

# Police Law

Jack English and Richard Card

12<sup>th</sup> Edition

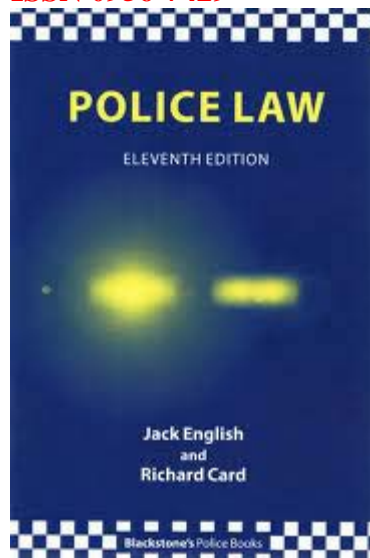
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Book review by Sally Ramage

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## Introduction

This twelfth edition of *Police Law* is the last edition that Jack English, OBE, QPM, MA, wrote. Sadly, Jack English died and is very much missed by all police officers and colleagues. Jack English used to be the Assistant Chief Constable of Northumbria Police Authority and Director of the Central Planning and Instructor Training Police Unit and Chief Examiner to the Police Promotion Examination Board.

As usual, the book of almost 1200 pages, one of the most comprehensive police law books ever written, is lucid, clear, and is plainly written and up-to-date. With this government's seismic budget cuts to the police, it is even more necessary for officers to keep up to date with the law, self-learning as never before. Cuts to the police are short-sighted and those who make such decisions appear to have not grasped all the facts, especially the fact that today we live in a global society and we are certainly not an 'island people' of ancient times because contemporary issues include being a part of the European Union, cross border human, arms and drug trafficking, border

controls or lack of it and increasing need to keep up with international laws, which is why we needed the many Criminal Justice statutes of the past two decades.

### **Reduction in the number of police officers**

Whilst policing suffers massive financial cut-backs, this is a time when police must grapple with much complex legislation, as compared to olden days of just one or two statutes to deal with. The pundits have come in with their glib solutions such as ‘get rid of the paperwork’ and ‘use your discretion’<sup>1</sup> and it remains to be seen if such ‘common sense’ wisdom will back-fire.

### **Issues today**

The recession that the United Kingdom and most of the world find itself in is forecast to be very long-term, as never before seen, and history records that ‘hard times’ bring out the worse behaviour in people. Police will need to deal with many crimes, including:

- (i) Theft which will become rife.
- (ii) An increase in fraud.
- (iii) An increase in burglary.
- (iv) An increase in public disorder.
- (v) An increase in environmental crimes.

This is therefore a vital book for police officers and criminal lawyers, equivalent to many volumes of other books because it is so comprehensive and it is hoped that Oxford University Press will continue to publish *Police Law*.

### **Police powers**

*Police Law* addresses police powers- a vital subject- in chapter 3, a chapter of 73 pages in length. Most police powers hinge on the Police and Criminal Evidence Act 1984 (‘PACE’) and this act has been amended so much that one is never certain that one has mastered this statute and its attached Codes of Conduct. In fact, PACE is dealt with in chapters 3, 4, 5, 6 and 7, in 247 pages of this book and this indicates the importance of PACE.

Recently, police ‘stop and search’ powers have been amended by section 1 of the Crime and Security Act 2010 which concerns the extent to which records of searches are to deviate from the previous regulations:

*‘S.1 Records of searches*

*(1)Section 3 of the Police and Criminal Evidence Act 1984 (duty to make records concerning searches) is amended as follows.*

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<sup>1</sup> In fact, the operational independence of police officers, their right to exercise discretion in the performance of their duties; their accountability, and their general legal status, has been established since 1906 (see *Enever v The King* [1906] 3 CLR 969).

*(2) In subsection (1), for “he shall make a record of it” there is substituted “a record of the search shall be made”.*

*(3) For subsection (2) there is substituted— “(2) If a record of a search is required to be made by subsection (1) above— (a) in a case where the search results in a person being arrested and taken to a police station, the constable shall secure that the record is made as part of the person’s custody record;*

*(b) in any other case, the constable shall make the record on the spot, or, if that is not practicable, as soon as practicable after the completion of the search.”*

*(4) Subsections (3) to (5) (record of search to include person’s name and description of person or vehicle) are repealed.*

*(5) In subsection (6)— (a) in paragraph (a), for sub-paragraphs (v) and (vi) there is substituted— (b) “(v) except in the case of a search of an unattended vehicle, the ethnic origins of the person searched or the person in charge of the vehicle searched (as the case may be); and”; in paragraph (b), for “making it” there is substituted “who carried out the search”.*

*(6) After subsection (6) there is inserted—*

*“(6A) The requirement in subsection (6) (a) (v) above for a record to state a person’s ethnic origins is a requirement to state—*

*(a) the ethnic origins of the person as described by the person, and*

*(b) if different, the ethnic origins of the person as perceived by the constable.”*

*(7) In subsection (7), for the words from the beginning to “it,” there is substituted “If a record of a search of a person has been made under this section,”.*

*(8) In subsection (8), for paragraph (b) there is substituted— “(b) a record of the search of the vehicle has been made under this section,”*

*(9) In subsection (9) (time within which copy of search may be requested) for “12 months” there is substituted “3 months”. Taking of fingerprints and samples: (c) he has had a non-intimate sample taken from him in the course of that investigation and— (i) the sample has been destroyed pursuant to section 64ZA below or any other enactment, and (ii) it is disputed, in relation to any proceedings relating to the offence, whether a DNA profile relevant to the proceedings is derived from the sample.” (6)*

*In that section, for subsection (3B) there is substituted— “(3B) Subject to this section, a non-intimate sample may be taken from a person without the appropriate consent if (before or after the coming into force of this subsection)— (a) he has been convicted of a recordable offence, (b) he has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted, or (c) he has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for a recordable offence, and either of the conditions mentioned in subsection (3BA) below is met. (3BA) The conditions referred to in subsection (3B) above are— (a)*

*a non-intimate sample has not been taken from the person since he was convicted, cautioned or warned or reprimanded;*  
*(b) such a sample has been taken from him since then but— (i) it was not suitable for the same means of analysis, or (ii) it proved insufficient. (3BB) A non-intimate sample may only be taken as specified in subsection (3B) above with the authorisation of an officer of at least the rank of inspector. (3BC) An officer may only give an authorisation under subsection (3BB) above if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.” (7) In that section, in subsection (9A)— (a) after “shall not apply to” there is inserted “(a)”; (b) at the end there is inserted “; or (b) a person given a caution before 10th April 1995.” (8) In section 1 of the Criminal Evidence (Amendment) Act 1997 (persons imprisoned or detained by virtue of pre-existing conviction for sexual offence etc)— (a) in subsection (3)(b), at the beginning there is inserted “he has at any time served or”; (b) in subsection (4)(b)— (i) at the beginning there is inserted “he has at any time been detained or”; (ii) sub-paragraph (ii) and the preceding “or” are repealed. (9) In section 2 of that Act (persons detained following acquittal on grounds of insanity or finding of unfitness to plead), in subsections (3) (a) and (4) (a), at the beginning there is inserted “he has at any time been detained or”.*

This amendment to police ‘stop and search’ is an effort to reduce police bureaucracy, following a government review of PACE.

There is almost nothing in the public domain about the Crime and Security Act 2010 apart from the statute and government explanatory notes. Yet it is a most important statute. As Bennion said in *Understanding Common Law Legislation*<sup>2</sup>:

*‘You can be a criminal lawyer without being a tax lawyer; you can be a company lawyer without also being a conveyancer; you can be an expert in public law while knowing little of private law, and so on. But nowadays you cannot be any sort of competent lawyer without being a statute lawyer, since legislation provides the framework for almost everything lawyers do.’*

The Crime and Security Act 2010, the Policing and Crime Act 2009 and the Local Democracy, Economic Development and Construction Act 2009 are but three very sound and laudable statutes which the new government is pretending do not exist, whilst simultaneously complying with these statutes in every way but name- so as not to remind the public that excellent law was passed by their predecessors.<sup>3</sup> Complainants and critics of the many criminal justice acts passed over the past two decades do not understand the level of complexity of modern Britain in an international situation. The United

<sup>2</sup> Bennion, Francis (2001) *Understanding Common Law Legislation*, Oxford: OUP; ISBN 978-0-19-956410-1

<sup>3</sup> One wonders if the present government thinks that hiding its head in the sand will make a statute disappear, as one knows that a government cannot just repeal statutes wholesale for no good reason and without facing fierce backlash.

Kingdom is no longer merely ‘a little island’ in the physical sense, having to deal with the loosening of border controls, extensive inter-country travel and crimes that ensue. The big picture to bear in mind relates to environmental crimes and climate change; fraud, bribery, and corruption in multinational organizations and organized cross-border gangs; trafficking of people for prostitution; arms trafficking, illegal immigration; increased computer misuse and identity theft, to mention but a few crimes today.

### **Breach of the peace**

Section 39 of the Crime and Security Act 2010 concerns breach of Anti-Social Behaviour Orders (‘ASBO’)<sup>4</sup> in respect of under 18s and Police Law deals with public order offences<sup>5</sup> in Chapter 31 (pages 871 to 921). Many people forget that the main function of policing is to keep the ‘Queen’s peace’ which Jack English and Richard Card describe as *‘that public peace and good order which is expected to be preserved to allow Her Majesty’s subjects to live their lives without due interference from other citizens.’* Breach of the peace is described as conduct in which there is an incidence of violence and verbal abuse is insufficient.<sup>6</sup>

### **Offences against the administration of justice**

Chapter 43 is a new chapter to Police Law, according to the Criminal Law Act 1967, sections 4 and 5. The statutory offence of conspiracy is enacted by s.1 Criminal Law Act 1977 and in particular s.1 (2) which states:

‘Where any liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit the offence by virtue of section (1) above unless he and at least one other party to the agreement intend to know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.’

This is a notoriously difficult statute to understand and to prosecute with. The Criminal Law Act 1967 section 3(1) has not been abolished and the 2008 Criminal Justice and Immigration Act s.76 clarifies the defence of self-defence under the common law and the 1967 Criminal Law Act (‘CLA’), s.3(1), though the 2008 act does not cover all the elements of the defence, especially with regard to money laundering. Smith and Hogan addressed this matter as ‘semi-innocent agent’. (See Ormerod, David (2006) *Smith and Hogan Criminal Law: cases and materials*, Oxford: OUP at pg 280;

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<sup>4</sup> By the 1988 Crime and Disorder Act, section 1C, an ASBO can be made on conviction in criminal proceedings, if the court considers that the conditions of section 1 of the act have been met.

<sup>5</sup> Public order offences other than those related to sporting events or industrial disputes.

<sup>6</sup> See Brodeur, Jean-Paul (2010) *The policing web*, Oxford: OUP; ISBN 978-0-19-974059-8.

ISBN 978-0-40-697729-8). Wasting police time is an offence under the 1967 CLA, s.5 (2). Offences of perjury and offences akin to perjury; offences of intimidation of witnesses, jurors or others; reprisals against witnesses, jurors and others; and witness protection as per the Criminal Justice and Police Act 2001, are also explained in this new chapter.

## Conclusion

Police law is simply a wonderful police law book. It excels in its comprehensiveness, its use of simple language without footnotes; and its style of writing which makes one want to read it from end to end because of its logical, well-ordered presentation, sound research and authoritativeness. Not many law books can boast of such qualities. It is simply the best, thanks to Oxford University Press.

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