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Detention of Individuals by Private Security Staff

**Advice note taken from The Athelney Group Training Course
for the private security sector.**

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The following note has been put in place following legal advice on the powers available to private security who are employed in the maintaining security and safety in shops and retail centres.

Every day thousands of loss prevention officers and security staff are engaged to prevent and detect crime in the retail environment. Many detain suspects on a regular basis, however they often believe that by resorting to obtaining the implied consent of the suspect to accompany them back into the store, they are in fact detaining those persons. This is because they are restricting their movement by taking them into an area or office where escape can be prevented or at least restricted.

There are a range of powers that allow trained members of private security to detain individuals during their duties.

Detention - the legal definition.

Any form of restriction on the movement of a private individual, where a person's freedom of liberty is removed can be classed as detention. For example, a shoplifter being pursued and restrained, but not yet informed he/she is under arrest would be classed as 'detained'. The same would apply to a football spectator taken from the stands as their liberty is being curtailed. This is perfectly legal where appropriate powers exist.

Most businesses detain people in management offices or designated security rooms. These can be filled with risks and dangers to both the suspect and staff. Such rooms are rarely secure or meet any form of detention standards

Detention and Arrest by Private Security Staff.

The statutory power of any member of the public in England and Wales to detain someone they consider to be involved in criminal activity is to be found in **Section 24A of the Police and Criminal Evidence Act 1974.**

Section 24A (1) states "A person "other than a constable" may arrest without a warrant anyone:

"Who is **in the act of committing** an indictable offence;

or

whom the person has reasonable grounds to suspect **to be committing** an indictable offence".

Section 24A (2) goes on to state:

(2) Where an indictable **offence has been committed**, a person other than a constable may arrest without a warrant—

(a) anyone who is guilty of the offence;

(b) anyone whom he has **reasonable grounds for suspecting** to be guilty of it.

The power of summary arrest conferred by subsection (1) or (2) is exercisable only if—

- (a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and
- (b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4) The reasons are to prevent the person in question—

- (a) causing physical injury to himself or any other person;
- (b) suffering physical injury;
- (c) causing loss of or damage to property; or
- (d) making off before a constable can assume responsibility for him.

An indictable offence is one that **can** be tried in a crown court, in front of a jury. This is deceiving technical language as the majority are tried in front of the Magistrates Court and the term 'indictable offence' includes a wide range of minor crimes. Indictable or either way offences cover a very broad range of crimes, but examples include theft, criminal damage, assault occasioning actual bodily harm. The list is in fact very long.

In the retail environment 'indictable offences include:

- Customer Theft (shoplifting) & Staff Theft
- Going Equipped to steal (foil lined bags, tag cutters, etc)
- Deception
- Fraud (checkout fraud, money fraud, refund fraud)

There are a range of public order offences that are indictable and can be committed in the retail and football environments:

- Violent Disorder (Section 2 Public order Act)
- Affray is using or threatening unlawful violence (Section 3 Public Order Act)
- Threatening, abusive or insulting words or behaviour or disorderly behaviour (Section 4 Public order Act)
- Threatening or abusive words or behaviour or disorderly behaviour (Section 5 Public Order Act)
- Any offence under the Football Offences Act 1991¹

These offences are **indictable** within the meaning of Section 24A Police and Criminal Evidence Act (as amended by section 110 SOCAP Act 2005) and all are extremely common within football stadia.

The grounds or reason that the arrest can be made.

¹Section 110 SOCAP Act 2005 - Section 5 of the Football Offences Act 1991 —(l) In section 24(2) of the Police and Criminal Evidence Act 1984 (arrestable offences), after paragraph (d) insert— "(e) any offence under the Football (Offences) Act 1991."



Such an arrest can be made if it does not appear reasonably practicable for a police constable to make the arrest instead, and if the person making the arrest has reasonable grounds to believe that such an arrest is necessary to prevent the person being arrested from:

- (a) causing physical injury to himself or any other person;
- (b) suffering physical injury;
- (c) causing loss of or damage to property; or
- (d) making off before a constable can assume responsibility for him.

Breach of the Peace.

A civilian also has a broader common law power of arrest where there is a "breach of the peace", which itself is not really a crime, but can be said to occur whenever harm is actually done or is likely to be done to a person or, in his presence, to his property, or where a person is in fear of being harmed through an assault, affray, riot, unlawful assembly or other disturbance.

A civilian may conduct an arrest in these circumstances if:

- (a) a breach of the peace is committed in his presence,
- (b) the person effecting the arrest reasonably believes that such a breach will be committed in the immediate future by the person arrested, or
- (c) a breach of the peace has been committed or the person effecting the arrest reasonably believes that a breach of the peace has occurred and that a further breach is threatened.

A fight or confrontation in the seating area or elsewhere in or around the ground could constitute a breach of the peace.

Detention and compliance with Article 5 of the Human Rights Act 1998.

Article 5 of the Human Rights Act 1998 covers the rights to liberty and security. There is a misconception that this right is absolute, it is not, it is a conditional right.

Section 1 states the following:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty **save in the following cases (1) (c) and in accordance with a procedure prescribed by law:**

Subsection 1(c) states:

“the lawful arrest **or detention** of a person effected **for the purpose of bringing him before the competent legal authority** on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.”

Therefore, loss prevention officers, store detectives, security officers, stadium and event stewards, and can ‘detain’ people prior to handing them to the competent legal authority being the police. As some businesses, may have to wait several hours for police to arrive, they should ensure that risks are managed and that suspects are held in appropriate safe and secure conditions.

Inclusion of searching and detention as part of a business's "Condition of Entry."

Private security staff have no power in law to search a person, even if they have been arrested.

Football clubs get around this as making consent to being searched a condition of entry into the ground. This rule or condition is outlined in the English Football League's recommended wording for 'Ground Regulations' or 'Ground Rules'.

They have made searching both on entry and after entry as 'Condition of Entry'. Once a person has entered or attempted to enter the ground they 'acquiesce'² to the condition and are obliged to comply. Failure to comply can result in immediate ejection from the premises/ground.

Businesses could equally include the use a condition of entry to provide a power to search, along the lines of:

"All persons seeking entrance to the premises or once having entered, acknowledge and agree to the company's right to detain and search any person who is suspected of committing a criminal offence.

The search will be extended to both the person and their property.

The detention for the search will be in accordance with the laws of England and Wales and will be for the purpose of preventing a breach of the peace, investigating a suspected crime or in order to hand the individual over to the police for further action."

Such a condition of entry can be included for any private premises including shops and shopping centres. All shopping centre car parks have conditions of entry published either on their websites or around the premises, this could equally apply to retail crime suspects.

There are many references to private powers to search individuals as a condition of entry. This includes the Police & Criminal Evidence Act Codes of practice (Code A).³

Paragraph 1.5 states "1.5 An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. **The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry."**

Therefore, the law accepts that a power to search as a condition of entry can be applied to private premises and venues. It further accepts, that police can use this to conduct a search of a person.

Courts have also upheld that private premises can and on occasion, should have the ability to search persons as a condition of entry.

² Defines as "to assent tacitly; submit or comply silently or without protest; agree; [consent](#)"

³ Police & Criminal Evidence Act 1984 – Codes of Practice – Code A paragraph 1.5.



An example of this is the London night club “Fabric London”. Following the deaths of two people who had attended died following taking of illegal drugs at the venue, the police discovered that open drug dealing took place on the premises. The police objected to the club’s licence and the club faced closure.

The club took the case to the High Court to appeal the closure notice. The club was granted a licence however, it found that “the procedures in relation to searching were insufficient as were its procedures to prevent the consumption and dealing of drugs within the club itself”.

The Court ordered that the club must apply more stringent searching procedures as one of the main conditions of granting the licence.

The conditions of entry now read “Entry/exit searches and the right to search whilst inside the venue/smoking area is a condition of entry. The entry search is mandatory, the others will be at the discretion of venue management.”

This clearly states that not only can customers be searched upon entry, but also that they can be searched once inside the venue.

Other night clubs have had instructions from the police that unless there is a stringent search policy, that licences may face objection. The Greater Manchester Police produce example texts and guidance for the owners/managers of licenced premises which states:

“No patron shall be admitted or readmitted to the premises after [XX:XX] hours unless they have passed through a metal detecting search arch and, if the search arch is activated or at the discretion of staff, been physically searched in accordance with a procedure agreed with Greater Manchester Police, which will include a ‘pat down search’, a full search and a full bag search.”

This again provides police support for searching as a condition of entry.

The final example is provided by the English Football League. It is the governing body for sports stadiums in England. Their best practice is followed by the other national bodies. The EFL produce recommended ‘Ground Rules’ or ‘Ground Regulations’. These are to provide for the safe management of sports stadiums and football grounds. In addition to prohibited activities such as criminal acts and disorder, it also covers the power for security staff to search people.

Rule 6 states “All persons seeking entrance to the Ground acknowledge the Club's right to search any person entering the Ground and to refuse entry to or eject from the Ground any person refusing to submit to such a search.”

It is not a surprise that people are fully aware of the need for searches to take place and comply with this condition every game across the country. The searching is carried out by both private security, stewards and police.



Use of Force.

In managing the detention or arrest of individuals, private security staff and the police will inevitably need to exercise the use of force⁴. This can be a little as taking a person by the arm or using their training in physical restraint with those who resist or present a higher risk. This includes those who are aggressive or potentially violent.

However, guiding an individual by the arm has been deemed by the Courts as normal behaviour and not an assault or inappropriate use of force. The stated case in question is *Mepstead v the Director of Public Prosecutions*⁵.

In *Mepstead v DPP [1996] Crim LR 111*, a police officer had taken hold of the defendant by the arm to calm him without arresting him.

The defendant then struck the police officer causing injury. The defendant was arrested for assaulting a police officer acting in the course of their duty.

The court held that a police officer who took hold of a man's arm in such a situation not intending to detain or arrest him, but in order to draw his attention to what was being said and this could be seen as acting in the execution of his duty.

Mr Mepstead was convicted for assault on a police officer, but appealed on the grounds that when a PC took hold of him by his arm he was not acting lawfully and was therefore not acting in the execution of his duty

He remained convicted. The courts accept that anyone, including police officers, may touch someone else where it is part of normal everyday contact between individuals 'this type of gesture is a form of non-verbal communication'

The use of force by any person is covered by Section 3 of the Criminal Law Act 1967 and Common Law.

Section 3 of the Criminal Law Act 1967 states that:

"Any person may use reasonable force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or persons unlawfully at large".

The term 'unlawfully at large' relates to persons who have been lawfully detained but have then escaped detention. It applies to a person who has escaped from or failed to return to prison after a recall.

Common Law follows up on the powers to detain or arrest a person for a breach of the peace and by allowing the use of reasonable force to prevent a breach of the peace.

⁴ Any use of force should be proportionate to the threat faced. The basic principle being that a use of force would be held reasonable in the circumstances.

⁵ *Mepstead v DPP [1996] Crim LR 111*



Common Law also allows an individual the protection of using force in their own self-defence or the defence of others.

“Any person may use reasonable force to protect themselves, to protect others and to protect property. They may also use reasonable force to gain access to an area where someone is under attack”.

This is supported by the stated case of Common Law (R v Griffiths 1988)⁶. Common Law recognises that there may be circumstances in which one person may inflict violence on another, without committing a crime.

It recognises as one of these circumstances, the right of a person to protect himself / herself from attack and to act in defence of others and if necessary to inflict violence on another in doing so. If no more force is used than is reasonable to repel the attack, such force is not unlawful. If you have an honestly held belief that you or another, are in imminent danger, then you may use such force as is reasonable and necessary to avert that danger.

This is further clarified by Section 76 Criminal Justice & Immigration Act 2008. This covers the fact that where a person uses force that they have a defence against excessive use of force in the following circumstances:

Section 2 The defences are—

- (a) the common law defence of self-defence; [F1and]
 - (aa) the common law defence of defence of property; and]
- (b) the defences provided by section 3(1) of the Criminal Law Act 1967 (c. 58) or section 3(1) of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)) (use of force in prevention of crime or making arrest).

Section 3 states “The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

Section 4 “If D claims to have held a particular belief as regards the existence of any circumstances—

- (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
- (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not—
 - (i) it was mistaken, or
 - (ii) (if it was mistaken) the mistake was a reasonable one to have made.

⁶ <http://library.college.police.uk/docs/APPref/use-of-force-briefing.pdf>



So, if a person uses force or uses excessive force, but this was a genuine mistake, then they cannot be found guilty of a crime.

In terms of a person's actions in the use of force there are two requirements and only two.

The first thing to be considered is, was the use of force lawful. It is as simple as that.

In terms of private security and their use of force, the first question would be what power they were using. Were they making an arrest and were they using Section 24A and in combination Section 3 of the Criminal Law Act 1967 (affecting an arrest) or were they using force to defend themselves or their property under Common Law.

The second test to be examined is simply, was the level of force proportionate in the circumstances.

So, in some circumstances where there is an honest held belief that a person feels that they or their property will be attacked they can use force to defend themselves. This can in the right circumstances include the use of a primitive strike.

If the person is either not trained or is being overwhelmed, they can use any thing available to them to effectively win the contest.

However, once the upper hand is gained or the situation is under control, the use of force should be de-escalated.

The use of force used should always be proportionate to the risks faced.

Trespass.

A shop, shopping centre or football stadium is private property and a person's presence is conditional and the right to stay can be withdrawn. If they refuse to leave, then the owner (or their agents) may remove them **using reasonable force**. Trespass could include a breach of a condition of entry and the person is removed from the ground or taken to a secure area.

Responsibility of Employers.

There is a further consideration that employers and those managing premises and events to which the public are granted access. The Health and Safety at Work Act places a clear duty of care responsibility for both employees and members of the public to protect them from harm.

This includes making every reasonable effort to put in place training, structures and policies and procedures to provide protection. This would include putting in place protection for persons detained by private security or those engaged in management of disorder and risk in the stadium, this includes the police. The management of risk cannot be placed upon the assumption that individuals can always be trusted to know what they are doing or to manage their response in situations of violence and aggression.



If a system exists that would prevent violence or aggression increasing the necessity of the use of force, it should be put in place.

Health & Safety at Work Act 1974

Section 2. Responsibility to protect workers.

- (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

Section 3 General duties of employers and self-employed to persons other than their employees.

- (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

The Corporate Manslaughter and Corporate Homicide Act 2007.

Companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care. Companies and organisations should keep their health and safety management systems under review, in particular, the way in which their activities are managed or organised by senior management. This includes the measures taken to protect staff and visitors to their premises from serious harm or potential fatality.

Under the Act, health and safety legislation means "any statutory provision dealing with health and safety matters", so it will include transport, food safety and workplace safety as enforced by HSE and local authorities.

If you have any questions concerning the subjects presented in this document, please contact Bernie Gravett on 0800 0025101.