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Metropolitan Police Service
Directorate of Training and Development

Police Constable Foundation Course

Breach of the Peace

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Objectives

After you have studied and understood this written lesson, you should be able to:

1. State the Police powers to deal with Breach of the Peace
2. State the directive regarding Domestic Incident

When dealing with incidents of this nature, you should consider the most appropriate use of the Effective Patrol Framework. A dynamic risk assessment must be undertaken. If you consider it appropriate, assistance from other officers should be sought, before dealing with the incident.

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Breach of the Peace

A breach of the peace means that there is actual or likely disturbance of the public peace and good order which it is expected citizens should ordinarily enjoy. Keeping the Queen's Peace has long been one of the primary functions of the MPS.

A breach of the peace may occur in both public and private places.

The following is an accepted legal definition of a breach of the peace:

- ◆ harm is actually done or is likely to be done, whether by the person against whom the breach is alleged or by someone else who provokes it, or
- ◆ harm is actually done, or is likely to be done, to a person's property in their presence, or
- ◆ a person is genuinely in fear of harm to themselves or their property in their presence, as a result of assault, affray, riot or other disturbance.

A breach of the peace is not a criminal offence as such. It forms part of common law and allows for a person to be brought before a magistrate to be bound over to keep the peace. A binding over is intended to ensure good behaviour during the period specified by the magistrate. A person is usually bound over in a sum of money which could be forfeited if brought back to court again. A binding over does not constitute a criminal record. A refusal to be bound over could result in imprisonment

Any person (including a police officer) can arrest :-

- ◆ Where a breach of the peace is committed by the person arrested in the presence of the person making the arrest;

OR

- ◆ Where the person making the arrest reasonably believes that such a breach will be committed in the immediate future by the person whom he arrested;

OR

- ◆ Where a breach of the peace has been committed by the person arrested and the person making the arrest reasonably believes that renewal of it is threatened.

The power of arrest can be used in a range of circumstances. For example, where a disturbance has taken place but no specific offence committed and where there is a possibility of a renewal of the disturbance.

It could also be used where people are arguing and may resort to violence as a means of dealing with the situation. They may not have gone so far as to make specific threats which amount to an offence under other legislation, such as the Public Order Act.

IMPORTANT

Remember to justify an arrest under 2 and 3 above the threat of a breach of the Peace or renewal must be both **REAL** and **IMMINENT**. This may be difficult if the subject of the arrest is acting quite lawfully whilst the police are dealing with him (it is the culprit not the righteous that should be arrested). Case Law has outlined the following rules for making an arrest where the breach of the peace was imminent in such circumstances:

- ◆ There must be the clearest of circumstances and a sufficiently real and present (imminent) threat to the Peace to justify such an arrest if a citizen was not, at the same time, acting unlawfully.
- ◆ The threat of the Breach of the Peace must come from the person to be arrested, whose conduct must be unreasonable.
- ◆ The conduct must clearly interfere with the rights of others.(e.g you cannot cause a breach of the peace screaming abuse on the North Yorkshire Moors five miles from the nearest person).

I'm sure you can think of occasions in the past when you have seen situations getting out of hand and perhaps thought to yourself, "Somebody should stop them before they hit each other". What you were feeling could have been described as 'fearing a breach of the peace', and if you were a police officer called to deal with the incident you would need to take some action.

A constable may have to resort to this power of arrest as a means of defusing a conflict situation. Often, the fact that police are there is enough to calm the situation.

Where a police officer reasonably anticipates that a person is likely to commit a breach of the peace in the immediate future, that person may only be arrested if the breach of the peace is about to occur or it is imminent. This interpretation has been reinforced through court decisions.

It is not enough merely that it is likely to occur in the near future. For example, it could not be said that a breach of the peace was imminent where police fear that when they leave the scene a person may return to cause such a breach.

If a breach of the peace is taking place or is likely to take place (such as persons openly preparing to fight) on private premises, then police may enter the premises, by force if necessary, either to stop or prevent the breach of the peace. This power comes from **common law**.

To re-iterate: the power of arrest for Breach of the Peace is an any person power of arrest and can be executed by a private citizen as well as a police officer.

Remember, if police have a reasonable belief that there is a threat to life or property we also have the power to enter, if need be by force, under sec.17 PACE.

A court held that 'concern for welfare' was not sufficient to enter properties using sec 17, it was too low a threshold. If something serious had happened, or was about to happen, and you did not do anything about it because you took the view you had no right of entry, no doubt there would have been a degree of criticism after the event. However, Parliament had set the level high as it was a very serious matter for a citizen to have their house entered by the police without a warrant. The power of entry is only a police power.

In such cases, you must first state who you are and demand admission. In plain clothes, show your warrant card.

The breach of the peace power will only be resorted to **if all other options available in statute law are exhausted**.

A person arrested for breach of the peace should be released once the threat of renewal has passed.

For example, if two strangers become involved in a disturbance, the arrest of one of them for breach of the peace may allow the other to leave the scene and make a recurrence most unlikely. In such circumstances, the arrested person should be released. Action taken by the officer would have had the desired outcome and render the continuing detention of the person unnecessary. Furthermore, continued detention might infringe the person's human rights if it was considered neither necessary nor proportionate.

In all cases the matter should be fully reported in an EAB and the Custody Officer informed. The report should include details of the options the officer considered and the reasons for choosing their particular option.

Domestic incidents

Perhaps suprisingly this is one of the most problematic situations for arresting officers and leads to the majority of civil claims.

Irrespective of and notwithstanding the MPS Policy of positive action, in *McConnell v C.C* 1990 which is still good law, the judge stated that 'a purely domestic dispute will rarely amount to a breach of the peace'. Therefore if you feel it appropriate and necessary to arrest then it is essential that every aspect of the law is justified to make the arrest lawful. The threat of, or renewal of, B of P must be both real and imminent and be clearly evidenced.

This is not an exhaustive list but consider

Evidence of Fear, vulnerability, volatile, tangible evidence, physical injury, psychological injury, children present, witnesses, demeanour of all parties, previous incidents, CAD/CRIS/Crimint/Merlin/Special schemes/Midscreen comments

The following points are all extremely important.

- ◆ Evidence to justify the **real** and **imminent** threat.
- ◆ Describe **fully all the circumstances** including demeanour of the people involved.
- ◆ Record accurately and in detail what was said to you at the scene; use direct speech.
- ◆ **Everything of note-** Physical/Psychological injury, children present etc.
- ◆ Consider **other offences** Assaults, Criminal Damage, harassment Public order and Sec 6 Criminal Law Act 1977.

You have a power of entry to private premises and all Breach of Peace powers have been specifically preserved under SOCPA.

As Breach of Peace is not a criminal offence there is no power to take fingerprints, DNA or photographs. **Therefore always consider criminal offences first.**

Guidance in cases involving Breach of the peace and domestic violence

'Breach of the peace' is an ancient common law concept, which is of importance to police officers, providing a number of powers:

- 1) To arrest
- 2) To intervene/detain by force.

Breach of the peace can be a valuable tool in dealing with domestic violence situations if used correctly. For example where officers attend an address where a domestic argument is taking place. On arrival whilst there are no offences committed by either parties the officers would need to consider what would happen once they leave. Would the argument recommence, would their attendance make matters worse for one of the people present once they left the property resulting in the police being called again? Taking all the circumstances into account it may be prudent to request one of the parties present to leave the premises and not return until things had calmed sufficiently. If they refused and the officers felt that for them to remain would cause a breach of the peace then they could arrest them to prevent that breach occurring.

Where there are grounds to arrest for a substantive offence then the officers should use them in accordance with the MPS positive action policy.

Going back to this scenario where the other party does leave freely they should be warned that if they return and the police are called again then it might lead to their arrest for breach of the peace. Should they return and the police are recalled then in the absence of any other offences being committed they could be arrested for, or to prevent a further breach of the peace.

This leads on to the next issue in regards to common law and breach of the peace. This power does provide that the police can detain the person who is arrested for breach of the peace however there are some considerations that must be borne in mind in regards to this. Firstly if there is no chance of the breach re-occurring then the person detained should be released. In this scenario for example where the other party also leaves the premises and goes elsewhere and it is unlikely that the detained person will go to their new address. It may also be appropriate where the detained person may be able to attend another address for the time being until the situation has calmed down. Again consideration should be given as to whether they will return to their home address and continue the argument.

Once in custody for, or to prevent, a breach of the peace the custody officer and the arresting officer should consider various factors when deciding as to whether, if released, the suspect will continue the breach.

How soon after release is it that they are likely to cause a further breach of the peace? This should be fairly soon after release and there should be real grounds to back this belief up, ie, the close proximity to the victims address. It could be argued with domestic violence situations that sooner or later the suspect will return to the victims address and there will be further incidents. Mr Justice Wall summed up this situation in *RV McGrogan* based on a test devised by Mr Justice Bowers to determine whether detention for a breach of the peace was justified.

“The power to detain to prevent a further breach of the peace is limited to circumstances **where there is a real (rather than a fanciful)** apprehension based on all the circumstances that if released a prisoner will commit or renew his breach of the peace within a short time. Continued detention cannot be justified on the grounds that sooner or later the prisoner if released is likely to breach the peace because otherwise in the context of a stormy relationship...it is almost inevitable that further breaches of the peace will occur when the parties eventually meet.”

He also added two conditions to this test to clarify

“1) That the officer making the decision to continue detention must have an honest held belief that further detention is necessary in order to prevent a breach of the peace and that (2) there must be, objectively, reasonable grounds for that belief.”

To demonstrate this test a recent appeal case of *R-V- McGrogan* shows the sort of grounds where continued detention would be justified.

McGrogan was arrested by police for assaulting his girlfriend. She later withdrew her allegation and would not assist in a criminal prosecution. Whilst in custody McGrogan's behaviour was initially aggressive and he repeatedly banged his head on the cell wall. Although the victim had refused to assist in the investigation the custody officer felt that to release him would lead to a renewed breach of the peace by him on the victim. This was based on several factors:

McGrogan's initially aggressive behaviour whilst in custody led them to feel that if released he would cause a further breach of the peace.

The victim's address was within walking distance of the police station where as his address was some distance away, making it highly likely he would attend her address upon release.

The victim when making her withdrawal statement had stated that she feared that he would return to her address if released.

The victim gave police his possessions that she had for him to be given when released, the custody officer felt that by returning this property upon his release might inflame the situation and lead to him attending her address.

It was not possible to bail him with conditions under breach of the peace

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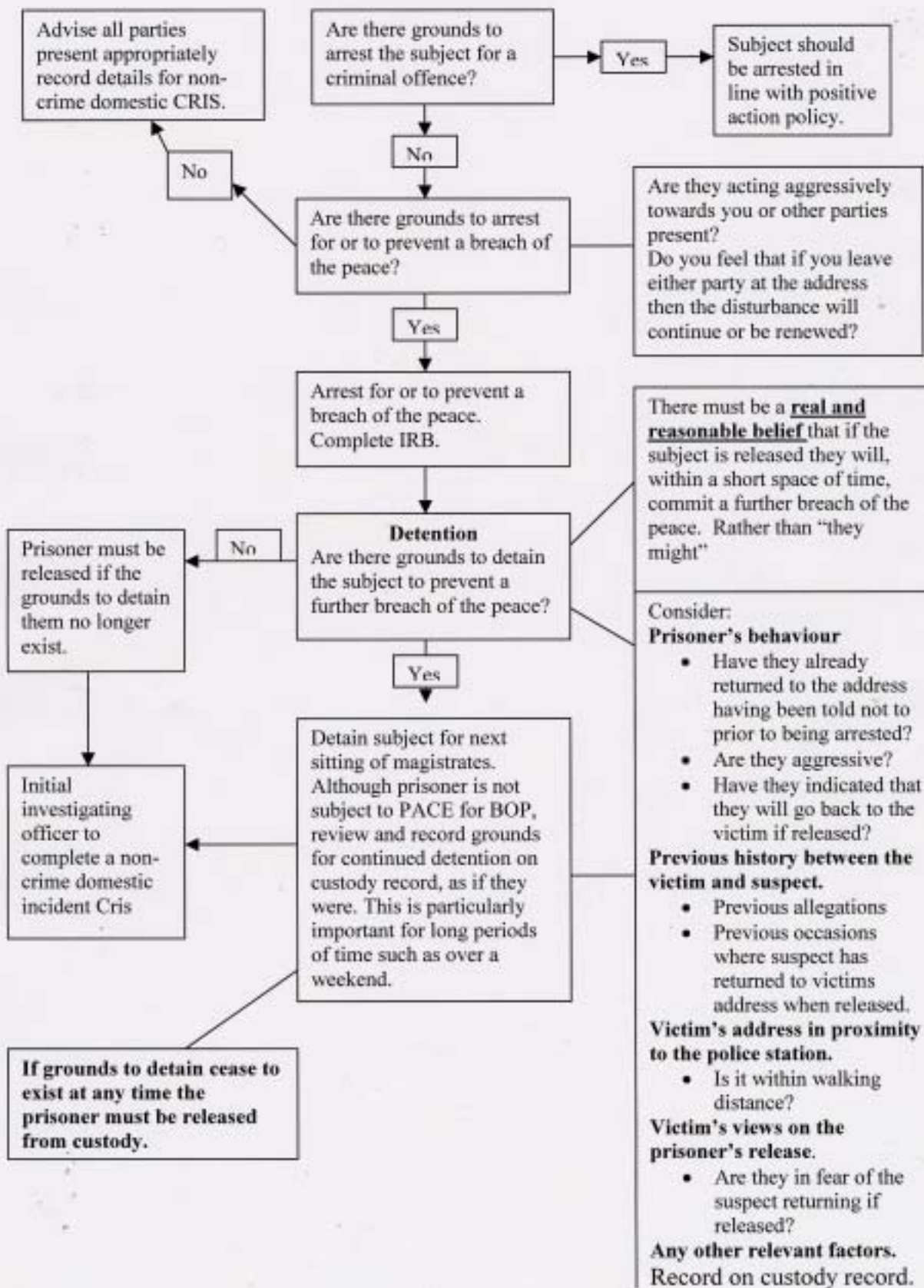
Summary

The power to arrest for breach of the peace or to prevent a breach of the peace is a common law one available to all members of the public including police officers. Where such an arrest is made the officer must complete an EAB.

Where a prisoner is detained for a breach of the peace, whilst they are not subject to the conditions of PACE it would be good practice to treat the prisoner as if they were. They should regularly review the reasons for continued detention and record them in the custody record.

If there are no reasonable grounds to believe that a subject would renew their breach or commit a further breach soon after their release then they should be released from custody. An officer's reasons to continue detention must be **real and reasonable** and not based on what the subject might do on release. An example would be where the subject actually tells the officer that if he is released he will return to the address or where the subject did leave the address when told by officers initially but returned within a short space of time resulting in police re-attending the address.

Breach of the Peace flow chart



End of
Lesson