and remain compliant with the law. Ultimately, it is for the individual officer exercising the power to ensure that they do so legally.

There are three main forms of police guidance: statutory guidance, Authorised Professional Practice (APP) and operational guidance.

Statutory guidance

Sometimes legislation allows or requires the government to publish guidance on a specific set of powers. For example, [part IV](#) of the *Police and Criminal Evidence Act 1984* requires the government to publish and maintain codes of practice on the powers in the Act (what are known as the PACE Codes). Similarly, [section 19](#) of the *Anti-social Behaviour, Crime and Policing Act 2014* allows the Government to issue guidance on the powers in that Act.

Sometimes legislation explicitly refers to statutory guidance. For instance, [section 39\(1\)](#) of the *Police and Criminal Evidence Act 1984* requires police forces to treat people detained in their custody in accordance with the [code of practice on detention](#). In these cases, it would be unlawful for police officers to deviate from the guidance.

Authorised Professional Practice (APP)

The College of Policing is the body responsible for professional standards in policing. It publishes [Authorised Professional Practice](#) (APP) documents.

APP documents are themed around different aspects of policing. For example, there is an APP on [public order policing](#) and one on [digital investigation and intelligence](#). These documents advise officers on how to use their powers lawfully but also advise on the most effective approaches.

Police officers are expected to have regard to APP when on duty. However, there may be circumstances in which it would be legitimate for them to deviate from it.

Unlike statutory guidance, which is specific to legislative powers, APP documents provide guidance on powers and tactics.

¹⁰ [Schedule 10](#), *Policing and Crime Act 2017*

Operational guidance

Operational guidance is published by the police themselves. As with APP these documents tend to be discretionary and discuss both tactics and powers.

The National Police Chiefs Council (a co-ordinating body for all UK police forces) publishes operational guidance which applies nationally. These guidance documents are written by police leaders from individual forces who are responsible for specific issues at the NPCC. For example, the National Police Chiefs Council's (NPCC) [operational guidance on unauthorised encampments](#) assists officers use their powers to direct unauthorised Gypsy and Traveller sites to move. It was written by the NPCC's 'policing lead' for Gypsies and Travellers, Deputy Chief Constable Janette McCromick.

Forces may issue their own internal operational guidance documents. Force level guidance is not normally made available to the public. However, sometimes forces choose to publish their guidance. It may also be obtained through Freedom of Information Requests.

2. Investigation powers

2.1 PACE powers

The key piece of legislation (though not the only legislation) which provides the police with powers to investigate crime is the [Police and Criminal Evidence Act 1984](#), often known by its acronym PACE. PACE gives the police powers to:

- Arrest, detain, question and take the biometric details of those suspected of a crime.
- Question witnesses to a crime.
- Enter a property, search it and seize evidence.
- Stop and search individuals.

PACE powers are subject to exemptions and safeguards. For example, some of the powers, like the power to enter and search property in certain circumstances, are reliant on officers securing a warrant from the courts.

The Home Office publishes and maintains a set of statutory codes which complement PACE. The [PACE Codes](#) provide statutory guidance to police officers on how to execute their PACE powers.

Power of arrest

[Section 24](#) of PACE allows police officers to arrest without a warrant anyone they suspect has committed or is committing a crime so long as the arrest is deemed *necessary*.

An arrest can be *necessary* if it is required to protect vulnerable people, prevent injury or damage to property or to support the prompt investigation or prosecution of an offence.¹¹

Until 2005, police officers could only arrest someone without a warrant if they were suspected of committing a “serious” offence. The police were required to determine the seriousness of the alleged offence before conducting the arrest. However, this requirement was removed by the *Serious Organised Crime and Police Act 2005*.¹²

Other Research Briefings about PACE powers

[Police stop and search powers](#) (last updated September 2019)

2.2 Digital evidence

There are multiple pieces of legislation which allow police officers to request and obtain digital evidence. It is the responsibility of the investigating officers to obtain evidence (whether digital or otherwise) legally. Only evidence obtained legally can be permissible in court.

¹¹ [s24\(5\)](#), *Police and Criminal Evidence Act 1986* as inserted by [s110](#), *Serious Organised Crime and Police Act 2005*

¹² [s110-111](#) and [Schedule 7](#) of *Serious Organised Crime and Police Act 2005*

Other than PACE the key piece of legislation which provides the police with the power to request and obtain digital evidence is the [Investigatory Powers Act 2016](#) (IPA).

IPA provides the police (and other security and intelligence agencies) with the power to obtain communications data and data about communications. It also provides a framework by which these powers are authorised and overseen.¹³ As with PACE, there are statutory [codes of practice](#) which complement the use IPA powers.

¹³ GOV.UK, [Collection: Investigatory Powers Act](#) [last accessed 7 August 2019]

3. Prevention powers

3.1 Public order powers

The police have a variety of powers to enforce public order. They have common law powers to maintain the 'Queen's peace', they also have statutory powers, notably through the [Public Order Act 1986](#) and the [Criminal Justice and Public Order Act 1994](#).

Statutory public order powers allow police officers to issue directions to members of the public to prevent serious disruption or harm. Failure to comply with a police direction made under a specific piece of public order legislation is normally a criminal offence. Police officers therefore have powers to arrest those who fail to comply.

The relevant legislation associated with the specific power will provide safeguards to ensure that the police use it proportionately and fairly. For example, legislation normally prescribes that directions can only be issued by (or with the consent of) senior officers. Legislation will also prescribe specific requirements that must be met before issuing a direction.

The powers associated with policing protests are a classic example of public order powers. [Part II Public Order Act 1986](#) allows police officers to issue directions on protests causing serious damage to property, serious disruption or will incite unlawful behaviour. These directions can proscribe where a protest can take place, for how long it can last and how many people can be involved. The Library Briefing [Policing of protests](#) discusses these powers in more detail.

3.2 Use of force

Police officers can use proportionate and necessary force in the course of their duties. Their common law powers provide them with authority to use force. [Section 3](#) of the *Criminal Law Act 1967* authorises the use of reasonable force to prevent crime or assist a lawful arrest. [Section 117](#) of PACE authorises police officers to use reasonable force to exercise their powers under the Act.

The College of Policing's APP on [Public Order](#) provides detailed guidance on the [police use of force](#).

There are [ten key principles governing the use of force by the police service](#). These principles were written by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and have been endorsed by the College of Policing.¹⁴ They are:

- 1 Police officers have a general duty to protect the public, prevent crime and investigate crime.
- 2 Police officers may use force to exercise this duty. They may also use force in self-defence or in the defence of others.

¹⁴ College of Policing, APP: Public order: [police use of force](#) [last accessed 11 September 2019]

- 3 Police officers shall, as far as possible, apply non-violent methods before resorting to any use of force.
- 4 When force is used it should be exercised with restraint. It should be the minimum honestly and reasonably judged to be necessary.
- 5 Lethal or potentially lethal force should only be used in self-defence or in the defence of others against the threat of death or serious injury.
- 6 Police officers should consider the implications of using force against children or vulnerable people.
- 7 Police operations should be planned to minimise the use of force.
- 8 Individual officers are accountable and responsible for their use of force and must be able to justify their actions in law.
- 9 The use of force should be reported and recorded as soon as possible.
- 10 Senior officers should consider the safety of their personnel when deploying them in a context which where force may be used.

Recording the use of force

Since 2017 there has been an extended operational requirement for forces to record their use of force.¹⁵ The NPCC has published [operational guidance](#) to forces on complying with the new requirements. Forces should now record when their officers use force in the following circumstances.¹⁶

- **The use of 'armed tactics':** Including the use handcuffs, batons, shields, TASERS, spit guards, irritant spray, body restraints or any improvised device.
- **The use of 'unarmed skills':** Such as restraining or striking.
- **The deployment of dogs.**
- **The use of firearms:** Any incident in which a firearm or [attenuating energy projectile](#) is aimed or discharged.

In 2017 HMICFRS found that eight forces were not complying with the new requirements. They said that two of these forces were choosing to not comply.¹⁷ HMICFRS have remained critical of how forces are recording their use of force. In 2019 they said that the poor recording and monitoring of incidents involving the use of force remains an "area of concern".¹⁸

The Home Office released the first set of 'use of force' data in December 2018. These statistics **do not represent all police use of force in England and Wales**. However, they do show that there were

¹⁵ HMICFRS, [PEEL: Police legitimacy 2017 a national overview](#), December 2017, p15

¹⁶ NPCC, Use of Force Monitoring Form: Guidance, January 2017

¹⁷ HMICFRS, [PEEL: Police legitimacy 2017 a national overview](#), December 2017, p15

¹⁸ HMICFRS, [State of policing: the annual assessment of policing in England and Wales 2018](#), July 2019, p113

around 300,000 **recorded** incidents in which a police officer used force in the year to March 2018.¹⁹

3.3 Anti-social behaviour powers

Anti-social behaviour can constitute a criminal offence.²⁰ When anti-social behaviour is criminal the police can use their powers to investigate and dispose of criminal cases to help bring the offender to justice.

The [Anti-Social Behaviour, Crime and Policing Act 2014](#) provides several public sector bodies with powers to prevent and tackle anti-social behaviour. This Act repealed and replaced previous legislation and was designed to simplify the powers available to tackle anti-social behaviour.²¹

There are now six specific powers, four of which apply to the police, designed to tackle anti-social behaviour. All six powers are explained in the Library paper [Constituency casework: Anti-social behaviour in England and Wales](#). The Government has also provided [statutory guidance](#) on them.

The four powers available to the police are:

- **Dispersal powers:** Allow police officers to direct people they suspect are behaving in an anti-social way to leave a specific area. The use of the power must be authorised by an officer of at least the rank of Inspector.²²
- **Closure powers:** Allow officers, of at least the rank of Inspector, to temporarily restrict access to premises associated with antisocial behaviour. Superintendents can extend the restrictions for a limited period or ask the courts to restrict access for longer if it is necessary. Local authorities also have closure powers.²³
- **Civil injunctions:** Police forces (and several other public sector bodies) can apply to the courts for an injunction to be issued against any person (aged ten or older) who has committed persistent anti-social behaviour. Injunctions can prevent individuals from engaging in certain behaviour and/or require them to attend classes or sessions, for example attending a support group for addiction.²⁴
- **Community Protection Notices:** The police, Local Councils and Social Landlords have powers to issue Community Protection Notices (CPNs). CPNs can be issued to anyone over 16 years of age. They can also be issued to organisations. They direct the individual or organisation to stop a particular behaviour and are designed to tackle persistent anti-social behaviour.²⁵

¹⁹ Home Office, [Police use of force statistics, England and Wales: April 2017 to March 2018](#), p2

²⁰ For example, graffiti can be classified as criminal damage under [s1](#) of the *Criminal Damage Act 1971*

²¹ HM Govt, [Explanatory notes to Anti-Social Behaviour, Crime and Policing Act 2014](#), paragraph 13

²² [Part II](#), *Anti-social Behaviour, Crime and Policing Act 2014*

²³ [Part IV, Chapter 3](#), *Anti-social Behaviour, Crime and Policing Act 2014*

²⁴ [Part I](#), *Anti-social Behaviour, Crime and Policing Act 2014*

²⁵ [Part IV, Chapter 1](#), *Anti-social Behaviour, Crime and Policing Act 2014*

Local councils must also consult their local police force when considering whether to implement a [Public Spaces Protection Order](#) (PSPOs). PSPOs allow councils to designate activities which are prohibited in specific areas.

Other Research Briefings about prevention powers

[Policing of protests](#) (updated August 2019)

[Constituency casework: Anti-social behaviour in England and Wales](#) (June 2018)

Section 7 of [Gypsies and Travellers](#) discusses the police powers to direct unauthorised encampments to move.

4. Disposal powers

The police have powers to 'dispose' of criminal cases. There are two formal ways in which the police can dispose of a case. They can either charge an individual with a crime, or they can issue a caution or a penalty notice.

4.1 Charging powers

The police do not have powers to prosecute crime in the courts. Instead they have powers to charge individuals, which they exercise in collaboration with the Crown Prosecution Service (CPS).²⁶ The CPS advises on what crime to charge an individual with based on the information provided to them by the police. Once an individual has been charged the CPS will pursue a prosecution through the courts.

Both the CPS and the College of Policing have issued guidance about how the process of charging offenders should be conducted:

- The College of Policing, [APP: Prosecution and case management: Charging and case preparation](#) [last accessed 7 August 2019]
- The CPS, [Police and CPS relations](#), updated December 2018
- The CPS, [Charging \(The Director's Guidance\) 2013 - fifth edition](#), May 2013 (revised arrangements)

4.2 Out of court disposals

The police may dispose of minor offences by issuing a caution or penalty notice. These are not criminal convictions, but they do appear on Disclosure and Barring Service (DBS- or criminal records) checks. Cautions and penalty notices are sometimes called 'out-of-court' disposals because they do not require a formal prosecution through the courts.

Some general information about cautions and penalty notices can be found through on the Gov.UK page [Police cautions, warnings and penalty notices](#). The College of Policing has also provided guidance on [Possible justice outcomes following investigation](#) which discusses 'out-of-court' disposals in more detail.

Cautions

A caution is a formal warning for a minor criminal offence that can be issued to any person over the age of ten.²⁷ Cautions can only be issued when the individual concerned has admitted they committed the offence. Police officers issuing cautions should be satisfied that the individual concerned is competent to admit guilt. If the individual refuses to admit guilt the police can charge them with the offence and a prosecution may be pursued through the courts.

²⁶ [s29, Criminal Justice Act 2003](#)

²⁷ GOV.UK, [Police cautions, warnings and penalty notices](#) [last accessed 7 August 2019]

The Home Office has published separate guidance on issuing cautions to [adults](#) and [children](#) which provides further information. The guidance includes information on the very limited circumstances in which a caution can be appealed. The following resources provide further information and advice about cautions:

- Ask the Police, [What is a caution and how long does it last?](#)
- Unlock (a criminal records charity), [Simple caution \(including youth cautions\)](#)
- Unlock, [Implications of accepting a police caution](#)

The police can issue adults with conditional cautions which require them to comply with certain requirements.²⁸ For example, individuals may be required to seek treatment for alcohol or drug abuse.

Failure to comply with a conditional caution is an offence and criminal charges may be brought against the offender.

The Ministry of Justice has published a statutory [code of practice for adult conditional cautions](#) which provides officers with guidance on when and how to issue them. The CPS has also published [guidance to police officers on issuing conditional cautions](#).

Penalty notices

Penalty Notices for Disorder (PNDs) are fines that police officers can issue to those over eighteen who have admitted committing certain types of minor offences. For example, graffiti and drunk and disorderly behaviour.²⁹

Like cautions, PNDs are not a criminal conviction but if the offender refuses to pay the fine they can be charged with the offence and may be prosecuted. Upon receiving a PND individuals have 21 days to pay the penalty or request a court hearing.

The police may issue a PND with an 'education option'. This enables the individual to complete an educational course relating to their offence *instead* of paying the penalty associated with the notice.

The Ministry of Justice has issued guidance to the police on [issuing PNDs](#).

Other Research Briefings about disposal powers

[The retention and disclosure of criminal records](#) (updated May 2019)

²⁸ [s22, Criminal Justice Act 2003](#)

²⁹ Ministry of Justice, [Penalty Notices for Disorder \(PNDs\)](#), June 2014, section 7

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