

FAQ's

What is an officer obliged to tell me before a search?

According to Paragraph 3.8 of Code A of the Police and Criminal Evidence Act 1984, before any search an officer **must** take reasonable steps to give you the following information:

- You should be informed that you are being detained for the purposes of a search;
- You should be given the officer's name (or warrant or other identification number) and the name of the police station to which the officer is attached;
- You should be told the legal search power which is being exercised;
- You should be given a clear explanation of (a) the purpose of the search in terms of the article or articles for which there is a power to search; and (b) in the case of powers requiring reasonable suspicion, the grounds for that suspicion; or (c) in the case of powers which do not require reasonable suspicion (for example s.44 of the Terrorism Act 2000 or s.60 of the Criminal Justice and Public Order Act 1994), the nature of the power and of any necessary authorisation and the fact that it has been given.

What are the most commonly used search powers?

Section 1 of the Police and Criminal Evidence Act 1984, allows the police to search you if they have **reasonable suspicion** that you have an offensive weapon or an article which you intend to use for burglary, theft, taking a motor vehicle, fraud or criminal damage. They also have the power to search you for bladed articles or prohibited fireworks.

Section 23(2) of the Misuse of Drugs Act 1971 gives a constable the power to search you if they have **reasonable grounds to suspect** that you are in possession of a controlled drug or evidence of drug use. In those circumstances they may seize and detain, for the purposes of proceedings under this Act, anything found in the course of the search which appears to the constable to be evidence of an offence under this Act.

Section 60 of the Criminal Justice and Public Order Act gives officers the power to search you **without reasonable suspicion**, but only in a designated area and only for offensive weapons.

Section 43 of the Terrorism Act 2000 gives a constable the power to stop and search a person whom he **reasonably suspects** to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

Section 44 of the Terrorism Act 2000 gives officers the power to search anyone in an 'authorized area' **without reasonable suspicion** for articles 'of a kind which could be used in connection with terrorism'.

Section 58 Terrorism Act 2000 - Photographs

Section 58(1) Terrorism Act 2000 deals with the collection of information. It states that a person commits an offence if (a) he **collects or makes a record** of information of a kind **likely to be useful** to a person committing or preparing an act of terrorism, or (b) he possesses a document or record containing information of that kind.

Section 58(2) states that a “record” includes a photographic or electronic record.

How can I defend myself against an accusation that a photograph falls within s.58?

Section 58(3) provides that it is a defence for a person charged with an offence under this section to prove that he had a **reasonable excuse** for his action or possession.

The House of Lords interpreted Section 58 Terrorism Act 2000 in the recent case of *R. v G.* [2009] UKHL 13. The Court ruled that the offence is premised upon there being **someone who is actually planning an act of terrorism**. “**Likely to be useful**” is interpreted as “**likely to provide practical assistance**.”

Helpfully the House of Lords also said that it could not have been the intention of Parliament to criminalise the possession of **items useful for everyday purposes** simply because those items *could* also be useful to someone planning an act of terrorism.

So, if you are asked to stop taking pictures under s.58 of the Terrorism Act you could ask the officer which terrorist he thinks you are trying to assist and if there is no such person he should not try to stop you taking pictures.

s.58A Terrorism Act – photographs of police officers etc.

Section 58A of the Terrorism Act 2000 creates the offence of “Eliciting, publishing or communicating” information about members of armed forces, intelligence services or police constables. A person commits this offence if they elicit, attempt to elicit, publish or communicate information about an individual who is or has been a member of these services, if it is “of a kind likely to be useful to a person committing or preparing an act of terrorism.”

Again it is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action.

The above House of Lords case also suggests that no offence can be committed unless there is someone, somewhere, planning a terrorist act who you are personally helping.

Does this prohibit me from taking photographs of police officers?

The Joint Committee on Human Rights and the Parliamentary Under-Secretary of State have both indicated that s.58A of the Terrorism Act does not criminalise the taking of photographs of the police.

Should I be stopped from taking photographs in an “authorized area” under s.44 of the Terrorism Act?

No. Home Office Policy 012/2009 – ‘Photography and Section 44 of the Terrorism Act 2000’ states:

“Section 44 does not prohibit the taking of photographs, film or digital images in an authorised area and members of the public and the press should not be prevented from doing so in exercise of the powers conferred by section 44.”

Can an officer look through my images?

Digital images can be viewed as part of a Terrorism Act search to discover whether you have in your possession anything which may constitute evidence that you are a terrorist (but see below regarding Special Procedure Material).

In what circumstances can my images be taken away by the police?

Cameras, film and memory cards **can be seized** if the officer **reasonably suspects** that these may constitute evidence that the person is a terrorist.

However, officers **do not** have the power to delete images or destroy film and if they do you may be able to bring a claim against the police for any loss caused to you.

Once cameras or other devices are seized, to preserve evidence, officers should not normally attempt to examine them further. Seized cameras and other devices should be left in the state they were found in and forwarded to appropriately trained forensic staff for forensic examination.

Section 51 Criminal Justice and Police Act 2001, states that items including pictures, memory sticks or cameras can be seized by a constable if there has been a lawful search and it is not reasonably practicable for it to be determined, at the time and place of the search i) Whether what the constable has found is something he is entitled to seize (i.e. whether it is Special Procedure Material); or (ii) the extent to which he has found something that he is entitled to seize. Items can be seized to enable those questions to be determined.

If items are seized then Section 52 Criminal Justice and Police Act 2001 states that notice must be given to the searched person specifying, amongst other things:

- what has been seized;
- the grounds on which the power has been exercised;
- the right to apply to court for return of the material; and
- the right to apply to be allowed to attend the initial examination of the material.

Section 53 goes on to say that items should be examined as soon as reasonably practicable (bearing in mind the desirability of having the person searched present if he chooses). If the police had no power to seize, then the items should be returned. There is also the potential for seizure on arrest.

What policies can help me in persuading an officer to allow me to carry on taking pictures/filming?"

1) Home Office policy - 012 / 2009

This came into force on 18 August 2009 and clarifies the scope of Section 43 of the Terrorism Act 2000 (set out above). It states:

- Section 43 does not prohibit the taking of photographs, film or digital images in a public place and members of the public and the press should not be prevented from doing so in exercise of the powers conferred by section 43.
- A police officer can only stop and search a person they **reasonably suspect** to be a terrorist under this power.

2) Home Office policy - 'Photography and Section 58A of the Terrorism Act 2000' (photos of police officers etc.)

This states: "An officer making an arrest under section 58A must reasonably suspect that the information is of a kind likely to be useful to a person committing or preparing an act of terrorism. An example might be gathering information about the person's house, car, routes to work and other movements."

It continues:

It is a statutory defence for a person to prove that they had a **reasonable excuse** for eliciting, publishing or communicating the relevant information.

Important: Legitimate journalistic activity (such as covering a demonstration for a newspaper) is likely to constitute such an excuse.

Similarly an innocent tourist or other sight-seer taking a photograph of a police officer is likely to have a reasonable excuse.

3) Metropolitan Police Service policy on s.58A Terrorism Act 2000.

This includes the following:

- **It would ordinarily be unlawful to use section 58A to arrest people photographing police officers** in the course of normal policing activities, including protests because **there would not normally be grounds for suspecting** that the photographs were being taken to provide assistance to a terrorist.
- An arrest would only be lawful if an arresting officer had a **reasonable suspicion** that the photographs were being taken in order to provide **practical assistance to a person committing or preparing an act of terrorism**.
- There is nothing preventing officers asking questions of an individual who appears to be taking photographs of someone who is or has been a member of Her Majesty's Forces (HMF), Intelligence Services or a constable so long as this is being done for a lawful purpose and is not

being done in a way that prevents, dissuades or inhibits the individual from doing something which is not unlawful.

Assistant Commissioner John Yates' Guidance – 14 December 2009

General Points

- Officers do not have the power to delete digital images, destroy film or to prevent photography in a public place under either Terrorism Act power.
- Officers are also reminded that under these powers they must not access text messages, voicemails or emails.
- Where it is clear that the person being searched under Sections 43 or 44 is a journalist, officers should exercise caution before viewing images as **images acquired or created for the purposes of journalism may constitute journalistic material** and should not be viewed without a Court Order.
- If an officer's rationale for effecting a stop is that the person is taking photographs as a means of **hostile reconnaissance**, then it should be borne in mind that **this should be under the Section 43 power. Officers should not default to the Section 44 power in such instances simply because the person is within one of the designated areas.**

So, you may wish to ask an officer who tries to view your images or stop you taking pictures whether he is doing so because he thinks you are involved in 'hostile reconnaissance'. If the answer is 'no', then the policies suggest he should not target you simply because you are a photographer. If the answer is 'yes' then he should have reasonable grounds to suspect that you are in possession of articles likely to be useful to a terrorist and you could ask upon what basis he has this suspicion. The reply might be "because you are taking pictures", in which case, refer him to the above policies which state that you should not be prevented from taking pictures simply because you are in an 'authorised area' under the Terrorism Act 2000.

As a journalist, are my photographs afforded any special protection?

Section 14 of the Police and Criminal Evidence Act (PACE) states that journalistic material is subject to the rules of Special Procedure Material.

This section also applies to material acquired or created in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office where it is held subject to an express or implied undertaking to hold it in confidence.

Generally, once your images are recorded, the police have no power to delete or confiscate them without a court order.

In terrorist cases, e.g. where police contact starts with a search under section 43 Terrorism Act 2000, a police officer of at least the rank of superintendent may issue a search warrant (without court order) if there exists a "great emergency" and "immediate action is necessary." This only applies to terrorist cases, not investigations of other criminal offences.

In almost all cases therefore, the production or seizure of images will require a court order. This should only be granted in circumstances where there are reasonable

grounds for believing that the material is likely to be of substantial value to that investigation; and where there are reasonable grounds for believing that it is in the public interest for the material to be disclosed, having regard to the benefit likely to accrue to the investigation, and the circumstances under which you had the material in your possession.

Do I have to give an officer my name and address details if I am not under arrest?

Section 50 Police Reform Act was enacted to deal with persons acting in an anti-social manner. It states that if a constable in uniform has **reason to believe** that a person has been acting, or is acting, in an anti-social manner he may require that person to give his name and address to the constable.

Part 2 of Section 50 says that any person who

- (a) fails to give his name and address when required to do so under subsection (1), or
- (b) gives a false or inaccurate name or address in response to a requirement under that subsection,

is guilty of an offence and shall be liable, on summary conviction, to a fine.

A constable in uniform may arrest an individual for failure to provide name and address details if there is reason to believe that person is acting in an anti-social manner.

It would be difficult for the police to justify the belief that the mere taking of photographs is “anti-social”.

Is there any law that stops me from taking pictures of government buildings?

Section 1(1)(b) of the Official Secrets Act 1911 states that it is a criminal offence to take a photograph of a “prohibited place”, which is **calculated to be or might be or is intended** to be directly or indirectly **useful to an enemy**, for a purpose which is prejudicial to the safety or interests of the state.

Prohibited places include:

- All HM Defence establishments
- Places declared by Order of the Secretary of State to be prohibited places (i.e Nuclear facilities and property belonging to, or used for, the purposes of the Atomic Energy Authority and the Civil Aviation Authority.

This section should not prohibit the taking of photographs of buildings such as the Houses of Parliament, i.e. those that are already within the public domain.

Are there any other guidelines or leaflets available that I can carry with me to show officers?

Yes. Guidelines for MPS (Metropolitan Police Service) staff on dealing with media reporters, press photographers and television crews were produced in 2006. A leaflet

is available from the Metropolitan Police or through the National Union of Journalists (NUJ). Guidance can be found at:

<http://www.met.police.uk/about/photography.htm>

Association of Chief Police Officers (ACPO)
Media Guidelines (Nationally adopted in April 2007)

- Members of the media have a duty to report from the scene of many of the incidents we have to deal with. **We should actively help** them carry out their responsibilities provided they do not interfere with ours.
- Where it is necessary to put cordons in place, it is much **better to provide the media with a good vantage point** from which they can operate rather than to exclude them, otherwise they may try to get around the cordons and interfere with police operations. Providing an area for members of the media **does not exclude them from operating from other areas** to which the general public has access.
- Members of the media have a duty to take photographs and film incidents and **we have no legal power or moral responsibility to prevent or restrict what they record.**
- Once images are recorded, **we have no power to delete or confiscate them without a court order**, even if we think they contain damaging or useful evidence.
- **We cannot give or deny permission to members of the media to enter private premises** whether the premises are directly involved in the police operation or not. This is a matter between the person who owns or is in control of the premises and the members of the media.

How can I tell if a police officer could be subject to a complaint?

The Police (conduct) Regulations 2008 provide standards of behaviour expected of all police officers:

Authority, Respect and Courtesy

- Police officers act with **self-control and tolerance**, treating members of the public and colleagues with **respect and courtesy**.
- Police officers **do not abuse their powers** or authority and **respect the rights of all individuals**.

Equality and Diversity

- Police officers act with **fairness and impartiality**. They do not discriminate unlawfully or unfairly.

Use of Force

- Police officers only use force to the extent that it is **necessary, proportionate and reasonable** in all the circumstances.

Orders and Instructions

- Police officers only give and carry out lawful orders and instructions.

- Police officers **abide by police regulations, force policies** and lawful orders.

Challenging and Reporting Improper Conduct

- Police officers **report**, challenge or take action against the **conduct of colleagues** which has fallen below the Standards of Professional Behaviour.

What powers do the police have to seize pictures on private property?

s.19 Police and Criminal Evidence Act 1984

19.

— (1) ...exercisable by a constable who is **lawfully on any premises**.

...

(3) The constable may seize anything which is on the premises if he has **reasonable grounds** for believing—

(a) that it is **evidence in relation to an offence** which he is investigating or any other offence; and

(b) that it is **necessary** to seize it in order **to prevent the evidence being concealed, lost, altered or destroyed**.

(6) No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

Can the police order me to move away from a demonstration?

s.14 Public Order Act - Imposing conditions on public assemblies

— (1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, **reasonably believes** that—

(a) **it may result in serious public disorder, serious damage to property or serious disruption to the life of the community**, or

(b) the **purpose** of the persons organising it is the **intimidation** of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

He may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

This law is intended to assist in policing demonstrations and assemblies, **not** photographers who are taking pictures of such an event.

If I refuse to move, can I be arrested?

Section 89 Police Act 1996 deals with assaulting or obstructing a police officer. Part 2 of the section states that any person who resists or wilfully obstructs a constable **in the execution of his duty**, or a person assisting a constable in the execution of his duty, shall be guilty of an offence.

For the purposes of this section “obstruct” means **prevent** the officer from carrying out his duties or to **make it more difficult** for him to do so.

NB- you can only be guilty of an offence if the officer is acting lawfully to begin with.

Do PCSO's (Police Community Support Officers) have similar powers to those of Police Officers in relation to stops and searches of photographers?

No. PCSOs have much more limited powers. PCSO's have the power to:

- direct traffic and pedestrians;
- confiscate alcohol and tobacco from persons under 16;
- enter premises to save life and prevent damage to property;
- remove abandoned vehicles;
- issue fixed penalty notices;
- demand a name and address from a person under s.50 Police Reform Act;
- seize vehicles used to cause alarm;
- search property in matters related to terrorism (with a constable) and seize drugs.

They **do not have a power of arrest**, however they can require someone to remain with them until a constable arrives in specific circumstances.

Any final tips?

As a photographer or photo journalist dealing with the police, you should be assertive.

You should ask questions such as upon what basis are you asking me to be searched/to stop filming etc.

You should make a detailed note immediately after an interaction as to what you said and what was said by the officer in reply before, during or after a search.

You should rely upon the policies cited above and carry them with you.

If necessary, remind officers of the police codes of conduct. Warn the officer that (s)he will be the subject of a formal police complaint in the event of an unlawful search or arrest. (This would result in a regulation 9 notice being issued against the officer and the officer being interviewed under criminal caution).

Shamik Dutta
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The information in this guide is of a general nature and should not be relied on in place of legal advice appropriate to your circumstances.