

4 December 2009

To: all Chief Constables and Commissioners

Dear Colleague

Section 44 Terrorism Act and Photography

Adverse media coverage of the police service use of Section 44 powers, when dealing with issues relating to photography, have recently hit the headlines again and suggests that officers continue to misuse the legislation that is available to them. The evidence also suggests that there is confusion over the recording requirements of 'Stop and Account' and the actual police powers of 'Stop and Search'. The purpose of this letter is to clarify the legislation and guidance in relation to these matters.

Stop and Search

Section 44 gives officers no specific powers in relation to photography and there is no provision in law for the confiscation of equipment or the destruction of images, either digital or on film.

On the rare occasion where an officer suspects that an individual is taking photographs as part of target reconnaissance for terrorist purposes, then they should be treated as a terrorist suspect and dealt with under Section 43 of the Act. This would ensure that the legal power exists to seize equipment and recover images taken. Section 58A Counter Terrorism Act 2008 provides powers to cover instances where photographs are being taken of police officers who are, or who have been, employed at the front line of counter terrorism operations.

These scenarios will be exceptionally rare events and do not cover instances of photography by rail enthusiasts, tourists or the media.

The ACPO/NPIA Practice Advice, published in December 2008, is again included with this letter and specifically covers the issues surrounding photography. The guidance also includes the need for clear briefings on the use of Section 44 and it may be appropriate to include photography issues within those briefings.

Stop and Account

Encounters between police officers and PCSOs and the public range from general conversation through to arrest. Officers need to be absolutely clear that no record needs to be submitted to cover any activity that merely constitutes a conversation.

Only at the point where a member of the public is asked to account for their actions, behaviour, presence in an area or possession of an item, do the provisions of the PACE Act apply and a record for that 'stop and account' need to be submitted. Even at that point, such a discussion does not constitute the use of any police power and should not be recorded under the auspices of the Terrorism Act, for example.

Officers should be reminded that it is not an offence for a member of the public or journalist to take photographs of a public building and use of cameras by the public does not ordinarily permit use of stop and search powers.

Yours sincerely

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