

The Serious Organised Crime and Police Act 2005 – is it seriously organised?

Darren Sylvester focuses on the reforms to police powers of arrest contained in the Serious Organised Crime and Police Act 2005

The Serious Organised Crime and Police Act 2005 (SOCPA) re-writes the laws of arrest in all cases. Previously, the powers of arrest were broadly governed by The Police and Criminal Evidence Act 1984 (PACE). PACE introduced in s.24 the arrestable offence, for which a police officer could arrest without a warrant; and s.25 of the same Act set out the general arrest conditions whereby a police officer might sometimes arrest for a non-arrestable offence.

Police arrest

Since 1st January 2006, the distinction between an arrestable and non-arrestable offence has vanished and police officers can arrest for minor as well as serious offences. By s.110 of SOCPA, a police officer may arrest without a warrant anyone who has committed any offence, is committing any offence, or is about to commit any offence, or whom the officer has reasonable grounds for believing has, is, or is about to do so. In cases involving minor offences, there is a subjective test (the officer's assessment) of whether the arrest is necessary. An arrest may be necessary in the following circumstances:

- to determine the true name and/or address of the suspected person
- to prevent the causing of physical injury, loss and damage to property
- to prevent an offence against public decency or obstruction of the highway
- to protect a vulnerable person or child
- to prevent a person disappearing
- to allow the prompt and effective investigation of the supposed offence

The scope of the new arrest powers has led to the revision of PACE Code of Practice G which reminds police constables that the use of the power must be fully justified and officers should consider whether the necessary objectives could be met by other, less intrusive means. In other words, the police ought not to use a sledgehammer to crack a nut. As well as the power of arrest being exercised in a proportionate manner, it should, of course, be exercised in a non-discriminatory fashion also.

Citizen's arrest

Provision is made in the Act (by a new s.24A of PACE) to allow a person other than a constable to arrest anyone who:

- is (or whom the person reasonably expects to be) in the act of committing an indictable offence – that is, any indictable-only offence (triable in the Crown Court); or either way offence (triable in the Magistrates' Court or Crown Court)

- has committed (or whom the persons reasonably suspects of having committed) an indictable offence which has actually been committed by someone.

Coupled with these requirements, it must also be necessary to make the arrest; to prevent the person from injuring himself or another person; suffering physical injury; causing loss or damage to property; or making off before a constable can assume responsibility for him, and it is not reasonably practicable to make the arrest. It is essential, therefore, that public spirited citizens are acquainted with sufficient legal knowledge to determine what offences are classified as indictable; otherwise, they could well be exposed to civil liability for wrongful arrest.

Other changes

As well as the above changes in the area of arrest, SOCPA has made many changes, the majority of which are outside the scope of this article. However, readers' may do well to note that some of the changes include the powers of the police to take a suspect's photograph and fingerprints at a place other than a police station; there is the new power to take footwear impressions at a police station; and the definition of an 'intimate sample' has been clarified to include swabs from a person's genitals or from a person's body orifice other than the mouth.

Is it seriously organised?

SOCPA is a most recent and serious development in criminal law, but it is surprising to discover that SOCPA omits to include a definition of "organised crime". Whilst the implications of the omission are difficult to currently assess, it has to be wondered whether it was Parliament's actual intention to give the Serious Organised Crime Agency (SOCA) a free licence to determine what it considers to constitute organised crime.

With the wide ranging police powers accompanying the SOCPA, it is discomfoting to realise that corresponding levels of accountability together with the system of checks and balances on its own, precise terms of reference are not defined. Yet again, as with so much of the legislation this government passes, it can be argued that the imbalance of power is held with the State. It is for these reasons (and more outside the scope of this article) that one questions whether the legislation is seriously organised at all.

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The views expressed are those of the author alone, and not those of the management committee of DONA