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**A Guide to the  
Police and  
Criminal  
Evidence  
Act 1984**



**Butterworths**

# **A Guide to the Police and Criminal Evidence Act 1984**

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## **A Guide to the Police and Criminal Evidence Act 1984**

## Preface

The Police and Criminal Evidence Act 1984 received the Royal Assent on 31 October 1984. It is the first legislative attempt to define comprehensively the investigative powers of the police and it also contains significant changes in the laws of evidence for criminal trials. Its passage through Parliament attracted considerable controversy. It will have far-reaching consequences for the investigation of crime and for the style of policing well into the next century. This book is intended as a practical guide for those affected by the Act.

At the time of going to press, the Codes of Practice which supplement the Act had not been finalised. The latest drafts of the Codes are therefore used in the Appendices. They are unlikely to change much by the final draft. The draft Codes are Crown Copyright and are reproduced with the kind permission of the Controller of Her Majesty's Stationery Office.

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# 1 Introduction

**1.01** Before the Police and Criminal Evidence Act 1984, the law governing police powers for the investigation of crime was unclear and antiquated. It had developed piecemeal since the establishment of professional police forces in the nineteenth century. Parliament had added fitfully to the few common law principles (eg the Criminal Law Act 1967). This varied and scant law was supplemented by (a) rules of guidance as to the admissibility of confessions provided by the Lord Chief Justice in consultation with the judiciary (the Judges' Rules); (b) national administrative guidance in the form of Home Office Circulars (notably that attached to the Judges' Rules); and (c) local administrative guidance in the shape of standing orders issued within each police force. The results were patchy legal obligations and powers for the police and local variations in powers (eg some police forces had wide stop and search powers whereas others were tied to a few narrow national powers). A wide ranging overhaul of the system had been due for many years. New and heavier pressures on the police and a more critical public opinion demanded that the powers of the police be placed on a modern statutory footing. Eventually, in 1978, a Royal Commission on Criminal Procedure was appointed to examine, inter alia, 'the powers and duties of the police in respect of the investigation of criminal offences and the rights and duties of suspect and accused persons, including the means by which these are secured'. With commendable speed the Commission reported within 3 years, having commissioned and received 12 Research Studies. These Studies did much to fill the gaps in public awareness of police powers and procedures. For there was surprisingly little information available about these areas.

**1.02** The Royal Commission's recommendations can be summarised as follows. It proposed that any new law governing the powers of the police should meet the standards of fairness, openness and workability. The first led to the conclusions that reasonable suspicion should be the threshold for the exercise of police powers and that certain powers (eg to obtain a warrant to search for evidence) should only be available in respect of grave offences. The second led to an emphasis in the Report on the written recording of the reasons for exercising powers. The third

### 1.03 *Chapter 1*

produced recommendations for the rationalisation and simplification of the law. Examples included the proposed creation of a single power to arrest without warrant for all imprisonable offences and of a national and uniform stop and search power to replace the variety of earlier specific statutes. The Report worked its way from the law's reaction to police/citizen encounters on the street to the police powers of arrest, search and detention of the citizen. It recommended the streamlining of each. The Report advocated a power to detain persons after arrest for the purpose of questioning. On the other hand, it recommended the retention of the individual's right to remain silent in the face of such questioning. It proposed that the treatment of those detained for questioning be more rigorously regulated by statute and a code of practice. Parts I-V of the Police and Criminal Evidence Act correspond closely to the suggestions of the Royal Commission. However, the Commission went on to consider the system of prosecuting offenders and recommended the establishment of a prosecution service for each police force which would be independent of the police and would be called the Crown Prosecutor system. Criteria for deciding whether to prosecute would be drawn up to guide local prosecutors. The Government reacted more cautiously to this part of the Report by engaging in consultation, but legislation will emerge from the 1984/85 Parliamentary Session, setting up an independent prosecution system.

**1.03** As its title suggests, the 1984 Act tackles aspects of the law of criminal evidence. This is the legacy of the Eleventh Report of the Criminal Law Revision Committee (1972) and not the Royal Commission. Some of the former's recommendations are implemented. The Royal Commission paid relatively little attention to the issue of complaints against, and discipline of, the police. However, civil disturbances and in particular the Report by Lord Scarman into the Brixton Disorders fomented the issue. The Government produced two White Papers (1982 Cmnd 8681; 1983 Cmnd 9072) on the subject and inserted its proposals as Part IX of the Act.

**1.04** The first version of the Police and Criminal Evidence Bill was introduced into Parliament in November 1982. Three aspects of it dominated Parliamentary and public discussion: the stop and search powers, the power to issue a warrant to search for and seize confidential information, and the power to detain persons for the purpose of questioning. The Bill provoked considerable controversy amongst professions, including lawyers, journalists and the clergy. It fell along with the dissolution of Parliament in May 1983. Following the General Election, the second version of the Bill was introduced in November 1983. Most of the major policy battles had been settled on the first dry run of the Bill. This had a beneficial effect on the final legislation since it concentrated minds on the finer detail of the Bill. The Bill's long gestation

period meant that, by the time of Royal Assent on 31 October 1984, the Act was a much more detailed and sophisticated piece of legislation than was originally intended. It consumed over 400 hours of Parliamentary time and led to a number of defeats for the Government in the House of Lords.

**1.05** As to implementation, Part IX (covering complaints against the police) is operational from March 1985, and the rest of the Act is likely to be operational from the end of 1985. Codes of Practice and various secondary legislation have to be finalised and approved by Parliament before the Act can commence. More importantly, the police must conduct a wide ranging training programme to acquaint all ranks with the detail and practical implications of the Act.

**1.06** The singular importance of the Act lies in the fact that it is the first legislative attempt to enact a comprehensive code of police powers and practices in relation to the investigation of crime. Along with the forthcoming legislation on the prosecution system, it will govern the method of policing well into the next century.

**1.07** The format of this book follows the order of the Act. The Act itself and the Codes of Practice are found in the Appendices. For ease of use, footnotes have been avoided and cases have only been given their date in the text. A complete list of cases and their citations is found in the Table of Cases.



