

## **Powers of Arrest**

**Professor Joshua Bamfield  
Director, Centre for Retail Research**

**(From September 2006 edition of Professional Security Magazine)**

The discussion in Professional Security between Peter Whitehead and Adrian Maxwell about changes to a security officer's powers of arrest has been extremely valuable in focusing attention on this subject.

Although much of the debate last year about the Government's Serious Organised Crime and Police Act 2005 (or SOCPA) concerned police detention powers for terrorists and the role of the Serious Organised Crime Agency, the law itself laid out a new basis under which private individuals (including security officers) may arrest other people. This received very little comment in the media. However the Whitehead: Maxwell debate has sparked interest in this topic within security, but, like many debates, some of the issues seem unresolved. This article attempts to resolve some of these in relation to the work of security staff in the retail sector.

It is obviously essential that security staff are aware of their powers of arrest and must understand how these powers are limited by the law. In the last two years there have been a number of changes to the law affecting retail crime. As well as SOCPA, there have been the Fraud Act as well as the use of Fixed Penalty Notices (FPN) to dispose of low-level retail thefts.

There is evidence that police training about the new changes has been spasmodic. Police do not always understand the new legal frameworks themselves. In some areas, retail security managers have had to deal with new police 'policies' that the citizen's powers of arrest have been abolished or withdrawn for offences below the FPN limit. These problems have normally not hit the headlines because retail security managers have developed wisdom in order to do their jobs. But the apparent uncertainty means that security staff need to be confident about their precise powers of arrest in order to act lawfully in their behaviour with criminals as well as dealing with any police attempts to undermine or negate these powers.

### **Indictable offences**

Previously, the law limiting powers of arrest by police and by private persons was PACE 1984. SOCPA 2005 section 110 has amended many sections of PACE including the section dealing with arrest by the private individuals. There have been several changes.

The concept of 'arrestable offences' has been abolished. Instead, 'other persons' can arrest without warrant only indictable offences although the police are now able to arrest for all offences (some would argue that PACE section 25 allowed them to do this anyway). For security officers in the retail sector these changes do not make much difference. Indictable offences are those which can be tried in a Crown Court or higher court by a jury. 'Arrestable' offences (PACE 1984) were those for which an adult may be sentenced for five years or more. However the lists of indictable and arrestable offences are very similar in practice. For retail security officers they include most of the crimes for which they would normally make arrests: theft, assault, robbery, burglary and much Criminal Damage. The situation may be different for security officers in other sectors.

Previous legislation started with the powers of 'any person to arrest without warrant' (PACE 1984) before going on to enumerate the additional (and necessary) powers of constables to arrest in other circumstances. SOCPA 2005

defines arrest powers primarily in terms of police. It details the wide powers of the police to arrest suspects and then creates a new section 24A of PACE (headed 'Other Persons') to set out the more limited powers of 'a person other than a constable' to arrest. This may simply reflect the world we live in, but one feels that something important has been lost here.

Summary arrests by other persons now can no longer be justified in terms of the rights of the citizen or the gravity of the offence, but because 'it is not reasonably practicable for a constable to make it instead' (section 24A (3) (b)). The legislators were presumably trying to emphasise the primacy of the police in the fight against crime rather than create new restrictions upon the power of arrest. It seems unlikely that this imposes a new range of responsibilities upon security staff such as the need to search nearby streets to find a police constable before being able to make an arrest. But it also means that when police are actually present, the powers of arrest of security staff and others will be subordinate to the police.

### **The retail position**

Theft, assault, robbery, burglary and much criminal damage are indictable offences so the retail security officer's powers of arrest are unchanged. Although many of these crimes are dealt with summarily (or, retailers would say, not at all) they are all by definition indictable crimes for which their staff have the power of arrest. Although the Government may seem to have made small-scale retail theft into a misdemeanour by introducing FPNs, this does not change the rights of staff to arrest thieves for sums as small as £1.00 or less. The scale of the actual theft may influence whether the police are willing to make an arrest and whether the CPS will prosecute, but does not alter the legal powers of retail staff or vigilant customers in making arrests.

An arrest is 'taking a person's liberty in order that he may answer to a charge or suspected charge or offence'. Retail staff are normally trained to avoid arresting thieves. Instead they 'apprehend' them by asking them to cooperate voluntarily by coming to the manager's office. Although this can amount to an arrest if the person is unwilling, the policy of 'apprehending' rather than arresting is likely to continue in the expectation that an arrest which has not been made cannot lead to a suit for false arrest.

### **The basis of arrest**

The new PACE section 24A gives 'a person other than a constable' the powers to arrest without warrant anyone who is in the act of committing an indictable offence and anyone whom he has reasonable grounds for suspecting to be committing an indictable offence. For offences that have already been committed, a person may arrest anyone who is guilty of the offence and anyone whom he has reasonable grounds for suspecting to be guilty of it.

As before, other persons may not arrest someone about to commit a crime: only police have this power.

The terminology of the SOCPA law of arrest for private persons is identical to PACE 1984, except for the use of 'indictable' offences and new clauses (3 and 4) requiring the arrest to be justified.

It is difficult therefore to view these changes as making things either much more difficult for security staff to make arrests or much easier. There seems no reason to suggest that SOCPA enables a security officer to rely on the uncorroborated

word of a CCTV operator when making an arrest. This will continue to be problematic. But neither does it generally undermine the powers of arrest that security officers had under previous legislation.

### **The four reasons**

A further change introduced by SOCPA is that all arrests, including arrests made by police, have to be justified.

For private individuals, as we have seen, one justification for any arrest is that 'it is not reasonably practicable for a constable to make it instead' (24A (3) (b)). Other persons (including security staff) must also be able to show that the arrest itself was 'necessary' (24A (3) (a)). Whilst this seems to imply that arrests are to be avoided at all costs, it is probably intended to prevent the use of arrest as a routine activity.

For an arrest by a private person to be 'necessary' it must comply with one or more of four reasons given as amendments to PACE, section 24A (4). None relate to the gravity of the offence but to the person apprehended.

The four reasons are that without being arrested the arrestee might:

1. cause physical injury to himself or any other person;
2. suffer physical injury;
3. cause loss or damage to property;
4. make off before a constable can assume responsibility for him.

In order to make a lawful arrest, the security officer 'has to have reasonable grounds for believing that' any one of these reasons apply. He or she does not have to have conclusive proof that unless arrested the thief will harm himself, destroy property or run away, but there needs to be some basis for this belief. The four reasons are quite sweeping and meet most eventualities. Presumably the belief that the criminal suspect would otherwise have escaped will be the catch-all reason used when the other reasons seem inappropriate. There is no requirement to inform the suspect which of the four reasons are being used to justify the arrest.

The implication of the four reasons is that a suspect who is peaceful, compliant, unthreatening, and who gives no evidence that he or she will self-harm, attack others, damage property or try to escape ought not to be arrested. This should not require a change in the policies followed as such people would be regarded as voluntarily cooperating with the store until the police arrive.

### **Summary**

The changes introduced under SOCPA clarify the law about powers of arrest –but create new issues! The basis of any arrest by security staff, particularly retail security, remains largely unchanged. The key differences are the leading role given to the police and the need to be able to justify the arrest as 'necessary' in relation to one or more of the four reasons.