

Activists' Legal Project

info@activistslegalproject.org.uk

www.activistslegalproject.org.uk



Police Search and Seizure Powers

CONTENTS

1. Stop and search of persons/ vehicles
2. Searches of premises
 - a. search with a warrant
 - b. search without a warrant
3. Seizure of property
4. Retention of property

1. Stop and Search of Persons and/or Vehicles

The police often use the opportunity of stopping and searching you to do a little extra intelligence gathering. In particular they will ask for your name and address. There is no obligation to give your name or address when you are stopped and searched. But the police frequently try to search more extensively than necessary, looking through paperwork, address books and wallets when supposedly searching for weapons. They have also been known to look inside mobile phones for the IMEI number (a number unique to your phone), ostensibly to check whether you have stolen the phone. Or they have suggested that people have stolen their own credit cards when they have refused to give their details. Stop and search is often used at protests as a way of trying to extricate our personal details, to harrass us and waste our time.

There are a number of different pieces of legislation that permit the police to stop, detain and search you and/ or your vehicle, these include: section 1 of the Police and Criminal Evidence Act 1984, section 60 of the Criminal Justice and Public Order Act 1994 and sections 43 and 44 of the Terrorism Act 2000. Make sure you know which one you are being stopped under, so that you can feel confident in refusing to cooperate if they go beyond the law.

The police can stop and search you or your vehicle if:

- a. They have a 'reasonable suspicion' that you are carrying

drugs, weapons, stolen items, or articles for use in the commission of specific offences: theft, burglary, criminal damage under **section 1 Police and Criminal Evidence Act 1984 (PACE)**. They must have the reasonable suspicion before they start to search you and it can't be based only on the fact that you are a known activist. You must be told what the object of the search is and the grounds for making it, otherwise its illegal. They can use reasonable force to search you. People were searched on arrival at the Heathrow and Kingsnorth climate camps under this provision on the basis that campers had 'articles for use in the commission of criminal damage'.

- b. A search has been specifically authorised under **section 60, Criminal Justice and Public Order Act, 1994**. Searches can only be authorised when the police believe an incident involving serious violence may take place in the locality. Searches must be authorized by a superintendent (or by an inspector where violence is believed to be imminent and no superintendent is available). This is a blanket search power allowing searches of anyone in a given area for a given period of time. The act allows a police officer to stop and search any person or their possessions (eg bags) or vehicles for offensive weapons and dangerous instruments. It's not a right to search for anything else eg address books, camera film. The police do not need any grounds to suspect that you are carrying weapons or dangerous instruments before searching you. This section has been used frequently at street protests, the term 'kettling' is often used to describe the way in which the police surround large groups of people and only release them one by one after they have been searched. It is an offence to fail to stop or to stop your vehicle when required to do so. The maximum penalty is a term of imprisonment of one month or a fine of £1,000 or both.

- c. They have reasonable suspicion that you are a terrorist under **section 43 Terrorism Act 2000**. The Act defines terrorism very broadly and it includes serious damage to property as well as violence to people. The 'terrorist act' must also be designed to influence the government or to intimidate the public or a section of the public, and

the act must be for the purpose of advancing a political, religious or ideological cause. The search can be carried out by a constable without authorisation provided they have reasonable suspicion. The search is for any items that constitute evidence that you are a terrorist. People stopped on the London Underground following the July 2005 bombings were stopped under this provision.

d. they believe it is expedient for the prevention of acts of terrorism - **section 44 Terrorism Act 2000**. This is another blanket search power which must be authorised by an officer of at least the rank of assistant chief constable (a Commander in London). Once authorised, searches of any person or vehicle, for articles which could be used in connection with terrorism can take place, within a specified area for a given period of time (up to 28 days). There is no need for the searching police officer to have grounds for suspecting that you have articles connected with terrorism in your possession. This section has been used to carry out blanket searches in London at antiwar protests, during the DSEi arms fair and outside Fairford US airbase. Failure to stop or obstruction of the police when exercising these powers is punishable with a maximum of six months imprisonment or a fine of £5,000, or both.

Under **all** of the stop and search provisions above the following apply:

- You are not required to give your name and address when you are searched, unless you are the driver of a vehicle.
- You only have to remove outer clothing (hat, coat and shoes) for searches in public places. They can 'pat you down', but this should be done by an officer of the same sex. They can also check your bags and pockets. The removal of more than outer clothing constitutes a strip search, this kind of search and intimate searches can only take place after you have been taken into custody.
- If they find any weapons or other items, that they are entitled to search for, these can be seized.
- The police must give you a written record of the search and a list of anything they have seized.

2 Searches of Premises

a. Search with a warrant (section 8 Police and Criminal Evidence Act, 1984)

If you have not been arrested, the police cannot search your home or workplace for articles linked to an offence, without a warrant. A magistrate can issue a warrant authorising entry and search of your home or workplace where there are reasonable grounds that a serious or 'indictable' offence has been committed, that there is material on the premises of substantial value to the investigation, that it is likely to be relevant evidence and

that it's not practicable to gain entry any other way (See 'A Guide to Possible Offences' for more on indictable offences). The police must specify in their application which premises are to be searched and what articles/ persons are being searched for. Reasonable force can be used to exercise the warrant eg kicking down your door. Any items found can be seized. They can only search for items specified in the warrant, but if they find anything else during the search which might be evidence of an offence then they can seize it under their general powers of seizure (section 19 PACE see below).

b. Search without a warrant (section 18 Police and Criminal Evidence Act, 1984)

Once you have been arrested for an indictable offence the police no longer need to get a search warrant. They can enter premises eg your home or workplace whilst you are under arrest, if they reasonably suspect that there is evidence on the premises relating to the offence for which you are under arrest or for similar offences. The police may only search the parts of the premises under your control, so can't search your housemates rooms, but can search the common parts, eg garden, shed, kitchen, bathroom, attic.

3. Seizure of Property (section 19 Police and Criminal Evidence Act, 1984)

A police officer lawfully on premises (which includes vehicles, tents, caravans) can seize any item which they reasonably suspect is evidence of an offence or has been obtained as a consequence of an offence. So they can seize items on actions eg: video or stills cameras, even though you haven't been arrested, if they reasonably suspect they contain evidence of an offence. If they are searching your house and are looking for evidence of your last action, they can also seize anything else they find if it is evidence of an offence. So if they find that bit of dope down the back of the sofa, it can also be seized.

Don't invite them in (as they would then lawfully be on the premises), make them get a warrant, unless they are searching under section 18 above.

4. Retention of Property (section 22 Police and Criminal Evidence Act, 1984)

The police have the power to retain your property 'for as long as is necessary in the circumstances'. You should be able to get it back as soon as they have dropped the case or decided it isn't needed as evidence, but there's plenty of room for abuse. If you are acquitted you will get all of your property back.

We have tried to be as accurate as possible. However it would be impossible to include every point and issue in a short briefing like this. If you are in any doubt about a point, please ask us and if we can't answer your question we will try to refer you to someone who can.
August 2008