

## SEARCHING PREMISES

It is a fairly common occurrence when people are arrested in protest and public order situations that the police search their home (which may of course be the home of other people, including their parents as was the case with many students) and seize property, including computers and 'phones.. This short article looks at the entitlement of the cops to carry out such a search and what safeguards there are for the defendant.

It must be stressed that the right to privacy and respect for personal property are key principles of the Human Rights Act 1998. PACE acknowledges this by stating that "Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means."

There are four ways the cops may enter premises:

### 1. By consent

The cops should seek the consent of a person entitled to grant entry (i.e. flatmate, family member who lives there). Before seeking consent the officer in charge of the search shall state the purpose of the proposed search and its extent. This information must be as specific as possible, particularly regarding the articles or persons being sought and the parts of the premises to be searched. The person concerned must be clearly informed they are not obliged to consent, that any consent given can be withdrawn at any time, including before the search starts or while it is underway and anything seized may be produced in evidence.

If at the time the person is not suspected of an offence, the officer shall say this when stating the purpose of the search. An officer cannot enter and search or continue to search premises if consent is given under duress or withdrawn before the search is completed.

The simple answer is therefore not to give consent and make sure that the people you live with know this.

### 2. Without Consent

Leaving aside gambling establishments and other licensed premises, the cops may enter premises to arrest someone under a *warrant of arrest* or for an arrestable offence. They may also do so to recapture a person who has escaped from custody (prison, YOI etc) and finally to save life or limb or prevent serious damage to property.

### 3. By Search Warrant

The police may obtain a search warrant from a Magistrate. If so the search can only be used for the purposes stated in the warrant (but the cops won't ignore other incriminating evidence – for example drugs). Magistrates should only issue warrants if there are reasonable grounds for believing that the police will not be able to obtain access to the evidence without a warrant, for example, if consent will not be forthcoming. In addition, magistrates should be satisfied that there are reasonable grounds for believing:

- The material is likely to be of substantial value - whether by itself or together with other material - to the investigation of the offence.
- That it is likely to be 'relevant evidence', that is, anything that would be admissible as evidence at a trial.
- That it does not consist of or include items subject to legal privilege, 'excluded material' or 'special procedure material'.

This power also applies to premises owned or occupied by someone who is not implicated in the offence (i.e. anywhere!).

#### **4. After arrest**

If you have been arrested for an arrestable offence, the police may search premises occupied or controlled by you for evidence of that offence or of some other arrestable offence connected with or similar to that offence. They do not require your or anyone else's consent.

Authorisation must be given by an officer of inspector rank or above in writing. That authorising officer must be satisfied that the premises are occupied or controlled by the arrested person and that the necessary grounds exist.

The police officer conducting this search should normally have with him or her the written authorisation.

If you have been arrested for any offence, not just an arrestable offence, the police may enter and search any premises you were in at the time of the arrest or immediately before it for evidence of the offence for which you were arrested.

In both cases the police are only permitted to search to the extent reasonably required to find the evidence sought.

#### **Conduct of Searches**

In the main this is governed by PACE Code B: <http://bit.ly/yUVeEc>

A warrant can be used only once. The police must identify themselves and (if not in uniform) produce a warrant card. They may be accompanied by non-cops (e.g. photographers, forensics). They must produce the warrant.

The police have a right to use reasonable force if necessary to affect an entry or search. All searches should take place at a reasonable hour, unless the constable conducting the search believes that waiting until such time would frustrate the purpose of the search.

You are entitled to have a friend or neighbour witness a search unless the officer in charge has reasonable grounds for feeling this would seriously hinder the investigation, but you don't have a right to delay a search unreasonably while you find a witness.

The warrant must be endorsed afterwards by the police to show whether articles or persons specified in the warrant were found and whether any other articles were seized.

If there is no warrant then the police must keep records of the search and goods seized.

## **Seizing goods**

When the police are lawfully on any premises, including when they are there with your consent, they have wide powers to seize anything on the premises, including a vehicle, if they have reasonable grounds for believing that:

- It has been obtained as a consequence of the commission of an offence.
- It is evidence in relation to any offence; and
- It is necessary to seize it in order to prevent it being concealed, lost or damaged, altered or destroyed.

‘Anything’ includes fingerprints.

It also includes items belonging to others, even if they do not live there.

However they must be very careful not to remove more than is strictly necessary.

The cops also have limited rights to photograph or copy any document or other article they have the power to seize.

If you request it, the police must provide a record of seized items within a reasonable time (so obviously you should request this, through your solicitor if necessary).

Seized articles may be retained so long as is necessary, for example, for production in court, but the articles cannot be kept for use as evidence in a trial or for forensic examination if a photograph or copy would suffice.

There are special provisions that relate to the retention of items seized where their status cannot be determined or where they are attached to items that can lawfully be seized (Criminal Justice and Police Act 2001).

### **If the Cops Exceed or Abuse Their Powers**

You can make a complaint or bring a civil claim. We always advise you to bring a civil claim rather than making a complaint, as the IPCC is independent in name only. See “Suing The Police” [http://www.ldmg.org.uk/files/SUING\\_THE\\_POLICE.pdf](http://www.ldmg.org.uk/files/SUING_THE_POLICE.pdf)

If the police damage the building (e.g. by breaking down the door) or your goods then you should be able to get compensation. Your solicitor should assist with this.

## **Conclusion**

It is best to assume that if you are arrested the cops will search your home. If you are involved in any kind of direct action, then keeping records on computers or ‘phones will give the cops access to them if you are arrested. They will also have access to the details of your friends and comrades. You probably don’t want this to happen.