Chapter 3: Arrest procedures relevant to security operatives

Arrest and limitations of arrest

During the course of your duties as a security operative, you will occasionally come across evidence of, or be witness to, an offence for which a person will need to be detained pending the arrival of the police.

As a security operative, you have no special powers of arrest, only the same powers of arrest as any other member of the public when it comes to apprehending suspects for a variety of offences. This section will appraise you of those powers and procedures so that you will know what to do should the situations arise.

An arrest or apprehension can be defined as:

'the taking or restraint of a person from his liberty in order that he shall be forthcoming to answer an alleged crime or offence'.

For any individual to deprive another of his liberty is one of the most serious responsibilities a person can accept, and for this reason, you must ensure that you act correctly when apprehending someone for an offence.

The various powers of arrest afforded to all members of the public, including security operatives, must be used with discretion and consideration. These powers should only be exercised when circumstances make it necessary, not just because they are available. They should always be applied correctly and responsibly and as a last resort.

The police have other powers of arrest, under warrant, for specific offenses. Security operatives do not require a warrant to carry out a lawful arrest under the following legislation.

The most common power of arrest that you will use as a security operative can be found within Section 24a of the Police and Criminal Evidence Act 1984 (as amended by the Serious Organised Crime and Police Act of 2005). This Act was brought in to address the difficulties of the numerous and varied powers of arrest from the past, and now provides a power of arrest for most criminal offences where such a power is necessary (Article 26 PACE (Northern Ireland).

The most useful piece of common law that you will use as a security operative, however, is the power of arrest for 'breach of the peace'.



Breach of the peace

A breach of the peace is a common law concept that has ancient roots.

In general terms it is considered to be:

'any disorder or disruption to the peace in public or in private that results in violence, threat of violence or provokes violence from another'.

The common law power of arrest for breach of the peace states that:

Any person (including a security operative) may arrest without warrant where:

(a) a breach of the peace is committed by the person arrested in the presence of the person making the arrest

(b) the person making the arrest reasonably believes that such a breach will be committed in the immediate future by the person whom he has arrested, although no breach had occurred at that stage

(c) a breach of the peace has been committed by the person arrested and the person making the arrest reasonably believes that a renewal of it is threatened

SCO

Breach of the peace in Scots law

Breach of the peace is a common law offence against society and is defined as 'conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community'.

The words 'severe' and 'serious' above are an essential element of breach of the peace and therefore it is not considered a trivial crime.

Some breaches of the peace might be more 'minor', such as cursing or swearing in public, peering in a person's window or shop window and causing alarm to other people, or more serious incidents such as fighting in public or conducting oneself in a riotous or disorderly manner.

The common law crime of breach of the peace is that it can be committed by 1 or more people, so long as the conduct of the person or people is riotous or disorderly, while the conduct must be severe enough to cause alarm to ordinary people and threaten serious disturbance to the community ***(Common law)***.

This is a useful but **rarely used** power of arrest for a security operative, as it is not restricted with regards to where a breach of the peace may occur in order for the power to be used.

Under normal circumstances, if you witness a breach of the peace occurring on the premises, then you would remove guilty parties from the site or venue. The power of arrest would usually only be used if it was considered necessary to stop or prevent a breach of the peace from occurring on the premises, in which case the police should be called to help deal with the problem.

Anyone arrested for causing a breach of the peace would be handed over to the police in the normal way and if necessary, would be taken before a magistrate in court to be bound over to be of good behaviour.

SCO

Scotland: Arrest

A private citizen has some powers of arrest under common law as long as they are carried out with care. A wrongful arrest, even a citizen's arrest, can result in a claim for damages.

For a citizen's arrest under common law to be lawful, the crime witnessed must be serious and not merely a breach of the peace. The person carrying out the citizen's arrest must be certain that an offence has in fact been committed, through either witnessing it or being a victim of it.

Reasonable force can be used if the arrested person attempts to resist. The arrested person must be handed over to the police as soon as possible.

Arrestable offences are at common law and arrest is classified as 'citizen's arrest'. Serious offences include:

- culpable homicide
- rape
- serious assault
- indecent assault (sexual)
- robbery
- theft
- housebreaking
- opening lock-fast places
- fraud
- malicious mischief
- wilful fire-raising

Indictable offences

The majority of offences that you are likely to come across during the normal course of your duties as a security operative are those referred to as 'indictable offences' under statute law.

The limitations to powers of arrest

Under Section 24a of the Police and Criminal Evidence Act (PACE) 1984, (the Criminal Procedure (**Scotland**) Act 1995, S26a of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341), certain serious offences have been given a special condition within criminal law and are known as indictable offences. The majority of crimes that security operatives come across will fall within this category. Indictable offences are those that may be tried at a Crown Court.

The reasons to arrest a person would be to prevent the person from:

(a) Causing physical injury to themselves or any other person

(b) Suffering physical injury

(c) Causing loss of or damage to property

(d) Making off before a constable can assume responsibility for him

Offences under this section, for which all security operatives have the same powers of arrest as other members of the public, include:

- murder/homicide
- rape
- assault (ABH, GBH and GBH w/i)
- sexual assault
- firearms offences
- drugs offences
- possession of offensive weapons
- robbery
- theft
- burglary
- fraud
- criminal damage

Chapter 3: Arrest procedures relevant to security operatives

The term 'citizen's arrest' is often used to describe a power of arrest given to 'a person other than a constable', although the term has no real meaning in law. These are exactly the same powers used by store detectives in retail establishments when they arrest shoplifters for theft, and the same powers regularly used by police officers when they catch suspects committing other serious offences.

SCO

In Scots law, neither store detectives, nor security guards can arrest for suspicion. They must have actually witnessed the crime of theft by using the following acronym, SCONE.

SCONE relates to retail loss prevention and store security.

It is the list of things that must be seen before a stop can be done.

- **S** **Selection** – the detective must see the customer take the item from the display
- **C** **Concealment** – the detective must see the customer conceal the item
- **O** **Observation** – the detective must maintain constant observation from selection to non-payment and exit. There must be no gaps in observation
- **N** **Non-payment** – the customer passes the last point of sale without making an offer of payment
- **E** **Exit** – the customer must be off the premises to prove the intention to permanently deprive

As a security operative, before you decide to arrest another person, you must be satisfied that you have reasonable grounds to suspect that the person is committing, or has committed, an offence which is classed as indictable. It is not always necessary for the suspected person to have actually been seen committing the offence, providing that there are 'reasonable grounds' to suspect that they had. It is, however, necessary that an indictable offence is being, or has been committed.

The term 'reasonable grounds' has no legal definition but is generally accepted as being that which can be explained to, and evaluated by, an objective third person. Reasonable grounds cannot be equated to mere suspicion.

How to arrest

As previously explained, an arrest is the 'taking or restraining of a person from his liberty in order that he shall be forthcoming to answer an alleged crime or offence'. Security operatives should only arrest someone for the following reasons:

(a) To prevent an offence being committed

(b) To prevent the continuance of an offence

(c) To prevent the renewal of an offence

(d) To detain someone for an offence already committed





Once the decision has been made to arrest someone, the person must be told:

- who you are (if not obvious)

'I am a member of the security team here'

- that they are under arrest

'You are under arrest……..'

- what they are being arrested for

'……for criminal damage'

- the grounds for the arrest

'I have just seen you breaking that window'

- that the police will be called

'We are calling the police and you must wait here until they arrive'

Chapter 3: Arrest procedures relevant to security operatives

Where possible, arrests should be made as quietly and as discreetly as possible, preventing the escalation of situations to a point where they are out of control. As a security operative, you should take care not to show an over-aggressive attitude when effecting an arrest, just a firmness of intent.

It is perfectly acceptable to arrest someone without laying hands on them if the situation allows, but in many circumstances where security operatives make an arrest, there is the obvious possibility of being assaulted by the suspect.

Anyone you arrest should be treated in a reasonable manner. If, during the subsequent police investigation, it transpires that the detained person is innocent of the offence for which you arrested them, they are far less likely to take civil court action out against you if they were treated reasonably during the initial arrest.

Following an arrest

Having arrested someone, you are then responsible for the suspect's welfare and safe custody until the arrival of the police.

You must not lose sight of the person or allow them to be alone for any reason. There could be an escape attempt, or the suspect, aggrieved at their detention and pending prosecution, could assault either yourself or any other person nearby. Be aware also for the suspect's attempts to discard evidence. It is also not unknown for suspects to injure themselves or attempt to commit suicide if left alone for any length of time.



On the arrival of the police, you will be required to tell the officer what you have seen and done with regards to the arrest and why you have made the arrest. This is also the time to hand the police details of any witnesses to the offence, as well as any CCTV or other evidence in relation to it, such as weapons, drugs or stolen property. Provided that the officers are satisfied that there are sufficient grounds to arrest the person themselves, they will then formally arrest the person and take them from you. At some stage, possibly at the end of your shift, you will be required to make a formal written statement relating to your evidence, but the police will help you with this. Whether or not a statement is required, the arrest needs to be properly reported internally at the earliest convenience.

If the person is subsequently charged with an offence, you may later be called to attend court to give evidence of what you saw and did.

Unlawful arrest

Various sections of the public, particularly store detectives, security officers and door supervisors, regularly use their powers of arrest in the course of crime prevention and detection. To date, there have been relatively few successful civil or criminal actions against them for unlawful arrest. Provided that discretion and common sense are used in deciding when to effect an arrest, and that when you are making the arrest you have reasonable grounds to suspect that the person is either committing or has committed an indictable offence, then you should not encounter too many problems.

Your safety

Never put yourself in any unnecessary danger while effecting an arrest. If you are in any doubt about your ability to make the arrest, or about your personal safety, then the police should be called to assist or to make the arrest themselves.

Chapter 3: Arrest procedures relevant to security operatives

The use of force

Occasionally, you will need to use force to carry out your duties as a security operative, and under certain circumstances you are legally empowered to do so. The law gives certain situations when members of the public are allowed to use force on others, and the authority for security operatives to use force when necessary can be found in the following parts of the law.

Common law - the rules of self-defence

'If any person has an honestly held belief that he or another is in imminent danger, then he may use such force as is reasonable and necessary to avert that danger.'

SCO

In Scots law, if a person is attacked, or is in reasonable fear of attack, he's entitled deliberately to use such force as is needed to ward off that attack.'

Furthermore, a person about to be attacked does not have to wait for their assailant to strike the first blow. Circumstances may justify a pre-emptive strike. This essentially means that if, while carrying out your duties as a security operative, you feel that you or someone else is about to be hurt, then you are allowed to use force to protect yourself or that other person.

In a criminal case in 1988, it was said that common law has always recognised the right of a person to protect themselves from attack and to act in the defence of others, and if necessary, to inflict violence on another in so doing. Provided that no more force is used than is reasonable to repel the attack, such force is not unlawful and no crime is committed.

In another case in 1995, it was said that the necessity of using force was a question for the subjectivity of the defendant, whereas the degree of force was more objectively considered by the courts. This means that security operatives have to decide themselves if and when to use force, whereas ultimately a court may have to decide whether the amount of force used was reasonable or not.

The questions that are likely to be asked about any use of force are:

1. Was there a need to use the force?
2. Was the amount of force used reasonable or not?
3. What was the extent of the injuries compared to the amount of resistance given?
4. What was the size and build of the injured party compared to the security operative?
5. Were any weapons used or threatened by the other party?
6. At what stage did the security operative stop using the force?
7. Was the force applied in good faith or in a malicious way?

COMMON LAW - preventing a breach of peace and saving life

'Any person may use such force as is reasonable in the circumstances to prevent a breach of the peace or to save life'.

In another 1981 case, it was said that in relation to stopping a breach of the peace, every citizen in whose presence a breach of the peace is being, or reasonably appears to be about to be committed, has the right to take reasonable steps to make the person who is breaking or threatening to break the peace refrain from doing so. These steps may include the use of reasonable force. Once again, though, what force is reasonable will depend on the facts of the particular situation. Security operatives are also allowed to use force to save someone's life. If, for example, an assailant is running at another person with a knife, then you would be entitled to use force to stop the assailant from killing the other person.

Chapter 3: Arrest procedures relevant to security operatives

SEC.3 CRIMINAL LAW ACT, 1967

This act gives everyone, including security operatives, the authority to use:

'such force as is reasonable in the circumstances in the prevention of crime, or in effecting (or assisting in) the lawful arrest of offenders, suspected offenders or persons unlawfully at large.'

The 'prevention of crime' element applies to any crime where the preventative use of force is reasonably required. This would include protecting property from damage or theft and protecting people from physical injury. This piece of legislation again allows you to use force to stop a crime from being committed, such as breaking up a fight (assault) or stopping someone from smashing a window (criminal damage), and also allows you to use force if needed to arrest someone and to stop them from running away before the police arrive.

It is important to remember that the wording of this act refers to:

'such force as is reasonable in the circumstances',

and previous criminal cases have pointed out that where force is used in these situations, the amount of force used must be judged according to the particular circumstances. It is made very clear, however, that the excessive use of force is not allowed. If you consider that every time you use force against another person you may well have to justify your actions, then you should be able to act reasonably in any given situation. If, however, you are reckless as to how much force you use, or you deliberately use excessive force, then you will have to answer to the police and possibly even to a court.



Security operatives are also allowed under the rules of trespass to physically eject members of the public from a site or venue when all other methods of persuasion have failed. You can effect lawful arrests for a variety of offences and you are allowed to protect yourself if you are attacked. What the law does not allow is the excessive use of force or causing unnecessary or malicious injuries to any person.

Security operatives must always be able to justify their actions. If you remember this during every potential confrontation with a member of the public, then you should prove to be effective within the security function.

