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Crime and Criminal Offences:

Theft, Related Offences and Criminal Damage

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Contents

1. Introduction.....	6
2. Theft and Related Offences.....	7
2.1 Theft.....	7
2.2 Making Off Without Payment	14
2.3 Robbery.....	15
2.4 Burglary.....	19
2.5 Aggravated burglary	25
2.6 Going equipped for burglary or theft	27
2.7 Taking a conveyance without consent	30
2.8 Preventing vehicle crime.....	33
2.9 Vehicle interference.....	35
2.10 Aggravated vehicle taking.....	36
2.11 Taking a pedal cycle without consent	39
2.12 Stopping vehicles safely	40
2.13 Lost or stolen vehicles	42
2.14 Abstracting electricity.....	49
2.15 Handling stolen goods	53
3. Criminal Attempts	59
3.1 The Offence.....	59
3.2 Criminal Intent	60
3.3 The Impossibility Rule	61
4. Fraud.....	62
4.1 Categories of fraud	62
4.2 Fraud by false representation	64
4.3 Fraud by failing to disclose information	69
4.4 Fraud by abuse of position	70
4.5 Possession of articles for use in frauds.....	73

4.6 Actions to be taken in on deployment to a fraud scene	76
4.7 Carrying out an initial investigation at a fraud crime scene	77
4.8 Preserving evidence at a fraud crime scene	77
4.9 Responding to victims and managing expectations	78
4.10 Dealing with other actual or potential victims	79
4.11 Advice that can be given to prevent further loss through fraud.....	79
4.12 Action fraud	80
4.13 Types of offences that should be reported to the police	81
4.14 Get Safe Online	81
5. False Identity Documents (False ID)	83
5.1 The five types of false document:	83
5.2 False ID and Alcohol:	83
5.3 Acceptable forms of identification and how to check them	85
5.4 Commonly used forms of fake ID.....	89
5.5 What to do with handed in or confiscated ID documents.....	91
5.6 Offences relating to identity documents	93
5.7 Offences relating to forgery and counterfeiting	93
6. Criminal Damage.....	94
6.1 Destroying or damaging property.....	94
6.2 Arson.....	96
6.3 Racially or religiously aggravated criminal damage	97
6.4 Damage endangering another's life	97
6.5 Threats to destroy or damage property	99
6.6 Having articles with intent to destroy, damage or endanger life	100
6.7 Investigating criminal damage	101
7. Revision Questions.....	102
8. Key Legislation	103
9. E-learning	103

Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: <http://www.app.college.police.uk/>

1. Introduction

These notes are for Pre-Join, Police Officers, PCSOs and IL4SC Phase 1. You should consider how the content applies in relation to PCSO powers, 'any person' powers of arrest under Section 24A of the Police and Criminal Evidence Act 1984 (PACE) and local force policy. The beginning of each section will identify who it is applicable to.

If you are aware of the options available to an investigator you will be able to follow, or suggest to others, the areas of investigation that are worth pursuing. The key is information and below are ways of obtaining it.

These notes provides an introduction to offences regularly dealt with on a day to day basis. It is essential, therefore, that you have a full understanding of each offence and the definitions of important terms within those offences. This will enable you to be able to identify which, if any, offence has potentially been committed when attending incidents and ensure you are aware of the points to prove for those offences to gather the relevant evidence from victims, witnesses, scenes and suspects.

It also provides an introduction to offences within the Fraud Act 2006 that first responders may be required to investigate. The notes support the Fraud e-learning as an aide-memoire of some of the areas covered by that e-learning.

The notes also give, for police officers and PCSOs, an overview of ways to determine whether identification documents (ID) are real or false and methods to determine whether a person using the ID is the person to whom it belongs. They give guidance on how to check identity documents and what to do when identification documents are handed in.

Finally, it provides an introduction to the offence of Criminal Damage and the types of offences that first responders would have to deal with. Criminal damage can be caused intentionally or recklessly, and in some circumstances would even cover an offender causing damage to his or her own property, especially when it endangers another life. Investigators would also have to bear in mind any aggravating factors that might be present, such as a racially motivated offence.

2. Theft and Related Offences

2.1 Theft

Theft is an offence that will be dealt with frequently by a police officer and, in some policing areas and certain circumstances, PCSOs. This will depend on the PCSO's designated discretionary powers and, amongst other considerations, the value of the property stolen. PCSOs should clarify their designated powers and seek advice on local policies and procedures. Theft, which in general terms, you will probably understand as stealing property belonging to someone else, forms the basis of a high proportion of the crimes reported to the police.

Theft – Sections 1 to 6 Theft Act 1968

The Offence

Section 1(1) of the Theft Act 1968 states:

‘A person is guilty of theft if he dishonestly appropriates property, belonging to another, with the intention of permanently depriving the other of it.’

In order to establish an offence of theft each of the five elements of the offence must be proved therefore they are examined in detail below:

- Dishonestly
- Appropriates
- Property
- Belonging to another
- Intention to permanently deprive

Dishonestly (Section 2 of the Theft Act 1968)

Dishonestly is not defined by the Act, but it does state that the appropriation is not to be regarded as dishonest if the person appropriating property believes:

- a. That he has, in law the right to deprive the other of it on behalf of himself or a third person.

Examples:

- Smith appropriates (takes) Green's umbrella in the mistaken belief he owns the umbrella. This is not dishonest.
- Smith, acting on behalf of Jones, appropriates Green's umbrella, having been told wrongly by Jones the umbrella was his, even if Green disagrees. This is not dishonest on Smith's part.

Or

- b. That if in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it.

Example:

- Coates and Murray are next door neighbours. Coates has unexpected visitors, runs out of milk and takes a pint (without Murray's knowledge) from Murray's online food order that has been delivered to his doorstep. Coates must honestly believe that Murray would have allowed the taking with regard to the circumstances. Coates may well believe the taking of the milk for visitors would be acceptable to Murray but if he took the milk to sell at a profit to a thirsty passer-by, and he believed that Murray would not consent to this, it would not satisfy this exception.

Or

- c. Except where the property came to him as a trustee or personal representative that the person to whom the property belongs cannot be discovered by taking reasonable steps.

Examples:

- Ownership of a £1 coin found in the street is not likely to be established easily
- A credit card is identifiable and ownership would easily be determined

Genuine Belief: It is for the suspect/defence to prove that their belief in any of the above three points (a, b or c) was a genuine belief, no matter how foolish that belief was. The court will make the final decision on this point.

This point is particularly relevant in the light of a stated case *R v Ghosh* [1982] QB 1053 where the Court of Appeal sought to clarify what was meant by dishonesty and decide whether, according to the ordinary standards of reasonable and honest people, what was done was dishonest. If it was not, then the defendant should be acquitted.

However, if it was dishonest by those standards (of reasonable and honest people), then the jury must decide whether the person realised that reasonable and honest people would regard what he did as dishonest. If the person did realise this, then they have been dishonest.

A person's taking of property belonging to another may be dishonest even if he is willing to pay for it. A person who takes a bottle of milk from a doorstep, but leaves the money, is not necessarily to be regarded as honest. There is no need for a Ghosh-based direction, unless the defendant has raised the issue that he or she did not know that anybody would regard what he or she did as dishonest, in accordance with the first stage of the test.

Appropriates (Section 3 of the Theft Act 1968)

'Appropriates' is defined by the Act as:

'Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner'.

In simple terms appropriates means the person treats, uses or disposes of the property as if it were their own to do with as they like.

Examples:

- You lend your lawnmower to your neighbour before you go on holiday. On your return you find your neighbour has assumed your rights as the owner and sold it. Appropriation has taken place.
- A friend gives you a stolen book as a present. A week later you find out about the theft. You decide to keep it and say nothing. You came by the book innocently and without stealing it, but you appropriate it when you decide to keep it and treat

it as your own. You have assumed the right of an owner although you know it belongs to someone else.

- There is an exception: Suppose, not knowing of the theft, you bought the book, or exchanged a book of your own for it and later learn of the theft? It would be unfair if you committed theft by keeping the book for which you had given something of value in good faith. The law recognises this and makes an exception for the person acting in good faith in this way (Section 3 (2)). In the above circumstances the rights of the original owner of the book would be a matter of civil law and not a matter for the police to decide. It must be emphasised that in such circumstances, the purchase or exchange must represent 'value' and must be made in good faith.

Property (Section 4 of the Theft Act 1968)

Property includes money and all other property, real or personal, including things in action and other intangible property, wild creatures tamed or untamed that are normally kept in captivity, but does not include:

- Wild creatures (other than those kept in captivity)
- Mushrooms growing wild on any land
- **Flowers, Fruit, or Foliage** of a plant growing wild on any land unless picked for reward, sale or other commercial purpose

It may help you if you remember the 3 **Fs** as highlighted in bold above. 'Plant' includes any shrub or tree; 'mushroom' includes any fungus such as that seen growing on tree trunks. The above exemptions do not apply to uprooting whole plants or removing branches from trees.

Examples:

- Buttercups and daisies growing wild are not property as they are flowers growing wild unless they are picked for reward/sale/commercial purpose.
- Blackberries from the hedgerows are not property as they are fruit growing wild unless they are picked for reward/sale/commercial purpose.

- A person goes for a walk in the local woods taking a spade. They look for wild flowers in bloom and use the spade to dig up whole plants including their roots. They take the wild plants home and plant them in their garden. The wild plants would be deemed as 'property' within the definition and the person has committed theft.
- A person picks blackberries from a hedgerow and uses them to make jam. The jam is sold at a profit at a local festival. Turning them into jam and selling it made the blackberries have a value as property and the full circumstances could therefore amount to the offence of theft.

Things in action: Things in action and other intangible property include delivery rounds, trademarks, patents, copyright etc. These are things that have value but have no physical substance. This area of theft is quite complicated and one where you might need to seek advice from a supervisor or CPS. Also consider other offences linked to such as high tech or cybercrime.

Cultivated plants: Trees, shrubs, flowers, vegetables etc. that have been planted, sown or are cultivated are all property and are capable of being stolen.

Example:

- A single daffodil bloom, an ear of wheat or a pea pod, provided some person cultivates it, would technically be property for the purpose of theft.

Animals: Any animal, which belongs to a person, is property for the purpose of theft. Wild creatures tamed or untamed in captivity are property (for example tigers in a zoo). However, a person cannot steal a wild creature that has not been tamed or that is ordinarily kept in captivity unless either:

'It has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or, another person is in course of reducing it into possession'.

Something could be 'reduced into possession' by one person by for example capturing, trapping or shooting and it could then be stolen by another person.

Cases involving deer, fish and game, which are not theft, will often be covered by various Acts dealing with poaching. Also there are special offences under the Theft Act 1968 covering the taking of fish from private water and under the Deer Act 1991 for the taking or killing of deer from private land. Other animals are protected in separate legislation such as the Wildlife and Countryside Act 1981 and the Protection of Badgers Act 1992.

Land: With some exceptions, land cannot be stolen. If a person complains to you that they have had land taken from them unlawfully, it may initially be a civil matter requiring the advice of a solicitor. However, criminal offences may also have been committed and you should consult your supervising officer. If a person (not in possession of the land) goes onto land and digs up and removes soil, gravel, turf, peat, rocks, etc. these are property and capable of being stolen. The same will apply if they were taken after the landowner had dug them up.

Electricity: Electricity is not property that is capable of being appropriated. It is for this reason that abstracting electricity could not be dealt with as a straightforward offence of theft. See the following chapter covering Abstracting electricity contrary to section 13 of the Theft Act 1968 for more information.

Belonging to another (Section 5 of the Theft Act 1968)

The property appropriated must 'belong' to someone other than the person appropriating it, or it cannot be stolen. If the owner throws it away (the owner must intend to relinquish their interest in the property and does not intend to pass the interest onto another person) then it has no owner; it belongs to no one and generally it cannot be stolen, even by a person who thinks they are stealing it (although they may still be guilty of attempt theft under the Criminal Attempts Act 1981).

Property is regarded as belonging to any person having possession or control of it, or having 'proprietary right or interest' in it.

Examples:

- You borrow a book from the library and you show it to a colleague who, while reading it, has it snatched by someone who runs off. Here, the person who runs off with the book may have stolen it from your colleague (who had control of it) and from you (who possessed it) and from the library (which still owns it).
- If you borrow a library book and sell it to someone, you have committed theft. Although the book was already in your possession, you appropriated it when you decided to sell

it, even though the appropriation only becomes apparent when the sale takes place.
Only the library has the right to sell the book.

The suspect must assume the rights of an owner in relation to property that belongs to someone else. If there is no owner, there is no theft. However, abandoned and ownerless property will become the property of the finder who takes possession of it, and the property then becomes capable of being stolen from them.

Intention to permanently deprive (Section 6 of the Theft Act 1968)

A person permanently deprives another of property when the intention is to treat the thing as their own to dispose of regardless of the other's rights.

Borrowing or lending may amount to permanently depriving the owner of it but only if it is for a length of time and in circumstances making it equivalent to an outright taking or disposal.

The thief may deprive the other by:

- Keeping it.
- Eating or drinking it.
- Selling it.
- Burying, breaking, destroying it.
- Throwing it away or leaving it where the owner is unlikely to recover it.
- Keeping the property until it has no further use, e.g. retaining a season ticket until after the season ends before returning it to the owner.

Disposal option

The value of property stolen can vary from a few pence to a vast amount of money. As a result the options for disposal vary dependant on the circumstances of each case. Offences of theft from businesses, for example shoplifting, where the value of the goods stolen does not exceed a set amount (and the offender fits the criteria) may fit the criteria for disposal out of court by way of issuing a penalty notice for disorder (PND). You should check local force policy, and if you are a PCSO your discretionary powers, with regards to this procedure. Also seek clarification with your supervisor.

2.2 Making Off Without Payment

Making Off without Payment – Section 3, Theft Act 1978

This offence is described by the slang term 'bilking' in some policing areas.

The Offence

'A person who, knowing that payment on the spot for any goods supplied or services done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due'.

Making off: It is often described as a 'dishonest departure' as it refers specifically to an offender making off dishonestly and not 'conning' the victim into thinking the money would be paid later. In such circumstances this making off offence is not committed and alternative offences contrary to the Fraud Act 2006 should be considered.

Know that payment on the spot is required or expected: It is important that the person knows that they are required or expected to pay at the time. It can just be common accepted practice such as paying for a meal at a restaurant after it has been eaten or paying for petrol after filling a vehicles tank. A lack of payment must be proved.

Goods supplied or services done: The term 'goods supplied or services done' in relation to the offence is not defined in the Theft Act 1978, but one of the main reasons this offence was created in 1978 was to close the loophole of allowing a motorist to fill his tank at a self-service petrol station and then making off without paying for it.

Examples:

- a taxi ride
- a hotel room
- a restaurant meal
- a tank of petrol

Intent: Intent is an element of this offence and it can be proved either by admission or inference or a combination of both. To show what is in a person's mind you can use

evidence of what a person did or said. For example a motorist who forgets to pay for petrol, but then remembers and goes back to pay, would not commit this offence.

Running away from a taxi is clear evidence of intent to avoid payment. The evidence could be strengthened during an investigation and when interviewing the suspect to show that a person never intended to pay for the taxi ride at the time they obtained it.

Possible areas for investigation:

- How much money did they have with them?
- Was it such a large fare that the passenger was not likely to be able to afford it
- Did they give a misleading address to the taxi driver to avoid being traced to their home nearby?
- What replies were given when you initially spoke to the person?

The goods or service supplied must be legally enforceable and you must prove an intention to avoid payment; simply delaying payment due or making someone wait for payment is not enough. The offence is most frequently committed by motorists who drive off without paying for petrol. However, do not overlook the fact that the person may have made a genuine mistake and forgotten to pay because they have been distracted or were in a rush. Your enquiries will help you to decide if there is evidence of an offence or of a genuine mistake.

If the person driving or running away from the garage, restaurant, taxi cab etc. does so because he or she feels aggrieved at the service received or is in dispute with the supplier, then the question of dishonesty should be considered. This should be whether, according to the standards of ordinary honest people, what was done was dishonest and also against the person's own belief, as per *R v Ghosh* [1982] QB 1053.

2.3 Robbery

Robbery – Section 8, Theft Act 1968

Robbery can be thought of as an aggravated form of theft but it is not titled as such. A robbery cannot be committed unless there is a theft.

The Offence

'A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force'.

The term 'mugging' is commonly used by victims and witnesses to describe theft or robbery. Your role is to find out the facts of each incident and consider which offence, if any, has been committed.

For example where a person has been assaulted and had property, for example a mobile phone, stolen from them in the street, is likely to amount to robbery whereas when a mobile phone is picked up from a table in a cafe then it is likely to be theft. Other examples of robberies are when offenders take money from banks, building societies and security vehicles by threat or use of violence, including the use of firearms and other weapons such as knives.

Robbery can be committed anywhere, for example in a building or in the street, unlike an offence of burglary which can only be committed in a building or part of a building.

The prosecution will need be able to prove beyond all reasonable doubt the following points and it may help you to identify the correct offence, and gather the appropriate evidence, if you break the definition down and remember it as follows.

A person is guilty of robbery when he or she:

- Steals and,
- immediately before doing so, or
- at the time of doing so, and
- in order to do so,
- uses force on any person, or
- puts or seeks to put, any person in fear of being then and there subjected to force

Steals: It is essential that for an offence of robbery to take place, there must be a theft.

Remember if there is no theft then it cannot be a robbery! Remind yourself of the points to prove within the definition of theft before continuing.

Immediately before or at the time: The force used or threatened must be in order to steal and must occur 'immediately before' or 'at the time' of the stealing.

Examples:

- 'At the time' would be where a person pushes another person to the ground and grabs the bag they are carrying and runs away with it. This would amount to a robbery

because force was used 'at the time' in order to steal the bag. How far the courts will go in defining 'immediately before' will depend on the circumstances of each case.

- A youth on a school playground demands that another youth hands over their mobile phone threatening to assault them after school if they don't hand it over immediately. The youth hands over their phone. This would not amount to robbery as force is not threatened immediately before or at the time as the youth is not put in fear of being then and there subject to force, but instead to force in the future. Any threat to use force at some time in the future, even by a few minutes, would not be robbery but may constitute another offence such as blackmail or theft.

In order to steal: The force 'used' or the 'putting or seeking to put in fear' must be in order to steal. If the force is used for another purpose, such as escaping and is not used to carry out the theft, then there cannot be a conviction for robbery.

Example:

- Two persons argue and one threatens to assault the other. The person is scared and gives money to the other to leave them alone. This is not a robbery because the force was not used, or threatened, in order to steal as the person offered the money without being asked for it.

Uses force: Force can be used **on any person** to satisfy this part of the definition not just the owner of the property. The fear of force however must be to put a person in fear for himself not in fear that another would be harmed. An accidental use of force will not be a robbery. Force can include pulling property from a person's grasp.

Example:

- A person is pushed to the ground in order to steal their bag/wallet.

Generally, robberies are clear examples of an aggravated theft where a victim is attacked in order to steal. In cases which involve bag snatching it is usually the case that 'snatching' will involve some force on the person and therefore robbery will be committed. This differs from pick pocketing, which will not usually be robbery, as it involves 'stealth not force'.

Puts or seeks to put in fear: When actual force is not used the 'putting' or 'seeking to put' a person in fear of being then and there subjected to force is sufficient to constitute a robbery, even though force has never been used. When any person is 'put' in fear of being then and there subjected to force, could be proved by the victim stating this in their written statement. Words and phrases used by the accused, such as "Give me your money!" would be good evidence as would how it made the victim feel.

Where the accused can be shown to have sought 'to put a person in fear', it does not matter if anyone was actually frightened as long as it is proved that the accused 'sought' to put the person in fear. Proving this point could be difficult without an admission by the accused, but circumstantial evidence of the conduct by the accused would be useful.

The force threatened can also be used against another person, not the person suffering the theft but it will be dependent on the circumstances as to whether this is a theft or a robbery. In order to be a robbery, the intention must be to put or seek to put a person in fear for himself of being **then and there subjected to force**. It is not robbery if a person is in fear for someone else having force threatened against them. In such cases, if the fear is of someone else suffering force, it is a theft.

Examples:

- JONES is walking along the street with his friend WILLIAMS, who is looking at his mobile phone. JONES is approached by an unknown male, JENKINS, who grabs JONES from behind and puts an arm around his neck and places him in a headlock. JENKINS shouts at WILLIAMS to hand over his mobile phone or his mate is 'gonna get it'. WILLIAMS isn't fearful for his own safety, but he is concerned that further violence may be used towards his friend and so he hands JENKINS his mobile phone. JENKINS releases JONES and then runs up the street with the mobile phone. Because there was no direct threat of violence directed against WILLIAMS to get him to hand over their phone, this would be classed as an assault upon JENKINS and a theft of the mobile phone from WILLIAMS. If however JENKINS had pointed a knife at WILLIAMS whilst demanding his phone then this would be a robbery.
- Circumstances that would not be sufficient to amount to 'puts' or 'seeks to put' a person in fear would be as follows. An elderly woman is approached by the accused in a dark alley. He politely asked her if she would give him a pound so that he could get the bus home as he had lost his wallet. The woman feels threatened by the man and hands over a pound. The man then leaves and gets the bus home. These

circumstances do not amount to a robbery because the victim was not intentionally put in fear and not in order to steal.

2.4 Burglary

Considering whether a civil trespass or a criminal offence has occurred

You may have seen signs stating 'Trespassers will be prosecuted' but in most cases this sign has no meaning in law. This is because trespass, which in simple terms means being on someone else's property without permission, is not generally a criminal offence.

Trespass may be a criminal offence in particular places or, when accompanied by other acts, in certain circumstances such as those relating to burglary. Trespass is a matter the police are frequently called upon to deal with. Where there are no additional factors that make the incident an offence (such as burglary) it is known as a civil trespass. There can be no criminal proceedings for civil trespass therefore the familiar 'trespassers will be prosecuted' sign is an empty threat.

The people involved are often angry and police officers and PCSOs must act with firmness, be impartial, use tact and have a sound knowledge of the subject. This will enable you to be able to identify whether, if any, criminal offences have been committed to be able to take the appropriate action for the specific circumstances.

Lawful Owner or Occupier: You need to consider who is entitled to be on specific premises or land so that you will be in a better position to make a decision whether to take action and if so what action to take. In the following types of premises some examples are given of those people who may be considered to be the lawful owner/occupier:

Examples:

- Private dwellings (houses, flats, etc.): The owner or occupier. "Occupier" will include a person renting the house or flat or part of it, as well as members of their family living with them or persons acting on their behalf.
- Shops, cinemas, and other commercial premises normally open to the public. The Owner, Manager or any employee acting on behalf of the Owner or Manager.

- Libraries, swimming pools, parks and other publicly owned places normally open to the public. Usually any employee of the Council, etc., responsible for maintaining the facility.
- Business premises, schools and other non-residential premises not open to the public. The owner, head teacher, manager, secretary, or other responsible employee. It is only at the request of such lawful occupier or representative that police are entitled to act.

People (other than the lawful owner or occupier) entering:

By implied consent/invitation: Many premises offer an open invitation to the public to enter. Shops and cinemas obviously depend on people entering or their business would fail, yet they are privately owned and the owner, manager or their representative can withdraw that invitation at any time. If there are no locked gates or notices forbidding entry, there is an implied invitation for persons to enter the gateway of private premises for the purpose of carrying on business or for lawful visiting. It does not mean the grounds are open for any purpose.

Withdrawal of invitation: The lawful owner or occupier has the right to exclude anyone from their premises who they do not wish to be there. Even those lawfully on premises can become trespassers if the invitation to remain is withdrawn. People entering or remaining on premises against the lawful owners/occupier's wishes are trespassers unless they have a legal right to be on premises. For example a tenant refusing to leave because the landlord wants to re-let the premises to get a higher rent is not a trespasser.

With lawful authority: Another type of legal right to enter and remain on premises applies to persons acting under authority of law such as court bailiffs, gas and electricity officers in certain emergencies and police officers (provided they are legally entitled to do so in the circumstances).

Police Action

A person in possession of land may use reasonable force to eject a trespasser from their land. A police officer is entitled to enter premises to prevent a breach of the peace and to remain there in order to do so. If, however, the trespassers conduct at any time is such that they commit another offence, such as criminal damage or assault, then those offences should be dealt with according to the circumstances.

A person detained for a breach of the peace must be released if there is no likelihood of the breach happening again. For example you believe that the situation has been resolved as, for instance, the other party has left the scene.

Before deciding on the action to take, first consider the possible feelings of the participants of a dispute involving trespass. Your task is, as far as reasonably possible, to achieve an acceptable solution to satisfy the needs of both parties. You should aim to send both people away having received (and feeling that they have received) a good, fair and impartial service.

You will need a systematic approach when dealing with trespass and here are some practical suggestions:

1. Establish who is the lawful owner/occupier and if other person is a trespasser. Having done that investigate the owner/occupier's complaint fully, listen carefully, find out what they want, their reasons and problems etc.
2. Investigate information from the complainant and listen carefully. Find out why the person(s) are there and what problems they may have which led to the situation.
3. Decide on the best course of action available. Remember that you should decide on any course of action fairly.
4. Attempt to resolve the dispute if there are no criminal offences revealed. Try to bring about an agreement between them. Success will give you considerable satisfaction for having achieved a result by using a professional approach.
5. Use persuasion. This should only be necessary if all else has failed. Try and persuade the trespasser to leave. You may be able to do this by explaining that the lawful owner/occupier has a right to ask them to go. Next you might warn the trespasser that even if they refuse to leave voluntarily they may lawfully be put out of the premises. You might also explain that if they physically resist or become violent they may possibly be committing criminal offences such as public order offences such as threatening behaviour or a breach of the peace.

If all else fails, you can tell the lawful owner/occupier that they may remove the trespasser from their land or premises using no more force than is necessary for that purpose. Your job is to stand by to prevent any breach of the peace.

The term criminal trespass is not used in legislation however criminal offences have 'trespass/er' as part of their definitions i.e. there is a trespass accompanied by other acts

that, together, complete a criminal offence. Examples of such offences are burglary or squatting in a residential building and failing to leave premises.

Burglary – sections 9(1)(a) and 9(1)(b) Theft Act 1968

The Offences

Contrary to Section 9(1)(a) of the Theft Act 1968 burglary is committed by a person who enters a building or part of a building as a trespasser with intent to:

a. steal anything in the building or part of the building

or

b. inflict grievous bodily harm on any person therein

or

c. do unlawful damage to the building or anything therein

or

Contrary to Section 9(1) (b) of the Theft Act 1968 burglary is committed by a person who having entered any building or part of a building as a trespasser:

- steals or attempts to steal anything therein,

or

- inflicts or attempts to inflict grievous bodily harm on any person therein

It is important that you remember that Sections 9(1) (a) and 9(1) (b) are two different offences with some different points to prove.

Enters: For a Section 9(1)(a) offence the entry has to be with intent to commit one of the three offences listed and the entry may be by entry of the full body, entry of part of the body or entry by an instrument.

Examples:

- A person uses their arm, or a coat hanger, to reach through a letter box to retrieve a door key to gain access. Entry by part of the body or by instruments merely to facilitate entry is not burglary. (It may well be sufficient to constitute an offence of attempted burglary however, dependant on the specific circumstances).

- A passer by sees a ground floor window open and reaches their arm through intending to feel around and steal anything they find inside. This is an effective entry with an intention to steal and, even though they could not reach anything and therefore did not steal, they commit a burglary contrary to Section 9(1)(a).
- A person forces the front door of a dwelling and, carrying a hammer, runs up the stairs intending to settle an argument by seriously assaulting a person they think is inside the house by hitting them on the head with the hammer (i.e. intention to commit GBH). There is no-one in the house. They would commit a burglary contrary to Section 9(1)(a) in these circumstances.

For a 9(1) (b) offence the offender does not require intention at the point of entry. An intention to commit the offence is not sufficient for the offence under section 9(1)(b) – a person must have entered as a trespasser and then actually steal (or attempt to steal) or inflict (or attempt to inflict) grievous bodily harm.

Building: To be a building the place must have some degree of permanence. However, inhabited vehicles and vessels in use as dwellings are buildings for this purpose and will remain so even when the occupiers are temporarily away, for example a caravan when the occupiers have gone out for the day.

When a vehicle or vessel is no longer in use as a dwelling, burglary cannot be committed in it. For example a static caravan in January that is on a site is closed for October to April. The term 'building' does not extend to a tent, but it can include a portable structure which is intended for permanent use as offices, workshops or stores and has the main characteristics of a building except for foundations (i.e. walls and a roof). For example a building site office or store in a cabin on a building site.

Part of a building: This is included to cover a situation where, in the same building, a person may have a right to be in one place, but not in another.

Examples:

- Two lodgers share the same house. One lodger enters the other lodger's room without permission in order to steal. He goes from the hallway where he has permission to be (a common part), into the other lodger's room, where he does not have permission to be, and is, therefore, a trespasser.

- An open-plan shop with a central, enclosed till area. People have permission to be in the main part of the shop, but anyone entering the till area without permission would be a trespasser.

Trespasser: This means being there without the consent of a person who can give such consent or without other lawful authority. This is fairly straightforward. A possibility however is where a person gains consent to enter premises by deception; in other words, there is no true consent and he or she is a trespasser.

Example:

- Where a person gains entry to a house by pretending to be an official wishing to read a meter, but actually intending to steal. In these circumstances the person is a trespasser.

Distraction burglary and doorstep crime

A common feature of doorstep crime is that the majority of victims are vulnerable people. Distraction burglary should not be viewed as being different to other doorstep crimes such as bogus property repairers or dishonest salesmen. The impact on victims can lead to a loss of self-confidence, illness and on occasions, death. You need to consider engaging partners at an early stage to raise public awareness to protect vulnerable victims in the community.

When dealing with victims of distraction-type offences empathy, tact and sensitivity are required. You should consider whether a specially trained officer should interview the vulnerable victim. You should promptly arrange identification options where appropriate and ensure Victim Support referrals are carried out.

Operation Liberal is the national distraction burglary intelligence unit. It uses dedicated resources to collate and disseminate crime recording and intelligence data. The key to its success is that forces share a common crime recording and intelligence database. The database has the facility to search for similar crimes on nominals, vehicles and Modus Operandi (MO) patterns and has up to date photographs. Notification and contact should be made via your Force Intelligence Bureau (FIB).

Burglary Related Vehicle Theft

Burglary related vehicle theft is where during a burglary, vehicle keys are taken which enables the vehicle to be stolen. These are sometimes known as 'two in one' burglaries. Sometimes the stolen goods are loaded into the vehicle before being driven off and on other occasions the vehicles, often high value or high performance, are stolen on their own.

Crime Prevention: When giving crime prevention advice you may want to consider amongst other advice the following:

- Not to leave vehicle keys in an obvious place
- Keep vehicle keys from view for example avoiding leaving them hanging up in the kitchen, placed on the hallway or porch table
- Park the vehicle in the garage if one is available
- Consider fitting an electric garage door
- If cars are parked on a driveway consider fitting substantial gate or security posts
- Install security lights to the front and rear of your property and consider CCTV
- Remember to lock doors and windows to avoid sneak in offences

2.5 Aggravated burglary

Aggravated Burglary – Section 10(1), Theft Act 1968

This section goes on to look at a more severe form of burglary, aggravated burglary, by looking at what constitutes the aggravation to the offence, and the definitions of the component parts, all of which will enable you to identify an aggravated burglary from a given set of circumstances.

The Offence

'... if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive'.

The difference between burglary and aggravated burglary is simple. Aggravated burglary has exactly the same elements of burglary plus the additional evidence that, at the time of committing the offence, the accused person has with him one or more of the four named articles listed below:

Weapon of offence

Imitation firearm

Firearm

Explosive

Or in mnemonic form... has with him his **WIFE**. It is essential you understand the meaning of the above named prohibited articles as explained below.

Weapon of Offence Section 10(1)(b), Theft Act 1968: A weapon of offence is any article made or adapted for use for causing injury to, or incapacitating a person, or intended by the person having it with him for such use.

Examples:

- Flick knife (made)
- Knuckle duster (made)
- A wooden club with nails hammered through and protruding from it (adapted)
- If they 'have with them' intending to use an item to cause injury or incapacitate a person:
 - Hammer (intended)
 - Screw driver (intended)
 - Handcuffs (intended)
 - Crowbar (intended)
 - Rope for tying someone up (intended)
 - Can of deodorant (intended)

Imitation Firearm Section 10(1)(a), Theft Act 1968: Anything having the appearance of being a firearm, whether capable of being discharged or not.

This definition includes toy guns and replicas but, in certain circumstances, it includes other articles too. The Act requires that the accused is carrying a 'thing' which is separate and distinct from his or her person and therefore capable of being possessed. Consequently, a

person who places their fingers inside a coat pocket so as to give the appearance of having a concealed gun would not be classed as carrying an imitation firearm, as an un-severed hand or finger is part of oneself and cannot be possessed.

Firearm Section 10(1)(a), Theft Act 1968: states 'Firearm includes an airgun or air pistol.'

The legislation does not define the term 'firearm' itself. The courts therefore have to apply the term realistically to anything that can be fired and can kill or wound.

Explosive Section 10(1)(c), Theft Act 1968: 'Explosive means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.'

Example:

- The word 'explosive' has a broad meaning. In addition to the more obvious items such as gelignite carried by a safe-blower it includes many other things, for example, grenades, thunder flashes and fireworks.

'Has with him': This means knowingly having physical possession at the time of committing the burglary.

In cases where two or more persons commit burglary and one of them has physical possession of a prohibited article, then all who knew of the article are guilty of aggravated burglary.

When the article is a 'weapon of offence', which has become such only because the person having it with him intends to use it to cause injury, then his co-defendant must, in addition to knowing of the article, also either know of their co-accused intentions or have that intention himself.

2.6 Going equipped for burglary or theft

Going Equipped for Burglary or Theft – Section 25 of the Theft Act 1968

The offence of going equipped for burglary or theft under section 25 of the Theft Act 1968 was created to try and prevent the full offences of burglary or theft being committed. If articles or equipment are lawfully seized and removed from an offender they cannot use them to enter property or vehicles unlawfully and commit offences with them in the future.

The exact circumstances of each incident need to be identified so that the correct offence can be dealt with. Officers need to be able to identify whether the full offence of burglary or theft has been committed, an attempt of the full offence or, as in this case, an offence of going equipped.

The Offence

Section 25 of the Theft Act 1968 states:

“A person shall be guilty of an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary or theft”

Any article found during any lawful search that may be evidence of this offence should be seized under section 19 of Police and Criminal Evidence Act 1984 (PACE).

Place of Abode: This means where a person resides i.e. lives/sleeps. For example places of abode can include a caravan or boat as well as a house or flat. The term place of abode is clarified by case law further such as: when the person is at work they are not at their place of abode unless they also reside at that location; also if a person lives in a camper van then the camper van is only a place of abode when it is parked at the place where the person intends to live for example on a camp site.

What is important to remember is that the offence can only be committed if the person is not at their place of abode.

Has with him: The relevant article must be within the offender's immediate control. For example carrying it in their bag, hand, pocket or clothing or the article is in a vehicle under their control.

Any article: This can be virtually any item as, for example, many every day tools are articles that can be used to force entry to premises to commit burglary. The more specialised the article the easier it would be to prove that it was meant to be used to commit a crime.

Articles are made, adapted or intended: an article will be either 'made, adapted or intended' for use in the course of, or in connection with, a burglary or theft.

If an article is made or adapted to use for burglary or theft then the fact that it was specifically made or adapted is evidence that he or she intended to use it for that purpose. An article that could be deemed as 'intended' for use in a burglary or theft could be any every day object you have at your home or work such as scissors, a screwdriver, glass cutter or bunch of keys.

Examples:

- A person is in their kitchen and they place a temporary lining inside their shopping bag. They plan to go shop lifting in the town centre and will use the bag with the lining to try to prevent electronic security systems being triggered when leaving a store with stolen items inside the bag. At this time they are at their place of abode so they do not commit the offence of going equipped. Subsequently they go into the town centre and take the bag with them. Whilst there, they are searched by the police for an unrelated incident. During the search an officer sees the lining in the bag, recognises its purpose, and arrests the person on suspicion of going equipped for theft. The person was not at their place of abode when the shopping bag was seized and it had been 'adapted' for use in the course of theft from a shop.
- Following a positive roadside breath test an officer arrests the driver on suspicion of driving their car whilst over the prescribed limit of alcohol. Before placing the person into a police vehicle to transport them to the custody suite the officer searches the person to check for anything they may harm themselves or another with or use to attempt escape from custody whilst in the vehicle. During the search the officer finds a tool in the person's pocket specially constructed (made) to open car locks or bypass vehicle ignition systems. The officer seizes the tool (article) under section 19 of the Police and Criminal Evidence Act 1984 (PACE), re-cautions and arrests the person on suspicion of going equipped for theft.
- There has been a spate of theft of money from charity boxes in local shops. A known person is seen by shop staff standing next to some small goods for sale and a charity box that is chained to a shop counter. The person puts something in their pocket and runs off when approached. Police are informed of a suspected theft of goods from the counter and they detain the identified person in the street nearby in order to search them for stolen goods. When searched the person is found to have no stolen goods in their pockets but they do have a home made tool in their pocket. It is a piece of metal that has been bent and filed to the correct size and shape to enable unlocking of that type of charity box. The police believe that the bent metal has been 'made' for use in the course of theft of money from charity boxes from a piece of scrap metal. Alternatively the metal (article) may have been 'adapted' from a metal spoon. The person is subsequently charged with the offence of going equipped to commit burglary or theft.

- A person has been circulated on the PNC as being wanted for burglary and assault. They are found by an officer crouching in an alley behind commercial premises late on a hot, August evening and arrested. On arrival at the custody suite their belongings are being searched and listed on their custody record. The searching officer finds, in the bag the person was carrying over their shoulder at the time of the arrest, a balaclava/face mask, a pair of gloves, a screw driver and a pair of pliers. The person refuses to give any explanation, when questioned, for having the items with them when not at their place of abode and the officer believes they were being carried with the intention to commit a burglary or theft from a person in the street. The person is charged with going equipped for burglary or theft.
- An officer sees a person attempting to unlock the front door of a house by trying one after another of keys that are all on a length of chain. The officer asks if it is their house and the person said it wasn't, but, that they were a locksmith trying to regain entry for the owner who had locked themselves out. There was no-one else around so the person explained that the owner had just gone to school to pick up their children. The officer completed various person checks using the police systems that confirmed the person was indeed a locksmith and therefore was not committing the offence of going equipped. The homeowner returned a few minutes later stating they had given their consent to the locksmith to try and gain entry to their house.

2.7 Taking a conveyance without consent

Taking a Conveyance without Consent – Section 12(1), Theft Act 1968

Taking a conveyance without consent differs from theft in that there is no need to show an intention to permanently deprive the owner, or those with lawful authority, plus dishonesty is not required for the offence. The offence is also often called 'TWOC' by police officers as an abbreviation for 'Taking a conveyance Without the Owner's Consent'.

The Offence

Section 12(1) of the Theft Act 1968 which states:

A person shall be guilty of an offence if:

- without the consent of the owner or other lawful authority
- he/she takes any conveyance

- for his/her own or another's use,
- or
- knowing that any conveyance has been taken without such authority,
- drives it,
- or
- allows himself to be carried in or on it.

In order to prove this offence we must show that the person took the conveyance for his own or another's use.

Taking a conveyance without consent is triable summarily therefore you cannot attempt TWOC under the Criminal Attempts Act 1981. You should consider how the content applies in relation to PCSO powers, 'any person' powers of arrest under Section 24A of the Police and Criminal Evidence Act 1984 (PACE) and local force policy. Other offences may however have been committed, such as vehicle interference or criminal damage, and each circumstance should be considered to identify any other relevant offence/s.

Conveyance: This means anything that is constructed or adapted to carry persons by land, water or air. A conveyance which is made for use only under the control of a person not carried in or on it is specifically excluded. Examples of this are the pedestrian-operated milk float or post office cart. Pedal cycles are also expressly excluded from this offence but are covered by Section 12(5) taking a pedal cycle covered by another chapter.

An animal upon which a person can ride cannot itself be a conveyance, but a vehicle made or adapted to carry a person or persons drawn by an animal is a conveyance. Pedal cycles are dealt with under a separate part of the section, so they are not conveyances for this offence.

Takes: It is 'taken' if it is moved any distance from its original position. It will be for the court to decide, with regard to the circumstances of the case and previous case law, what distance is sufficient for the purposes of the Act. It does not matter how little the conveyance is moved but simply starting the engine without moving it is not enough.

Example:

- A conveyance can be taken even where it is put onto another vehicle to do so. For example where a rubber dingy is placed on a roof rack and driven away.

For his/her own, or another's use: Normally, a person will take a conveyance for the purpose of immediately 'stealing a ride', but provided the other parts of the definition are proved, the 'use' may cover an intention to use it in the future rather than immediately.

Example:

- A conveyance is taken for another's use where a specialist car thief takes a car for temporary use in a bank robbery.

Consent of the owner: Where consent of the owner is obtained, then it would be an offence to go beyond the scope of the permission given.

Examples:

- An owner gives permission for a friend to borrow a vehicle solely for the purpose of going to work and back, but the friend then used it to go out socially at night.
- A person uses a company owned van to deliver company goods. During their working hours they decide to divert from the delivery route to a local shopping centre to do their personal shopping.

If, however, the person taking the conveyance genuinely believes that the owner would have given consent, had they known the circumstances of the taking, they do not commit this offence. This is so, even if the belief is mistakenly held. The onus is on the prosecution to show that the accused did not have that belief. The consent obtained from the owner of a conveyance must be a true consent, and not one obtained by way of threats of violence or any other form of intimidation.

Lawful authority: Examples are a police officer removing an obstruction or broken-down vehicle or seizure by legal authorities such as Customs and Excise. There is no offence if the person believes that they have such lawful authority, even if their belief is unreasonable.

Drives it or allow self to be carried in: This relates to the person who was not present at the actual taking, but later drives the conveyance, or has a ride in it, or on it. It must be proved, however, that:

- The person knew that the conveyance had been taken, as above. This proof may come from the person's own admission, or from the circumstances (mere suspicion that the conveyance was taken will not make out the offence)

and

- The person drove the conveyance or allowed themselves to be carried in or on it.

The reference to 'driving' as far as this part of the definition is concerned covers the control and propulsion of whatever conveyance was originally taken, i.e. rowing, gliding or sailing, as well as driving in the accepted sense of the word.

In both cases, whether 'driving' or 'allowing them-selves to be carried', it must be proved that the conveyance was in motion.

There is **no power of entry** for this basic TWOC offence.

Often the vehicles are abandoned quite soon after being taken. This was commonly known as 'joyriding' in the past but, as a result of the associated danger, damage and costs incurred, this is no longer considered to be an appropriate description. Sometimes however vehicles are taken for other purposes, for example to be used in the serious crime of 'ram raiding' i.e. to use the vehicle as a battering ram to gain entry to secure premises during a burglary.

2.8 Preventing vehicle crime

There are numerous ways of securing motor cars, motorbikes and other conveyances to reduce the chances of theft of the vehicle or theft from it. You should give crime prevention advice to members of the public whenever you have the opportunity to do so. In considering improving the security of goods vehicles and vehicles carrying particularly valuable loads the assistance of a specialist such as your force or BCU crime reduction officer should be sought.

Simple measures include:

- Never leaving the keys in the ignition when a vehicle is left unattended
- Closing windows and locking all doors

- At night park in a garage or in a well-lit location
- Whenever possible put your car in an attended car park
- Do not leave vehicle documents, valuables such as mobile phones, bags or shopping in the vehicle where they are visible

Many conveyances are fitted with sophisticated immobilisation systems, security devices and locks. In addition, the following measures may be considered if not already factory fitted:

- Locking wheel nuts to prevent theft of the wheels
- Steering or gear-stick locks and similar appliances to immobilise the driving controls
- Ignition and petrol cut-out switches
- Installation of an alarm
- Etching the vehicle registration mark into all the windows
- Marking the vehicle and components e.g. tools, wheels, audio equipment with your postcode
- Many of the measures already discussed also relate to motorcycles, but the following advice can also be given:
- Use a strong lock and chain securing a wheel to the frame
- Use a steering lock
- If panniers are fitted, they should be lockable

Whenever you have occasion to check a person in control of a conveyance or a pedal cycle, you should always bear in mind the possibility that offences may have been committed, even though this may not be immediately apparent.

During the course of questioning, in an effort to establish whether a conveyance may have been taken without consent, it will be helpful to establish the registered keeper and whether there are any current reports of it being stolen. Gathering information about the vehicle and the driver may lead you to deal with offences or consider the necessity for an arrest.

Check whether the driver or vehicle is recorded on the Police National Computer.

Remember, a 'no trace' response does not necessarily indicate that the vehicle or driver is of no interest, merely that there is no record of them on the computer at that time. The vehicle could be recently taken and not yet reported.

When you are trying to discover whether a motor cycle has been taken without consent, you should bear in mind the following points when questioning the rider:

- Is the machine too large or too small for the rider?
- Does the rider know the contents of the pannier/saddlebag (if any)?
- Can the rider give details of physical peculiarities on the machine?

2.9 Vehicle interference

Vehicle interference – section 9, Criminal Attempts Act 1981

Vehicle crime, the theft of and from motor vehicles, is a massive problem. The summary offence of interfering with motor vehicles cannot be attempted therefore this offence was specifically created under the Criminal Attempts Act 1981. It was designed to help prevent vehicle crime and this section, as its title indicates, relates to interference with a vehicle only. Its intention is to prevent vehicle crime and a theft occurring and if someone actually steals a vehicle, or steals from it or takes it without consent, it may be more appropriate to allege an offence under another act, e.g. the Theft Act 1968.

The Offence

Section 9, Criminal Attempts Act 1981 states:

1. A person is guilty of the offence of vehicle interference if he interferes with a motor vehicle or trailer or with anything carried in or on a motor vehicle or trailer with the intention that an offence specified in subsection (2) below shall be committed by himself or some other person.
2. The offences mentioned in subsection (1) above are:
 - a. theft of the motor vehicle or trailer or part of it
 - b. theft of anything carried in or on the motor vehicle or trailer
 - c. an offence under section 12(1) of the Theft Act 1968 (taking and driving away without consent)

and, if it is shown that a person accused of an offence under this section intended that one of those offences should be committed, it is immaterial that it cannot be shown which it was.

Where it can be committed: This offence can be committed in public or private places.

Motor vehicle and trailer: In this Act “motor vehicle” and “trailer” have the meanings assigned to them by section 185(1) of the Road Traffic Act 1988. Broadly, “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, and “trailer” means a vehicle drawn by a motor vehicle.

The offence of vehicle interference is committed under the Criminal Attempts Act 1981, Section 9, when someone interferes with a vehicle or trailer for the purpose of:

- Stealing the vehicle
- Stealing from the vehicle
- Taking the vehicle without the consent of the owner or other lawful authority

Interference can take a number of forms, e.g. trying the door handles of a line of parked cars, forcing a lock or breaking a window to gain access. “Interference” has its everyday, meaning as actions are not specifically defined by the Act.

Intent: In order to prove the offence, it is necessary to prove that there was intent to commit one of the three acts outlined above. However, it is not necessary to show, or prove, which one of the three acts a suspect intended to commit.

Intent may be proved by the actions of a suspect. It is not possible to prove intent by showing evidence of a single physical act, such as trying one car door, it is necessary to show other supporting circumstances. The suspect may be seen to walk along a row of cars trying the door handle of each, to attempt to force a lock or break open a door, and to carry some kind of tool in order to do so. Peering into the windows of a series of cars may indicate the intent to steal from the vehicle. A pattern of behaviour is a good indication of intent. The place where the interference occurred, and the time of the day may be relevant. As is always the case, a full record should be made of the suspect’s actions as, in the absence of an admission, the actions will be your evidence.

2.10 Aggravated vehicle taking

Aggravated Vehicle Taking – Section 12A, Theft Act 1968

This section looks at the aggravated form of the basic offence of Taking a conveyance Without Consent (TWOC) contrary to Section 12(1) Theft Act 1968. It applies only to mechanically propelled vehicles. A mechanically propelled vehicle is not defined, but refers to the source of its mechanical power. Quite simply, it is a vehicle that is constructed so that

it can be propelled mechanically including but not limited to: being propelled by diesel, petrol, paraffin, Liquid Propane Gas (LPG), steam or electricity.

The Offence

Any person who commits that offence (i.e. taking a conveyance whether as a driver or passenger) is guilty of aggravated taking of a vehicle offence if it is proved that the vehicle was involved in any of the four aggravating circumstances, after the taking of the vehicle and before its recovery, whether by himself or another.

The aggravating circumstances

The four aggravating options are:

- a. That the vehicle was driven dangerously on a road or other public place,
or
- b. That owing to the driving of the vehicle an accident * occurred by which injury was caused to any person (this includes the driver, passenger(s) and pedestrian(s)),
or
- c. That owing to the driving of the vehicle an accident* occurred by which damage was caused to any property other than the vehicle,
or
- d. That damage was caused to the vehicle.

* The word 'accident' has been retained in these notes to correctly reflect legislation. A more acceptable term when referring to road traffic accidents is 'road traffic collisions'.

Examples:

- The vehicle was driven dangerously on a road by overtaking crossing over double white lines in the centre of the road causing other, oncoming road users to have to brake and swerve out of the way.
- The vehicle was driven at speed down a busy main street causing 2 other vehicles to brake sharply. One skidded and hit a brick wall causing injury to their front seat passenger.

- The vehicle was trying to drive through bollards that blocked vehicle entrance to a local park. The bollards scraped the sides of the vehicle causing bodywork damage to both sides.
- Whilst being carried in or on the conveyance the offenders slashed the seat covers with a knife and stubbed cigarettes out on the carpet and roof lining.

Damage to the vehicle does not include damage that was caused by breaking into it to commit the basic offence. It is not necessary to establish that a particular defendant was directly responsible for the aggravating circumstances. The exception is for 'dangerous driving' where it is necessary to prove the elements of that offence. It is sufficient to prove that the basic offence was committed and the aggravating circumstance had occurred after the conveyance was taken but before it was recovered.

The vehicle is deemed as recovered when it is either returned to its lawful owner or other lawful possession or custody such as when police arrange recovery from a roadside. Where there is evidence of dangerous driving leading to a fatal collision the driver would normally be charged with the offence of causing death by dangerous driving. Drink will affect the danger of the driving, but where it is a major factor; it would be the subject of a separate charge.

Defences

Section 12(A)(3) provides a defence for defendants who can prove on the balance of probabilities that:

- a. The aggravating circumstances occurred before the basic offence was committed,
- or
- b. The defendant was neither in, nor on, or in the immediate vicinity of the vehicle when the aggravating circumstances occurred.

Examples:

- The damage on the conveyance is old damage as evidenced by the rust showing on the damaged body work.

- The defendant admits having been carried in a car after the basic offence had been committed but states they were not in, on or in the immediate vicinity at the time an accident occurred as they had been dropped off at home 2 hours earlier.

When the only aggravated element of an offence under section 12A is the allegation of damage being caused to the vehicle and/or other property, the offence will be triable summarily only, if the value of the damage does not exceed the relevant sum under section 22 of the Magistrates' Court Act 1980.

Offences under section 12A of the 1968 Act are subject to obligatory disqualification (for a minimum period of 12 months) and endorsement of the offender's driving licence with three to eleven penalty points when, for special reasons, disqualification is not imposed.

2.11 Taking a pedal cycle without consent

Taking a Pedal Cycle without Consent – Section 12(5), Theft Act 1968

The Offence

It is an offence, contrary to Section 12(5) of the Theft Act 1968 to:

- take a pedal cycle for his or another's use
- without the consent of the owner or other lawful authority or,
- knowing that it has been so taken, to ride on it

A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

Example:

- A person takes a family member's cycle to go to the hospital after being informed another family member has been taken there in an ambulance after sustaining a serious injury. In this example the person had an honest held belief that the owner would have consented if they had known the circumstances therefore they would not have committed this offence.

This offence is triable summarily therefore you cannot use other person powers of arrest under **Section 24A PACE 1984**.

Words and phrases that have already been defined within these notes in relation to 'takes', 'owners consent' and 'lawful authority', applies equally to pedal cycles.

Pedal Cycle: This means not only bicycles but also similar vehicles with more or less than two wheels, e.g. tricycles or unicycles.

Crime Prevention: The unlawful taking of pedal cycles is a growing problem and every opportunity should be taken to give crime reduction advice such as:

- use a strong chain and lock to secure the bicycle to a fixed object
- photograph plus make a note of the description and frame number of the bicycle
- 'property code' the bicycle and attach a 'coded cycle' sticker

2.12 Stopping vehicles safely

You will learn what powers, if any, you have to stop a vehicle on a road or public place as part of the policing the roads module. Lawful use of powers to complete checks on people and/or their vehicles or lawful use of other powers to search a person or vehicle, or anything which is in or on a vehicle, may reveal evidence of crimes as well as driver offences such as driving without a valid licence or insurance.

Once you are fully aware of your powers to stop a vehicle you should also be aware that a driver is not obliged to stop for a police officer unless he or she is in uniform. You may suspect that a vehicle may have been stolen and want to investigate further but there are certain safety measures that should be considered first. You should be particularly cautious when stopping a suspected stolen vehicle. The safety of officers and the public must be paramount. It is much better to risk that a suspect should escape than to risk serious injury or expose anybody to danger.

- Even if, after stopping a vehicle, you do not intend to carry out a vehicle check, let your Communications Room or Control Room know your location. This is especially important if you are alone or are outnumbered by the occupants of the vehicle.
- If possible write down the vehicle registration number before you attempt to stop it. That way, if the driver should fail to stop and drive off at high speed you will be able to circulate the correct details.

- Always consider obtaining assistance, or at least make a mobile unit aware of the situation.
- If you are on foot, do not step in front of vehicles to stop them.
- Always ask the driver to switch off the engine. Wherever possible, the driver of the police vehicle (if there are 2 officers present) should remain in his or her vehicle with the engine running until such time as the engine of the suspect vehicle is turned off.
- Take possession of the keys if possible while talking to the driver but beware of getting part of your body held or trapped in the vehicle. Do not lean through windows in order to, for example, turn off the engine. There may be terrible consequences if the driver speeds away with you half in and half out of the vehicle. Opening the driver's door to get to the keys is a much less dangerous exercise but appropriate care should still be taken.
- If for some reason the driver does not want to turn off the engine, e.g. driver claims to have a flat battery and says that the vehicle won't start again, separate the driver from the vehicle.
- Be vigilant at all times. You might feel that you can relax when the engine of a suspect vehicle is switched off and you have the keys. However, you cannot rule out the possibility of a duplicate key. One solution might be to get the suspects out of the vehicle. However, this could give them an opportunity to run off. You will have to judge the merits of an action on the circumstances of the case.
- Be alert to drink/drive offences and the possibility of weapons being carried.
- Be alert to the danger of assault.
- Once you have safely stopped the vehicle, you can begin the process of checking it. Remember that your powers to detain the driver and vehicle are only for as long as is required to resolve the grounds for which you first stopped the vehicle.
- If you are going to complete a search of the boot, remember your officer safety.
- You cannot arrest two people on your own easily. If the vehicle contains more than one person in it, get assistance.
- It is unwise to indicate to drivers to stop just before a left hand turn unless you want them to turn down it, as they may use it as a method of escape.

- It is a good idea to stop the police vehicle behind the suspect vehicle in all circumstances, using the police vehicle as a shield. Park it a few metres behind the suspect vehicle and about a metre from the kerb.
- Consider carrying out a PNC vehicle check before you stop the suspect vehicle. If there is anything shown you will be forewarned and will be able to make plans accordingly. However, do note that if the vehicle is not shown as being lost or stolen it may still be either of these things. It may be that the owner has not yet informed police. If the suspicion is there and is well founded, the fact that the computer shows no trace of the loss should not affect your action at all. The PNC is an index which needs the necessary and correct information inputted before it will function. It is neither infallible, nor necessarily up to date.

2.13 Lost or stolen vehicles

These notes are concerned with the actions to take when dealing with vehicles that have been reported or detected as being lost or stolen. They cover:

- Investigating the loss or theft
- Reporting the loss or theft
- Approaching stationary lost or stolen vehicles
- Stopping moving stolen vehicles
- Dealing with abandoned vehicles

Investigating the loss or theft of a vehicle

You may be called upon to deal with a lost or stolen vehicle in a variety of ways. Some examples are:

1. A recent theft has been reported to a central police point and the information has been relayed to you, or the theft has been reported directly to you in the street.
2. A moving vehicle is suspected of being stolen or a vehicle that has been stopped for another purpose, e.g. speeding has, in fact, been stolen.
3. You suspect that an abandoned vehicle has been stolen.

If someone has been injured during a theft, the priority will be to ensure that help is summoned.

In the case of theft, if the vehicle has been recently taken, it is important that the details of the stolen vehicle are reported immediately to maximise the chances of its early recovery. The theft should be added to the PNC as soon as possible, using your Airwave set from the scene if possible, so that if the vehicle is seen or checked by anyone else then they would be made aware of the theft and be able to take appropriate action. The details should be sent to your force's contact point for circulation and you should familiarise yourself with your own force policy.

When sending details to the contact point, you should give the following information:

- The registration mark and a full description of the vehicle, (make, model, type and colour)
- The time of the theft, either exactly (e.g. at 1000 hours) or as near as possible (e.g. between 9:30 and 10:15am)
- The place from which it was stolen
- If the theft was seen, the direction of travel and the description of the occupant(s)
- Details of the owner or person reporting the loss
- Any special circumstances surrounding the theft:
 - A valuable load (e.g. cigarettes, alcohol, cash)
 - Dangerous contents (e.g. chemicals, drugs, explosives)
 - If it is suspected that the vehicle will be used for further criminal activity
 - Special types of vehicles (police, armed services, diplomatic, VIP)
- Your personal details (name, rank, number and station)

If the theft was initially reported by other than the owner, the above details will not be fully available to the force contact point. If it has already been reported, part details will be known but you will need to confirm that the reported details are correct and add any further information gathered. After this initial action, you should obtain as much further information as possible, e.g. details of any suspicious activity preceding the theft, visible damage to the stolen vehicle or any other feature that will aid identification. This should also be passed to the contact point. Apart from the person reporting the theft, information may be obtained from people in neighbouring houses, nearby shops or factories or drivers of other cars etc.

A full record of all actions taken and information gathered should be made by the investigating officer.

It sometimes happens that a vehicle is reported stolen but there is in fact a non-criminal explanation.

Examples:

- The owner has forgotten where it was parked.
- The vehicle has been repossessed.
- It was illegally parked and has been removed.

You will find that in some cases, particularly where the owners have parked their vehicles in an unfamiliar place, the vehicle has not been taken but was parked not far away, perhaps in the next street. This is often the case following large sporting events or concerts.

Unlawfully parked vehicles may have been removed by the police or other authority. Consider also the possibility that the vehicle has been repossessed by a finance company owing to a lapse in hire purchase repayments. Your Communications Centre should have details if either of these applies. If a reported theft was not seen to occur, it may save time if these aspects are considered and checked. Ensure that the owner of the vehicle is certain as to where he or she left it, and also contact the appropriate force point to establish that the vehicle has not been lawfully removed.

Investigating whether a person is in lawful possession of a vehicle

In trying to determine whether someone is in lawful possession of the vehicle:

- Ask for the name and address of the driver and check against a document e.g. a driver's licence.
- Ask when and from where the vehicle was obtained.
- Check all details against the record on the Police National Computer (PNC).
- If possible, take possession of the vehicle keys and examine them. Do they look like normal vehicle keys or are they filed down in some way.

- By-passing the ignition is one of the tricks of vehicle thieves. If the engine switches off when the ignition key is turned, it indicates that this (by-passing) has not been carried out.
- Is the ignition key on a ring that holds house and padlock keys, which would be usual, or are you looking at a bunch which contains only car keys.
- Does the key you have been handed readily fit the ignition and operate the other locks on the vehicle.
- If something seems unusual, question the driver and, if applicable, the passengers.

Checking registration plates and engine and chassis plates

A motor vehicle has three identification numbers:

- Vehicle Registration Mark (VRM). This is the number shown on the plates at the front and rear of the vehicle
- Vehicle Identification Number (VIN). This is also known as the chassis number and it is unique to the vehicle. It can be found in two places:
 - It should be shown on a small plate, normally fixed under the bonnet somewhere, together with details of the make and colour, etc. of the vehicle
 - It must be stamped or embossed on to part of the chassis or frame of the vehicle, where it will not deteriorate or rust
- Engine number. This is a number stamped on the engine block by the manufacturer and is also unique to the vehicle.

All of the above numbers will be recorded on the PNC and are a means of helping to establish whether or not the vehicle has been stolen. Additionally, the PNC check will reveal whether the car has current insurance, an excise licence and an MOT certificate, and whether it has been reported as being stolen.

When you ask an operator to carry out a PNC check, you will need to provide some basic details. This information should always be given in the following order, as this is the order in which the operator must record it:

- The type of enquiry you require, e.g. a vehicle check or person check.
- Who you are (normally your force number or name).

- Where you are (this is important for security and for your own protection if you later require urgent assistance at that location as a result of the enquiry).
- Why you want the enquiry (because you are checking a parked or stolen vehicle).
- The details you require to be checked, such as a vehicle registration mark.

The PNC operators can carry out checks from the VRM, VIN or the details of the vehicle (make, colour etc.), and will be able to say whether the vehicle has been the subject of a previous report, (e.g. that it has been reported stolen).

Registration plates

In addition to carrying out a VRM check consider inspecting the plates:

- Do they appear to be the same age as the vehicle or do they seem newer or older.
- Are the plates old but the fixings new (or vice versa).
- Do the plates have another set of fixing holes with signs that they have been used before.
- Compare the front and rear plates with the tax disc and each other and with the registration mark if it has been etched into any of the windows.
- Check whether the letters and numbers on the plates have been moved around. Tell-tale signs of this are extra holes where the letters fit.

If as the result of what you have found, you believe that the vehicle is displaying false VRM plates consider checking the engine and chassis number on the PNC.

VIN and Engine Numbers

If there are reasonable grounds to suspect that a vehicle is stolen, the power to inspect the above exists under section 163 of the Road Traffic Act 1988. As this check entails lifting the bonnet and inspecting the engine, you will need to be aware of the safety aspect of leaving the driver unguarded while carrying out the checks and you will need to obtain assistance from another officer when doing so if at all possible.

The normal PNC check will not only indicate whether there are any reports on the vehicle but will also show the engine number and the VIN (chassis number) which you can compare against your suspect vehicle. (It will also show if a vehicle has been damaged beyond repair and been taken off the road i.e. that it is a “write off”). Any PNC chassis or engine number check should produce the vehicle registration mark to which it should be linked, irrespective

of whether any other reports exist. This check will also show if either number is registered as belonging to a vehicle reported lost or stolen even if the VRM plates have been forged.

When carrying out an engine or chassis number check, the most important thing is to get the correct details of the number, exactly as it is displayed in the vehicle. This includes any strokes, dashes or spaces between figures. They may be in fairly awkward places so you should have your torch to hand and they may well be covered in a layer of dirt or oil and need wiping to be able to read the numbers.

Give some thought as to how the VIN is fixed to the vehicle. If the vehicle has undergone a change of identity, it may have been removed altogether or it may have been replaced by one from another vehicle (normally a “write-off” from an accident). You should be able to see the evidence of this if you look carefully. The original chassis number is stamped on to the vehicle before it is painted. Therefore if anything is done to it, the paint will be marked. So look for paint missing or evidence of repainting together with signs of welding, i.e. uneven metal with blobs and lumps, or signs that it has been ground down with a power tool.

As the VIN is stamped on the frame as well as being shown on the plate, find both numbers and check that they are the same. A check on both numbers, if they are different, will help to establish the true identity of the vehicle. Similarly, comparing the engine number with the VIN and the VRM will establish whether all three refer to the same vehicle.

There are no regulations governing the exact locations of the numbers other than that they must be on the offside. However, your Communications Centre may have a guide which gives the position of the markings for the various makes of vehicle.

Vehicles found abandoned

An integral part of your duty is building up a good knowledge of the area you are responsible for policing. You may get to know which vehicles are normally parked in which streets. Experience and knowledge of your local area will allow you to distinguish the usual from the unusual. If a vehicle appears and remains in a location over a period of time, is in exactly the same place, and does not appear to have been moved it may be an abandoned vehicle.

Factors that may assist you in establishing that a vehicle is, or may be, abandoned, include:

- Its distance from the home address of the registered keeper.
- Whether the windscreen is dusty or dirty over the area normally swept by the wipers.
- If it is neatly parked or appears to have just been abandoned.

- If the doors are unlocked, if there is any apparent damage to the door locks, steering lock or ignition.

The vehicle may have been left for a variety of reasons, including:

- It has been stolen simply as a means of transport (unlawfully taken).
- It has been used during a crime.
- It has been mislaid (at events involving large numbers of people such as County Shows or major festivals people often forget where they have left their vehicles).
- The vehicle is in a condition which renders it unsuitable for use (it has been dumped).
- It is being used as a store of illegal articles (stolen goods, drugs etc.).
- It is a terrorist vehicle with an explosive device.

Warning – Abandoned vehicles may contain an explosive device. Officers should be aware that, if police Airwave terminals are operated near to any explosive device, there is a risk that this may detonate any explosive. Discuss this issue with your trainers who will be able to advise you regarding policies and procedures in your force area.

If you suspect that a vehicle is abandoned, do not touch it or its contents until you have made some initial enquiries. By not handling it you will:

Prevent evidential contamination

Prevent possible harm to yourself or others

The initial enquiries include:

- Speaking to the local residents and/or workers to establish:
 - When the car was abandoned, i.e. how long it has been in situ.
 - Whether the person(s) who left it were seen to do so, and their descriptions.
 - Whether anyone visits the vehicle without driving it away.
- Checking with the Police National Computer (PNC) to establish whether anything is known in respect of the vehicle. Usually this will reveal:
 - If the vehicle has been reported stolen, and
 - In most cases the particulars of the registered owner.

Remember that an abandoned vehicle and/or its contents may be an exhibit or crime scene, if it has been used in the furtherance of a crime, it must be treated as such.

The officers involved in an investigation have control of an exhibit from its discovery to its eventual presentation in court. Its location at any one moment in time must be accounted for. You should ensure that they make a full pocket book entry or notes regarding the vehicle and any enquiries you make.

Advice should be sought from your force regarding the action you should take if you detect an abandoned vehicle. The enquiries that you make at the scene will assist in deciding what this will be in that they will provide a clearer picture of the reasons that led to the abandonment of the vehicle and, therefore, establish a fuller basis for the decision as to how to proceed. Further action may include:

- A forensic search (if the vehicle has been stolen or used during a crime)
- Notifying the owner that a vehicle has been found
- Arranging for the vehicle to be collected
- Securing any valuable property within the vehicle, if necessary
- Securing and labelling potential evidence

Your force Communications Centre or other contact point will direct you as to how to proceed. This will vary according to Force policy.

If the vehicle is not suspicious and enquiries show it has been abandoned, for example due to needing expensive repairs, there may be force procedures in place for the local authority to be contacted to arrange for its removal from the roadside and disposal.

2.14 Abstracting electricity

Abstracting Electricity – Section 13, Theft Act 1968

The Offence

Section 13 of the Theft Act 1968 states:

A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted any electricity shall be guilty of an offence.

The Act made dishonestly abstracting electricity a specific offence because electricity does not come within the definition of 'property' as defined in the Theft Act 1968 and therefore

could not be 'appropriated'. It followed that electricity could not be stolen and abstracting electricity could not be dealt with as theft.

N.B. A person entering premises as a trespasser solely with the intention of committing this offence does not commit the offence of burglary under Section 9(1a) Theft Act 1968, neither is a person, having entered premises as a trespasser, guilty of burglary under Section 9(1b) if they only commit this offence.

Dishonestly: To be guilty of the offence the perpetrator must act dishonestly but, as explained in the Theft section of your notes, the Theft Act 1968 does not define what is dishonest but Section 2 of Theft Act 1968 states what is not to be regarded as dishonest. The aspects of Section 2 which are of particular relevance to abstracting electricity are as follows:

1. That it will not be regarded as dishonest if done in the belief that he has the right to deprive the other of it, on behalf of himself or a third person.

Example:

- The customer of a power company has been considerably overcharged and, in the face of numerous fruitless requests for a refund, decides to bypass the meter until the overpayment has been cancelled out. If the customer genuinely believes that he has a right in law to do this, then the conduct may not be dishonest. It is important to note that the customer would have to genuinely believe, they had a right 'in law' not just a moral or other right to do so.

2. That it will not be regarded as dishonest if he believes he would have consent if the person entitled to give consent knew of the appropriation and the circumstances of it.

Example:

- Parents are sitting with their sick child in a doctor's ice-cold waiting room and they turn on a heater in the genuine belief that the doctor would have consented, if aware of the parent's action, and the circumstances which prompted it.

3. That it will not be regarded as dishonest if done in the belief that the person to whom it belongs cannot be discovered by taking all reasonable steps.

Example:

- Someone finds a torch battery on the pavement outside a house and genuinely believes that the owner cannot be found by making all reasonable enquiries, such as knocking on the house door and asking if it is theirs, so they use the battery to power their own torch.

Uses: The word 'uses', in this context, implies a consumption of electricity that would not have occurred without the act of the accused.

Example:

- A farmer on entering his barn finds a homeless person warming himself by means of a large electric fan heater installed in the barn. It would be necessary for the homeless person to have performed a specific act to be regarded as 'using'. If the heater had been left on and he merely warmed himself his conduct would not constitute 'use'. Conversely, if he had switched the heater on, or if he had turned the heater towards himself and away from a calf or lamb the farmer had intended to keep warm he would be 'using'.

Without due authority: Persons using electricity with due authority would include for example householders, business owners and public bodies who enter into an agreement with a power company for it to supply electricity to their premises for payment at agreed rates. Similarly, people who use electricity with the consent of the person responsible for paying the electricity bill are using with due authority.

'Without due authority' means without proper authorisation, of, for example, the supplier or person responsible for payment.

Examples:

- A householder who tampers with the wiring and bypasses the meter to avoid payment for the electricity used, or used the meter to record what he used and intended to pay despite being disconnected. Consequently, there was not a true record of the amount of electricity consumed.

- Squatters who enter an empty house who use electricity, with no intention of paying for it, after a lawfully disconnected supply has been unlawfully reconnected without having informed either the supplier or the owner of the premises. They have used a number of electrically powered items over a period of several weeks.
- Employees who use their employer's electrically powered machinery or equipment, without permission, for their own purposes.
- A person who takes an electrically powered, pedestrian controlled milk float to transport some goods of their own.

Wasted: There is not a requirement for the electricity to be wasted for the benefit of any person.

Example:

- A factory owner finds that every piece of electrically powered machinery and equipment in her factory and offices has been switched on and left running over the holiday period. She now has a bill for over £1,000 for this time, when only a nominal amount for security lights would be the norm. She suspects a recently dismissed employee is responsible. If the factory owner was correct and the machinery had been deliberately switched on by a dismissed employee, they could commit the offence, even though they did not benefit financially or in any other material way.

Diverted: The word is not defined by the Act and can be given its ordinary dictionary meaning, i.e. 'to have been turned in another direction'.

Example:

- A camp-site proprietor shows you a cable connected at one end to a lamppost and you can see it is running into a caravan. On entering the caravan you find that the other end of the cable has been connected to provide power for the caravan. Electricity had been diverted to the caravan and it would not be necessary to prove that any electricity had been used or wasted.

Examples of any electricity: The electricity does not have to be mains electricity; it could be from any source, e.g. from a wind turbine or solar panels. It can also apply to a telephone system, but these offences are infrequent.

Police action: Your involvement may stem from a house search and finding the electricity meter or supply cables have been tampered with. More commonly, you will be called to the location as a result of investigations by the electricity supplier and will be involved in dealing with the offence in conjunction with the supplier's representatives.

One of your initial duties is to preserve the scene from contamination. There may be associated social problems, such as the hardship that can be caused by loss of supply. In particular, young children, the sick or frail should not be left without the means of keeping warm, cooking or washing. It is for these reasons that many forces have special arrangements for dealing with such situations. You should be guided by your force's local procedure as to your action.

Health and Safety

Electricity in any form is dangerous. It can kill instantly, cause serious burns or other injuries or start a fire. When attending the scene of these offences do not touch any wiring, or cable, whether exposed or not until it has been isolated. Do not accept the word of anyone other than a fully qualified person that the scene is safe. You should keep others away. It is important to preserve the scene for fingerprint or other forensic examination, but the main reason for keeping yourself and everyone else clear is the risk of electrocution.

2.15 Handling stolen goods

Handling Stolen Goods – Section 22, Theft Act 1968

These notes concern the offence of "Handling Stolen Goods", which, as its name suggests, occurs after a theft has taken place.

The Offence

Section 22 of the Theft Act 1968 defines the offence of "handling stolen goods" as:

"A person handles stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so."

A person guilty of handling stolen goods shall on conviction on indictment be liable to imprisonment for a term not exceeding fourteen years.

The offence of handling stolen goods is not necessarily committed by the thief. It is committed after the theft takes place.

Example:

- A person steals jewellery from a shop, and he or she is intercepted in the street, the offence is theft, contrary to section 1 of the Theft Act 1968. If the thief is not intercepted and hands the jewellery to another person, the latter, if he or she knew or believed it to be stolen, is guilty of handling stolen goods under section 22 of the Theft Act 1968. (He or she would have received them). The original thief is still guilty, of course, under section 1.

Goods: Section 34(2)(b) of the Theft Act 1968 gives a definition of goods as follows:

“goods, except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing”.

The act therefore refers to tangible objects including money. Theft can be carried out in other ways, e.g. non-payment of an electricity bill, but, of course, there can be no way in which there could exist any handling.

Knows or believes the goods to be stolen: The pertinent point here is that the suspected handler knows or believes the goods to be stolen. A person may be said to know that goods are stolen when told so by someone with first-hand knowledge, i.e. such as the thief or the burglar.

Belief has been held as “something short of knowledge”. It may be said to be the state of mind of a person who says to him or herself: “I cannot say I know for certain that these goods are stolen, but there can be no other reasonable conclusion in the light of all the circumstances, in the light of all that I have heard and seen”. Belief may be inferred from the circumstances in which the goods were obtained.

If someone takes possession of stolen goods but does not know or believe that they are, in fact, stolen he or she commits **no** offence.

The offence of handling stolen goods is a very wide one, and includes:

- Dishonestly receiving the goods (taking possession of them either in person or arranging for another to do so).
- Dishonestly undertaking or assisting in their retention (storing or concealing them, keeping possession).
- Dishonestly undertaking their removal, disposal or realisation of them by or for the benefit of another person (selling, exchanging or moving them either in person or organising others to do so).

The Theft Act 1968 defines what is not dishonest but does not define what is dishonest therefore, as explained in your notes on Theft relating to **R v Ghosh [1982] QB 1053**, “the ordinary standards of reasonable and honest people” can be applied when deciding whether what was done was dishonest. If it was dishonest by those standards, did the defendant realise that reasonable and honest people would regard the conduct as dishonest? The court must be satisfied that the evidence is capable of providing a positive answer to both questions.

If someone dishonestly handles goods that he or she believes are stolen, but they are in fact not, an offence may still have been committed contrary to under section 1 of the Criminal Attempts Act 1981.

Provisions of Section 24 of the Theft Act 1968: This section outlines the scope of offences relating to stolen goods:

1. The provisions of this Act relating to goods which have been stolen shall apply whether the stealing occurred in England or Wales or elsewhere, and whether it occurred before or after the commencement of this Act, provided that the stealing (if not an offence under this Act) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly.
2. For purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not),
 - a. any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and
 - b. any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as

being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by him or of goods so representing them.

3. But no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.
4. For purposes of the provisions of this Act relating to goods which have been stolen (including subsections (1) to (3) above) goods obtained in England or Wales or elsewhere either by blackmail or subject to subsection (5) below, by fraud (within the meaning of the Fraud Act 2006) shall be regarded as stolen; and “steal”, “theft” and “thief” shall be construed accordingly.

Subsection (1) above applies in relation to goods obtained by fraud as if:

- a. the reference to the commencement of this Act were a reference to the commencement of the Fraud Act 2006, and
- b. the reference to an offence under this Act were a reference to an offence under section 1 of that Act.

Summary of section 24:

- The original theft can take place anywhere providing that it would be regarded as theft at the time and in the place it was committed.
- If the person handling the stolen goods sells them for cash or subsequently exchanges them for other goods, that cash or the subsequent goods are regarded as being stolen, as well as the original goods.
- Goods that have been restored to their rightful owner or other lawful possession e.g. the police, can no longer be regarded as being stolen.
- Goods obtained by blackmail or fraud are regarded as being stolen.

Action

If you suspect that someone may be handling stolen goods, the following points need to be considered:

- Have the goods been stolen

or

- Does the suspected handler know or believe that they are stolen

Either of these two points can be established, either by an admission on the part of the suspect, or by the circumstances in which the goods were obtained by the suspected handler. These may include:

- If the price paid for them is a fraction of the true cost.
- If there is no supporting paperwork, e.g. invoices or record books.
- If the identity marks have been removed.
- If the goods were obtained in a clandestine manner.
- If they are offered for sale in a manner, or at a price, that is not in keeping with normal trade methods.
- Any other factor which may indicate an irregularity.

The suspected handler should be questioned carefully to assist in establishing the above points. A full record of everything said and done must be made. Remember, what must be established is:

- the guilty act – handling the stolen goods in some manner
- the guilty knowledge – doing so knowing or believing that the goods were stolen

Under the Police and Criminal Evidence Act 1984, (PACE) there exist the following powers:

- Section 1 the power to search persons, vehicles or anything which is in or on a vehicle for stolen articles if there are reasonable grounds for suspecting that stolen articles will be found. Persons may be detained for the purposes of the search.
- Section 1 also gives a power of seizure of anything for which there are reasonable grounds for suspecting it, or them, to be stolen.
- Section 24 the power of arrest.

Special evidence: Of special interest is Section 27 of the Theft Act 1968 which, basically, allows evidence of previous convictions to be given in proceedings where someone is charged with theft or handling stolen goods. Although the section will only be used after someone has been charged, investigating officers should include details of previous convictions when preparing a case.

The section states that:

'Where a person is being proceeded against for handling stolen goods (but not for any other offence), then at any stage in the proceedings, if evidence has been given of his having or arranging to have in his possession the goods subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in their retention, removal, disposal or realisation, the following evidence shall be admissible for the purpose of proving that he knew or believed to be stolen goods:

- a. evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realisation, of stolen goods from any theft taking place not earlier than twelve months before the offence charged
- b. provided that seven days' notice in writing has been given to him of the intention to prove the conviction, evidence that he has within five years preceding the date of the offence charged been convicted of theft or handling stolen goods.'

3. Criminal Attempts

If you are a PCSO you should consider how the content applies in relation to your designated PCSO standard and discretionary powers, 'any person' powers of arrest under Section 24A of the Police and Criminal Evidence Act 1984 (PACE) and local force policy.

In this section you will be exploring the offences committed where a person does an act which falls short of committing the full offence. You will consider examples of how the attempt to commit the offence is identified and what does and does not constitute an offence.

Section 1(1) of the Criminal Attempts Act 1981 clearly sets out the need for the police to distinguish between an act that is merely preparatory and an act that amounts to an attempt to commit an offence.

3.1 The Offence

"If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence".

To help the court to draw the distinction, the police will have to provide evidence that the act was immediately, and not remotely, connected with the commission of the crime as well as more than merely preparatory.

Examples:

- A woman gently puts her hand into another person's open bag whilst standing next to them on a bus. The woman intends to steal a purse, wallet or mobile phone but when she feels around inside the bag she realises the bag is empty and therefore theft is impossible. By putting her hand into the bag, she has done an act which is more than merely preparatory and therefore commits attempted theft.
- A woman is standing near a jeweller's shop for five to ten minutes holding a small bag. She has been looking around furtively. She puts the bag down and takes out a large hammer. Moving quickly she turns and beats on the jeweller's window close to a display of expensive rings. Someone calls out and the woman runs away. She has not

broken into the shop. (For the purposes of this example ignore the offence of 'going equipped to steal').

In this example, the woman would not be attempting to commit the burglary when she stood outside the shop. She would not be attempting the burglary when she stood there with the hammer in her hand. But when she starts to break the window with the hammer then that is an act 'more than merely preparatory', and not remotely, connected with the attempt to commit burglary.

3.2 Criminal Intent

Specific intent is required to commit a criminal attempt. It requires an intention to commit an offence to which section 1(4) Criminal Attempts Act 1981 applies.

In criminal law 'intent' is often an element of the offence. It is known in law as 'mens rea', which is Latin for 'guilty mind'. Intention is not defined but has to be proved. It can be proved by drawing on two sources of information or by a combination of both:

Firstly by an admission made by the defendant during interview with reference to their state of mind at the time of commission of the offence and the answers to questions with regard to their actions and intentions at the time of the offence made by the interviewer.

Secondly by inference from the circumstances the offence, any evidence from witnesses, the defendant's actions and property found on them or in their control, such as a motor vehicle for transporting property. To prove intent, an interviewer needs to take all this into account; the important thing is that the interviewer has to prove the defendant's state of mind at the time.

Example:

- A person bought a diamond ring, believing it to be stolen goods, when in fact the ring was not stolen.

In this case the person's intent was to handle stolen goods. Even though the item wasn't stolen the suspect thought it was, so they are guilty of the offence.

Summary Offences

The Criminal Attempts Act 1981 does not apply to summary offences. This means you cannot 'attempt to commit' a summary offence (e.g. depositing litter or taking a vehicle

without the owner's consent) but you can for indictable or triable either way offences (e.g. theft or criminal damage).

Statutory Attempts

Some Acts create a specific offence of 'Attempt' e.g. attempting to drive a motor vehicle with alcohol concentration over the prescribed limit is an offence contrary to Section 5 of the Road Traffic Act 1988. This is known as a statutory attempt. The Criminal Attempts Act 1981 states that where such statutory attempts exist, 'attempt' should be as defined by the 1981 Act.

Penalties

A person convicted of attempting to commit an offence shall be liable to the penalty of the full offence. For example if someone is found guilty of attempted burglary of a dwelling, where the maximum penalty for a dwelling burglary is 14 years, then they can be sentenced to the same penalty for the attempt burglary as if they had actually committed the burglary.

3.3 The Impossibility Rule

A person may be guilty of 'attempting to commit' an offence even though the facts are such that the commission of the offence is impossible. This is sometimes referred to as 'The impossibility rule'. There is a crucial distinction between what is factually impossible and what is legally impossible. The only kind of impossibility which is relevant to liability is true legal impossibility.

Example:

- A man tries to break into a property by beating on the window with a hammer, unaware that the glass is toughened and it is impossible to break.

Under Section 1(2) of the Criminal Attempts Act 1981 the man is guilty of the offence of attempted burglary despite the fact that he was incapable of breaking the window as it was impossible.

4. Fraud

In England and Wales a large number of fraud offences are committed every day. The scale of fraud and the techniques used can range from a simple use of fake ID to gain entry into licenced premises to a large scale 'scam' which is operated on a professional and business-like manner. However, the impact of fraud, especially when it targets the vulnerable, can be devastating. The need for knowledge of the Fraud Act 2006 is therefore important.

What is the meaning of 'fraud'?

Legally Section 1 of the Fraud Act 2006 defines fraud and introduces three ways of committing it.

"A person is guilty of fraud if he is in breach of any of the Sections listed in Section 1, Subsection 2 which provide for different ways of committing the offence. These are:

- Section 2 Fraud by false representation
- Section 3 Fraud by failing to disclose information
- Section 4 Fraud by abuse of position"

There are also further offences contrary to the Fraud Act 2006 not covered by these notes.

4.1 Categories of fraud

When a fraud offence is reported to the police it is categorised as either a fraud in action or a completed fraud.

Fraud in action: Ongoing fraud – the crime is being committed now

Completed fraud: Historical crime

Which category the crime comes into may have an impact on the urgency and type of response the victim or witness needs.

Fraud can be carried out in a number of ways as follows:

Technology enabled fraudulent activity: Technology may enable fraudulent activity to be carried out by offenders.

Examples:

- Hacking: Unauthorised access to a computer system.

- Phishing: The fraudulent act of sending emails which appear to originate from a legitimate organisation, but entice the recipient to respond by following a link to a bogus website where their login credentials, personal identity and financial information are stolen for use in crime.
- 419/Advance – Fee scams: By requests to individuals to help transfer substantial amounts of money out of another country in return for a percentage of the money individual helped to transfer, or, criminals will ask individuals to set up or use their bank account and to pay various legal fees or taxes before the money can be released.

Identity theft and identity fraud: Identity theft happens when offenders access or collect enough information about someone's identity such as their name, date of birth, current or previous addresses. This is often done with the intention of using that information in criminal activity. Identity theft can take place whether the victim is alive or deceased. Identity fraud can be described as the actual use of that stolen identity in criminal activity to commit fraud offences. You will need to be able to identify which, if any, offences have been committed in given circumstances.

Identity theft can lead to fraud offences that can have a direct impact on personal finances and could also make it difficult for the victims to obtain loans, credit cards or a mortgage until the matter is resolved. The identity details could be used in numerous ways by offenders.

Examples:

- open bank accounts
- obtain credit cards, loans and state benefits
- order goods in the victim's name
- take over existing accounts
- take out mobile phone contracts
- obtain genuine documents such as passports and driving licences in that name

Stealing an individual's identity details does not constitute fraud but using that identity for any of the above activities does. The first victims often know of it may be when they receive

bills or invoices for things they haven't ordered, or when they receive letters from debt collectors for debts that aren't theirs.

Changing Name by Deed Poll: Some people have been known to repeatedly change their name by deed poll to create multiple identities. When obtained the documents are legal and can be used lawfully to prove identity. When a person subsequently changes their name again and obtains new documents, they may use or allow use of the documents in their old, previous name/s to commit offences or hide their current identity.

4.2 Fraud by false representation

The key terms (or elements) of the offences are covered below the individual offence definitions.

Fraud by false representation – Section 2 Fraud Act 2006

The offence

A person is in breach of this section if he:

- dishonestly makes a false representation,
- and
- intends, by making the representation to make a gain for himself or another, or
- to cause loss to another or to expose another to a risk of loss.

The key term in this definition is the word '**Dishonestly**'.

Dishonestly: The representation must be made dishonestly. You should already be familiar with the definition of 'dishonest' (which was established in the stated case of R v Ghosh [1982] QB1053) from studying the offences within the Theft Act 1968, such as Theft. The judgement in R v Ghosh [1982] QB1053) sets a two stage test.

The first question is whether a defendant's behaviour would be regarded as dishonest by the 'ordinary standards of reasonable and honest people'. If answered positively, the second question is whether the defendant was aware that his conduct was dishonest and would be regarded as dishonest by those ordinary standards. Dishonesty is crucial to all the offences that you will be covering in the Fraud Act.

Section 2 is '**conduct based**' and there is no need to prove any of the following:

- a result of any kind

- that the alleged victim or any person believed any representation
- that any person acted on it
- that the accused succeeded in making a gain or causing a loss by the representation

Gain or Loss: The person must have the intention to make some gain for himself or another person, or to cause some other person a loss, or to put that person in a position where there may be a risk of some loss. However, the gain or loss does not actually need to take place; it is the intention for it to happen that is important.

The gain or loss can be temporary or permanent. 'Gain' includes keeping what one has, as well as a gain by getting what one does not have. 'Loss' means not getting what one might get, as well as losing something that one has.

The gain or loss extends to money or other property, whether real or personal, including things in action and other intangible property, such as milk delivery rounds, trademarks, patents and copyright etc. the same as in the Theft Act 1968. These are things that have value, but have no physical substance.

False representation: A 'representation' means,

'any representation as to fact or law, including a representation as to the state of mind of the person making the representation, or any other person'.

A representation is false if:

- It is untrue or misleading, and
- The person making it knows that it is untrue or misleading, or that it might be untrue or misleading.

In more simple terms, this means misleading a person in some way but the person does not have to be deceived. A representation can be expressed or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the representation must be expressed; it could be by what the offender says, or in the way in which they behave, or, as usually happens in practice, a combination of the two. It could also be written or posted on a website. The selling of fake or replica goods is an increasing problem and one which falls under this Section of the Fraud Act, if the seller advertises or sells the goods as the genuine item. This can take place in shops, through market stalls, street traders, internet stores and internet auction sites.

Examples:

- A trade person called to repair a tile missing from the roof who tells the householder that there was far more damage found on inspection than there was in reality. They dishonestly charge the householder a grossly inflated repair bill for work that was either not necessary or never actually done.

You may be aware from the media or even know personally of situations where trades-people have committed this type of offence such as when mending a leaking tap or repairing a boiler fault.

A representation may also be implied by conduct.

Examples:

- A person dishonestly misuses a credit card to pay for items.

By tendering the card, the person is falsely representing that they have the authority to use it for that transaction. It is immaterial that the merchant accepting the card for the payment is deceived by the representation.

- A person with a charity tin and identity badge carries out a collection in the street by shaking the tin at passers-by.

Their conduct implies that they are a bona fide collector for the given charity. In fact the person is not a charity collector and intends keeping the money for their own purpose. The bogus collector does not have to say anything, their conduct alone is sufficient for a 'representation'. However if the charity collector was a bone fide collector and they decided to keep the money that had been put into the tin by members of the public, this would be theft and not fraud by false representation as there has been no false representation in this case.

Fraud by false representation is also committed by someone who engages in 'phishing'. This is where a person sends an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the recipient to provide information such as credit card and bank account details in order that the sender can deposit funds into their account. Of course the entire transaction is carried out with the

intention of enticing the recipient to disclose their account details so that the sender can empty the recipient's bank account.

A representation as to the state of mind of the person: When you go into a café or a restaurant you know that if you place an order for food, that you will be required to pay the given charge. Therefore, when you place an order, you are implying that you intend to pay accordingly. If you go into the restaurant with no means of paying, but order a meal in the knowledge that you have no intention of paying, you are dishonestly making a false representation. This false representation is in relation to your state of mind and willingness to pay.

Refusing to pay a bill in a restaurant is not in itself a criminal offence. It may be a dispute over the quality of a meal. How might you try to establish if this was a genuine complaint, and therefore a civil matter, or a dishonest false representation being made in order to avoid payment for the meal?

A few enquiries that you might make are:

- What is the complaint regarding the meal and does it appear justified?
- At what stage of the meal was the complaint made?
- How much of the meal has been consumed?
- Has a replacement meal been offered or a reduction in the bill?
- Does the person have sufficient means to pay for the meal if requested to do so?
- Are they prepared to provide their details if requested by the restaurant staff? If so, can these details be verified?

The answers to the above questions should assist you to decide if you have a possible fraud or a civil dispute.

As to Fact or Law: Most frauds are as to 'fact', where the offender deliberately says or implies something that is simply not true or is not completely true.

Examples:

- A person selling a ring tells the prospective buyer "this ring is solid gold," when in actual fact, they know that it is only gold plated.

- The same would be true if the seller simply doubted for themselves that the ring might not be solid gold, they are still stating a fact that is not true.
- A person buys an imitation Rolex watch for £10 whilst on holiday and then sells it to an acquaintance for £300 telling them that it is a genuine Rolex.

In the context of fraud, 'as to law' is where someone states that something is a lawful requirement when this is untrue.

Examples:

- A railway employee dishonestly tells the finder of a valuable ring that they are obliged, in law, to hand the ring over to the employee as it was found close to the railway property.
- A customer takes a car into a garage to have one defective tyre replaced. The mechanic replaces all four tyres on the vehicle, even though there was nothing wrong with the other three tyres. The mechanic then dishonestly informs the owner of the vehicle that it is unlawful to only change one tyre therefore all four tyres have had to be renewed.

Section 2(5) of the Act states:

"A representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention)".

The purpose here is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement. An example would be where a person enters a number into a 'chip and pin' credit card machine as opposed to handing the card over to an individual for checking.

To summarise the essential elements for the offence of Fraud by False Representation contrary to Section 2 Fraud Act, 2006 to be committed it must be proved that there was:

- A representation made.
- That it was false.

- That it was made dishonestly.
- That the person who made the false representation knew that it was or might be untrue or misleading.
- And that it was made with intent to make a gain for himself or another, or to cause loss to another or expose another to risk of loss.

4.3 Fraud by failing to disclose information

Fraud by failing to disclose information – Section 3 of the Fraud Act 2006

The Offence

A person is in breach of this section if he:

1. dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
 - a. intends, by failing to disclose the information:
 - i. to make a gain for himself or another, or
 - ii. to cause loss to another or to expose another to a risk of loss.

The terms 'dishonestly', 'intends' and 'gain or loss' from other fraud offences are explained earlier in these notes.

Legal duty: This Section applies to all parties where a person is under a duty to disclose something and by not doing so could create some gain. We are often asked to disclose information to other people for a variety of reasons, but we are not always under a legal duty to have to do so. A legal duty to disclose information may come from statute or under a contract.

Risk of loss: There is no requirement for the gain or loss to actually occur as a result of the failing to disclose the information. What is essential is to prove that the failing to disclose was done dishonestly, together with an intention to make a gain for himself or another, or to cause the loss to another or to expose another to a risk of loss.

Example/s:

- A person who fails to declare a heart condition when applying for life insurance.

- The person who fails to declare a heart condition in order to obtain an insurance policy may never claim on that policy. If they do not make a claim, they have still committed the offence by exposing the insurance company to a risk of loss at any time. If they did make a claim, then clearly they have made a gain, either for themselves through monetary benefits, or perhaps support through medical care etc, or, in the worse scenario of their death, through the obtaining of death benefits for another.
- A person who fails to declare recent driving convictions in order to obtain cheaper motor insurance.
- A representative selling a potentially highly profitable investment scheme who fails to point out to the customer, the potential high risks involved with high profit investments.

4.4 Fraud by abuse of position

Fraud by abuse of position – Section 4 of the Fraud Act 2006

The Offence:

1. A person is in breach of this section if he:
 - a. occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - b. dishonestly abuses that position, and
 - c. intends, by means of the abuse of that position:
 - i. to make a gain for himself or another, or
 - ii. to cause loss to another or to expose another to a risk of loss.
 - d. A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

You should already be familiar with the meaning of the terms 'dishonestly', 'intends' and 'gain or loss' from other fraud offences earlier in these notes.

Occupies a position: This focuses on those people who are in privileged positions of financial trust, have insight and possibly control of another's financial situation. The defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another's financial interests, or not act against those interests. There will be some

form of relationship or agreement between both parties for the offence to operate. The relationship could be between:

- Trustee and beneficiary
- Director and company
- Professional person and client
- Agent and principal
- Employee and employer
- Partners
- Individuals within a family
- In the context of voluntary work

Whilst the relationship would normally involve some duties on the part of the person held or given in trust, this is not essential. This does not of course mean that it would be entirely a matter for the fact finders whether the necessary relationship exists. The question whether the particular facts alleged can properly be described as giving rise to that relationship will be an issue capable of being ruled upon by the judge, and, if the case goes to the jury, of being the subject of directions.

Abuses: Abuse is not restricted by a definition. The Act is designed to give the word a broad meaning, allowing for numerous interpretations for various situations, and although the offence focuses on the area of finance of the victim, the wording of this section does not restrict the actual gain to a monetary one, although invariably it will be.

A person may be regarded as having abused his or her position even though his conduct consisted of an omission rather than an act. An example could be that of an employee who fails to take up a contract to allow a rival company to obtain the contract at the expense of the employee's company. It is more likely, however, that you will deal with situations where the relationship of trust is one within the home.

Examples:

- A solicitor has a client who has charged him with the execution of their will when they die. The estate amounts to £100,000 in a bank account and the house the client occupied. The will orders the sale of the house for the best price available. On the

death of the client the solicitor only pays a proportion of the cash from the bank account to the beneficiaries, keeping the rest while using his position of trust to charge for a series of concocted 'administration fees.' The solicitor then sells the house to a colleague for below market value and the two agree to split the profit when the house is re-sold.

- An estate agent advises a client selling their house to accept a below asking price offer which is in fact from a relative of the estate agent.
- A man in his late 70s lives alone in a property that he owns. His health has been poor for some months, and his memory has also been deteriorating. Despite finding things difficult, it is important to him to remain living in his own home for as long as possible. To try and make this possible, he has given his only son control of his bank accounts. This is so that the son can buy food for their father and ensure that all the necessary utility bills are paid on time which was something that he was forgetting to do. Neighbours have contacted the police, stating that they are concerned. They have become aware that the electricity has been cut off at his house through non payment of bills and that is the only source of power for heating and cooking.

Initial police attendance would quite rightly first focus on the welfare of the man. The elderly man also appears to have little or no food in the house. However, effective questioning and investigation skills would reveal: that his son occupies a position in which he is expected to safeguard, or not act against the financial interests of his father; that he has dishonestly abused that position by using the money to pay off a debt of his own (thereby making a gain for himself or another). He has also caused his father a 'loss' in several ways: he has lost what he already had, which is an electricity supply, warmth, the means of cooking and an adequate supply of food. There may be a reconnection fee, therefore the possibility of a further loss to be incurred.

- A person is employed by a bus company as a bus driver. Whilst driving the bus on a regular route the driver often allows friends to get on the bus without paying for their fare.

In this example, the driver occupies a position in which they are expected to charge customers for their bus journey, thereby safeguarding the financial interests of the bus company. By giving friends free rides, the driver is dishonestly abusing their position of trust within the company. It is not necessary that the driver makes a gain for themselves or another, or that by their actions, a loss is caused to another or another is exposed to a risk

of loss. What is important is that you prove an intention to do one or more of these things. That is much easier to prove if it has actually happened, and here the drivers friends are making a gain by not having to pay for their fare, and the bus company are certainly making a loss each time that a fare is not collected. The actus reus (guilty mind) of abusing a position of financial trust is met and the mens rea (the act) of acting dishonestly with an intention to cause a gain are also present.

- 'A' works in a store and their best friend 'B' often purchases goods waiting until 'A' serves him because they have told him that they can get staff discount for goods for family and friends. This is incorrect, 'A' is not allowed discount at the store except for themselves. Instead of putting the goods through the till at the correct price, 'A' scans the bar code on a different item which is substantially cheaper. By doing so, his friend is able to buy the goods at a fraction of the real price.

In their capacity as employee they seem to have abused their position of financial trust. The friend is not committing any offence; 'B' believes that 'A' is giving them staff discount that he is entitled to and therefore the friend is not acting dishonestly.

4.5 Possession of articles for use in frauds

Possession of articles for use in frauds – Section 6 Fraud Act 2006

The offence

A person is guilty of an offence if:

- he has in his possession or under his control
- any article for use in the course of or in connection with
- any fraud

The wording of this offence is very similar to the offence of 'Going Equipped for Burglary or Theft' under Section 25 of the Theft Act 1968 but that offence states that a person cannot be at their place of abode. For this offence, possession of articles for use in frauds contrary to section 6 of the Fraud Act 2006, a person can commit this offence if the article is in his possession or under his control regardless of whether or not he is at his place of abode. This takes into account the advantage of technology, allowing a person to conduct their crime any time and in any place, including from their home address, place of work or a vehicle.

In his possession or under his control: A general legal definition of possession can be found in common law.

There are two elements to consider:

- Actual or potential physical control

and

- Knowledge of its presence

Actual physical control is straight forward; the person has the article with them and they have immediate access to it. 'Potential physical control' is often referred to as 'constructive possession'. This means that the article does not have to be in the individual's immediate reach, it could be in a vehicle or premises some distance away. It could also be being carried by another on their behalf, as long as the second element of the definition is present, in that both parties have knowledge of its presence.

This requirement can be more complex where containers of some sort are involved, for example, boxes, handbags, packets, or where the person claims not to have realised what it was that he/she possessed. In such cases the requirements remain the same; you need to show that the person had physical control of the container together with knowledge that it contained something, in this case, an article for use in the course of or in connection with fraud

A number of people can have an article under their control at the same time.

Examples:

- A lock up garage contains a vehicle that has false number plates which is intended to be used in a future fraud. Four people are involved in the planning of the fraud and all of them have keys to the garage. One of the four people also has a set of keys for the vehicle which they keep with them at all times. A spare set of vehicle keys are hidden in the garage.

In this example both sets of vehicle keys are articles for the purpose of fraud. The vehicle is also an article. Actual possession: all four people have actual possession of the garage keys as they all have the keys with them thereby having immediate access. One person is also in actual possession of the vehicle keys for the same reason. Constructive possession: all four people have constructive possession and control of the vehicle in the garage. This is because it is some distance away, but

they can all gain access to the vehicle, one with their own vehicle keys and three by using the spare vehicle keys.

Any article: The meaning of 'article' is, as it says, any article at all. It does not have to be made or adapted for the purpose of crime; it could be anything, and includes any program or data held in an electronic form so long as the article is 'for use in the course of or in connection with a fraud'.

Examples:

- A person intends to stand in the town centre and pretend to collect money on behalf of a local hospice charity with a view to keeping the money collected. Possible articles: sign advertising the charity; Charity/collectors badge; Charity/collectors identification or permit; Collection tin or bucket with appropriate details there on.
- A person builds a false front for a public cash machine. The false front has a card reader in it so that when customers put their card into the slot it automatically reads the details of the card and transmits it to a receiver. Possible articles: false front for the cash machine; digital transmitter; receiving equipment; computer files or hard copy records containing lists of peoples credit card and bank details; tools and components used for construction of the device.
- Three people intend to visit a local housing area offering a cut price service for replacement double glazing windows and doors. They ask prospective customers to pay a 50% deposit to cover the initial purchase of materials. The company does not exist and they have no intention of completing any of the work. Possible articles: vehicle with company name on side; brief case/clip board; brochures of windows and doors; identification badge; mini example of double glazed window; customer satisfaction letters; order forms; items with bogus firms name thereon, i.e. pens, paperwork etc; calculator; receipt pad; credit card swipe machine; cash float for customers who give cash deposit; any computer templates and programmes used to generate notes; headed paper, acceptance letters, invoices, customer satisfaction letters etc; computer files containing lists of peoples credit card details computer/laptop.
- A person has printed a copy of an email sent by a 'phisher' pretending that the receiver has won a large sum of money in a competition. The email requests bank

details from the receiver. The person intends to use the email to help her draft a similar one for the same purpose. Possible articles: the original email; any electronic programme, data or computer files used to contain lists of peoples' credit card details; lists of email addresses, electronic or hard copy; computer/laptop.

For use in the course of, or in connection with: This area is very similar to the offence of Going Equipped for Theft or Burglary under Section 25 of the Theft Act 1968. There must be evidence to show that the individual had an intention to use the article in some way to commit an offence of fraud in the future. You do not need to know the specific details of the fraud, although it obviously adds to the strength of your evidence if you do, it is sufficient to prove a general intention to commit fraud.

Similarly, it is not necessary to prove that the defendant intended to use the article himself, it is enough to prove that he/she had it with them with the intention that it should be used by someone else.

If the article is being possessed for the intention of committing an offence of Burglary or Theft, then the offence committed would be Going Equipped contrary to Section 25 Theft Act 1968 and not Possession of Article for use in Frauds. There may be occasions when the item possessed could be an item used in the course of, or in connection with a theft, burglary or a fraud and you are unable to determine the specific offence in relation to the intended use of the article. Under such circumstances, the advice of the Custody Sergeant and/or the Crown Prosecution Service (CPS) should be sought.

Available advice, information and support

There are various means of obtaining advice, information and support and the two of the most useful for you in your role are 'Action fraud' and 'Get safe online'.

4.6 Actions to be taken in on deployment to a fraud scene

Clearly, the actions that you will need to take at the scene of the fraud and before will depend on the nature of the fraud and its victim. However, you will need to follow the process laid out below in most cases.

Prior to attending the crime scene

One of the reasons that fraud is reported for a call for service is a case where the victim is vulnerable or intimidated so **in such cases there must be no undue delay in attending to the victim.**

If time allows, establish any information regarding the fraud and victim that already exists by liaising with the person that received the information and checking for reports of similar fraud offences in the force area. Ascertain what, if anything, the victim has been advised to do, e.g. to contact his or her bank. You should also enquire whether an interpreter is needed,

The victim will already have contacted the police to report the fraud, or someone will have done so on his or her behalf, so there will be information available.

4.7 Carrying out an initial investigation at a fraud crime scene

The fraud crime scene will generally be the home, office or other commercial premises such as a shop or store. You should proceed in accordance with the “Golden Hour” principles as in any other investigation, but there are certain factors that are particular to fraud and you should cover these points in the investigation.

You should confirm the details of how the fraud was carried out and how any funds were transferred to the fraudster, then advise the victim to contact any bank, online agency, credit card company or other financial institution that may have been used as part of the fraud. The victim should advise the financial institution that the fraud has taken place and ask that a stop is put on any further transfer or use of any card. He or she should request assistance from the bank etc. to try to retrieve the funds if there is any possibility to do so.

Obviously, if the offender is present or nearby you should consider apprehending him or her.

4.8 Preserving evidence at a fraud crime scene

You must also consider preserving the evidence at the crime scene. The amount and type of evidence available will depend on the type of scene but may include any of the following actions:

- Obtain material relevant to the fraud. This may take the form of advertising material that started the fraud, letters or emails from the fraudster. If contact between fraudster and victim was by email, print copies, if this is possible. Do not ask the victim to forward emails to a police address as they may contain malware.

- Establish the assets involved, the amount and the form in which they were sent to the fraudster, cheque, bank transfer or Paypal etc. It may be that as well as obtaining money, the fraudster may use the means of transfer to acquire details of a bank account or credit card and thereby gain access the victim's funds.
- Arrange to obtain any digital devices that may be relevant ensuring that the data on them is not altered or deleted. It may be that the victim will not be willing to allow this as he or she may need the device for business reasons or because it is necessary for his or her personal life. If this is the case try, as far as is possible, to ensure that any data is not lost, in order that it may be captured at a later stage. You may ask the victim to print copies of emails etc. or download to a portable media device.
- N.B. remember the possibility that data may contain malware and should not be connected to force networks
- Obtain the details of any financial institutions or online agencies that are relevant (if this has not already been completed).
- Gather as much intelligence as possible regarding the fraud, the fraudster and the victim. The lifestyle of the victim may have been an integral part of the fraud, e.g. a recently widowed person may have been a victim of a fraud perpetrated via an online dating agency, and this is valuable intelligence.
- Record the victim's evidence by an appropriate means.
- Identify any people, other than the victim, who may need to be interviewed, e.g. suspects and witnesses and take statements where possible.
- Obtain any CCTV footage that is available e.g. in a store or other business premises.
- It is unlikely that there will be fingerprint or DNA evidence available, unless the fraudster has visited the crime scene, but the possibility may have to be considered. If there is such evidence you may need to request a crime scene examination.

4.9 Responding to victims and managing expectations

It is important that you manage the expectations of the victim. Do not give the impression that funds **will** be recovered or offenders **will** be identified or arrested.

Victims will often ask about this ("when will I get my money back")? The fact is that in the majority of cases it is impossible to retrieve funds transferred to a fraudster and it is

important that a victim has no hopes of recovery as these may not be realised. However, there are support agencies available for the victims of fraud and you should advise the victim regarding the assistance they can provide. Alternatively, there may be a relative, friend or carer who can support the victim if you consider that one is needed.

4.10 Dealing with other actual or potential victims

After dealing with the crime scene, you will need to establish whether there are other actual or potential victims who have been, or may be, targeted by the fraudster. The victim may belong to a group e.g. a care home, some form of social organisation or a family etc. whose members are liable to the same fraud as the victim. If such a situation exists, you should obtain details of the group, contact any potential victims, or someone responsible, e.g. a care home assistant, and warn them regarding the possibility of fraud. Supply contact details of the force and Action Fraud and request that the police are alerted if there is an approach by a fraudster, if necessary by dialling 999. Deal with any fraud that has occurred bearing in mind that the fact that the victim may be unaware that it has happened.

4.11 Advice that can be given to prevent further loss through fraud

To prevent the loss of further funds by the victim, or funds by a potential victim, the following advice may be given:

- The victim must have alerted his or her bank, credit card company, online agency or other financial institution to ensure that the bank etc. “stops” the account or card to prevent further loss and to retrieve, if possible, the stolen funds. Potential victims should Alert the bank etc. and ask that it takes appropriate action to prevent the fraud.
- No more money is to be sent to the fraudster no matter what is promised. Sometimes the victim is told that there has been a problem that will be solved by paying an additional fee, e.g. an unexpected postal charge.
- No money is to be sent to any agency offering to retrieve the lost funds. Some fraudsters will contact victims purporting to be an agency able to recover the proceeds of fraud and will ask for a fee in advance.
- No contact should be made with the fraudster, and any contact from him or her or from an agency described above should be reported to the police and to Action Fraud.
- Victims, actual and potential, should change passwords and ensure that the new ones are strong.

4.12 Action fraud

Before leaving the scene, you should assist the victim to complete an Action Fraud report.

The contact details for Action Fraud are:

www.actionfraud.police.uk

0300 123 2040

You should explain the purpose for this, i.e. that Action Fraud will try to progress the case, or use the details for intelligence purposes.

Action Fraud is the UK's national fraud reporting centre where people can report they are a victim or witness of a fraud offence. People may use terms such as 'scammed', 'ripped off' or 'conned' when they report incidents that may meet the definition of an offence within the Fraud Act 2006. Action Fraud provides a central point of contact for information about fraud and financially motivated internet crime.

The service is run by the National Fraud Authority, the government agency that helps to coordinate the fight against fraud in the UK. They work with partners in law enforcement such as the National Fraud Intelligence Bureau (run by the City of London Police), the Home Office, ACPO and Victim Support to make sure fraud reports reach the right place.

If the fraudulent activity is complete (i.e. historical) victims and witnesses can report fraud to Action Fraud. The following can report offences to Action Fraud:

- Individuals
- Police officers
- Charities
- Small businesses
- Large corporations

Reports taken are passed to the police who may contact the person who reported it for further information. It is therefore important that the person provides correct contact details and keeps any relevant information or evidence relating to the fraud. Action Fraud does not investigate the cases and cannot advise on the progress of a case.

When someone makes a report to Action Fraud the fraud is given a police crime reference number and the case will be referred on to the National Fraud Intelligence Bureau (NFIB). In some cases the police and other law enforcement agencies may want to contact them for

further details, so it's important that the person provides correct contact details and keeps any relevant information about the fraud. The information provided will also aid the police to build up intelligence about fraud which includes who is committing what fraud and against whom.

When a person reports a fraud to Action Fraud, they can also choose to have their details passed on to Victim Support, a national charity that helps those affected by crime. If they take up this option, they will then be contacted by someone from the charity and offered free and confidential emotional support and practical help.

The report can be made online any time of the day or night and the service enables people to both report a fraud as well as find help and support. Help and support is also available by phoning the Action Fraud contact centre on **0300 123 2040**.

4.13 Types of offences that should be reported to the police

There will be occasions however when offences because of their substantive nature should be dealt with by the police in the first instance and not directed to Action Fraud. These include:

- Making or supplying articles for fraud
- The possession or control of articles for use in fraud
- Possession of false documents
- Making off without payment
- Theft of fuel
- Forgery or use of drug prescriptions
- Forgery etc. associated with vehicle or driver records
- Other forgery
- All Proceeds of Crime Act 2002 offences
- Statute offences e.g. cash seizures/confiscations

4.14 Get Safe Online

With a surge in online fraud prevention and education are crucial. Get Safe Online is a very good example of how government, industry and law enforcement can work together. Get

Safe Online is a jointly funded initiative between several Government departments and private sector businesses. They are the Government's preferred online security advice channel.

Get Safe Online is the UK's leading source of unbiased, factual and easy-to-understand information on online safety. The website is a unique resource providing practical advice on how to protect the individual, their computer or mobile device against fraud, identity theft, viruses and many other problems encountered online. It contains guidance on various topics including safe online shopping, gaming, social networking and dating etc. The site also provides up to date news, tips and guidance.

5. False Identity Documents (False ID)

The term “false ID” is used as a general term for fake identification document (ID) as well as the misuse of another person’s genuine ID. The term “fake ID” is used as a general term for an illicit copy of a genuine document such as a passport or a document which is a form of ID that does not exist such as a UK national identification card.

Fake ID cards are commonly sold as novelty items and the companies that produce them are often foreign-based. Therefore, it is difficult for the UK to prevent or restrict the production of these items. Fake ID cards are often used by young persons under the age of 18 years to obtain alcohol. However a more common practice is the use of genuine ID, which does not belong to the person using it, than the use of fake ID to buy alcohol.

5.1 The five types of false document:

1. Genuine document which is being used by someone else
2. Genuine document which has been altered
3. Genuine document which has been fraudulently obtained
4. Fake document which is a copy of a genuine document and
5. Fake document which is a form of ID that does not exist

5.2 False ID and Alcohol:

Since 2010 a mandatory licence condition has required all licensed premises to have in place an age verification policy. That policy must require that customers who appear to staff to be under 18 years of age are asked to show valid ID and this has led to a growing market for false ID. There are numerous offences relating to the buying and selling of alcohol that are covered elsewhere in your curriculum.

Challenge 25 is a retailing strategy that encourages anyone who is over 18 but looks under 25 to carry acceptable ID if they wish to buy alcohol. Think 21 is a policy companies may adopt to require their staff to check ID documents when age is of relevance such as gambling or alcohol licensed premises. You may have seen the logo next to point of sales/tills. Initiatives, such as Challenge 25 and Think 21, resulted in it being much more difficult for young people to buy alcohol therefore some under 18s have resorted to obtaining fake ID from the internet or borrowing ID from older siblings or friends with the intention of

using it to buy alcohol. The use of genuine ID, which does not belong to the person using it, is a more common practice than the use of fake ID to buy alcohol.

Due Diligence: The offences of selling alcohol to a person aged under 18 (section 146 of the Licensing Act 2003) and allowing the sale of alcohol to such a person (section 147 of the Licensing Act 2003) each contain an absolute prohibition against selling or allowing such a sale. This means that, in the eyes of the law, it does not matter that the individual selling the alcohol did not intend to do wrong or were unaware of the requirements of the law. A valid defence against a charge of this nature is one of due diligence. A person can argue that he or she can rely on due diligence if he or she took all reasonable steps or precautions to comply with the law.

For this purpose, a person is treated as having taken all reasonable steps to establish an individual's age if he or she asked the individual for evidence of his age, and the evidence would have convinced a reasonable person. The detailed basis on which a person can demonstrate due diligence is set out in the relevant provisions of the Licensing Act 2003.

Acceptable Forms of ID

Decisions about which forms of ID are acceptable are ultimately made by those managing the premises. (Public House, Night Club, Off Licence, Supermarket, etc.) However, such decisions must be lawful and, in particular, non-discriminatory.

The mandatory condition on age verification is clear about the minimum requirements for acceptable ID. Among those requirements are a photograph, date of birth and a holographic mark. However, some valid forms of national ID and some passports do not bear a holographic mark.

The Equality Act 2010 Act

The Equality Act 2010 permits limited discrimination in certain circumstances on the basis of nationality (but not the other elements of race such as colour or ethnic origin). Under this exception, the requirements of the mandatory age verification condition may permit premises to refuse to accept a national ID card or passport which is issued by a country other than the United Kingdom. However, a policy which states that no passport (regardless of which country issued it) is acceptable, or that only UK passports are acceptable as a form of ID, may be discriminatory. This is on the basis, for example, that it treats foreign nationals less favourably than British citizens due to the fact that British citizens are more likely to have ready access to alternative forms of ID.

The Equality Act 2010 also permits limited discrimination in certain circumstances on the basis of age. (Equality Act 2010 Part 7 of Schedule 3 to the Act paragraph 30C).

Example:

- A person tries to gain entry to a nightclub that has a policy which only allows people 18 years and over entry on the basis that it is an offence under the Licensing Act 2003 to sell alcohol to such a person. The person appears younger than 18 to the staff and they cannot provide satisfactory identification.

The Equality Act 2010 permits premises to operate policies which require persons to produce ID which establish that they are at least 21 or 25 (or whatever the age set out in the policy).

5.3 Acceptable forms of identification and how to check them

Proof of Age Standards Scheme (PASS) Approved Cards:

The Proof of Age Standards Scheme (PASS) is the UK's national guarantee for proof of age cards and has the backing of the Home Office, the Association of Chief Police Officers (ACPO), the Security Industry Authority (SIA) and the Trading Standards Institute (TSI).

The scheme delivers a common standard through its easily recognised logo, which is backed by a robust audit and accreditation process to help protect retailers of age restricted goods, and their employees, against being taken in by the many forms of false ID in use. Accepting a card with the PASS hologram which carries the bearer's image and acceptable date of birth is a means of demonstrating due diligence. Examples of all PASS accredited schemes can be found on the PASS scheme website.

How to check a PASS Card

1. Check the PASS hologram – Look for the 3D effect in the background of the hologram; make sure it has the characteristic tick on the “A” in the PASS lettering; the hologram must be flush with the plastic of the card – not stuck on top of the plastic.
2. Check the photograph – Ensure that the photograph is of the person presenting the card; the photograph must be printed directly onto the plastic of the card – not stuck on top of the plastic.

3. Check the date of birth – Calculate the age of the person from the date of birth; if a person is purchasing alcohol or tobacco, look for the 18+ symbol on the card; otherwise make sure they are old enough to buy the goods or services; the date of birth must be printed onto the plastic – not handwritten or stuck on top of the plastic.
4. Check the card – Ensure the card has not been tampered with or altered; feel the card – it should be completely smooth.

United Kingdom Passports

There are 2 new types of United Kingdom (UK) passport designs issued in 2006 and 2010.

UK Passports Introduced in 2006:

New UK passport designs introduced through a phased roll-out however older style passports were also issued after the introduction of this design. These will continue to be valid until their stated expiry date.

- **Validity:** Adults, normally 10 years up to a maximum of 10 years 9 months; children, normally 5 years up to a maximum of 5 years 9 months.
- **Size:** Approximately 125 x 88 mm.
- **Number of pages:** Standard issue book is 32 pages; business book is 48 pages.
- **Location of the data:** The data page is Page 31 of the passport.
- **Laminate:** Page 31 and 32, sewn in; clear laminate with UV visible printing and holograms on page 31.
- **Photograph:** Digitally printed.
- **Numbering:** 9 digits, printed on page 1. These are entered on the bio-data page in the same style as the personal details. The serial number is perforated through pages 1-30 (1-46 in business book version).
- **Observations:** An electronic chip and antenna is visible on page 32 and the business version page 48.
- **Extra Checks:** The holograms are on three patches attached to the underside of the laminate on page 31; the stitching thread is red, white and blue and is fluorescent yellow and red in UV light; the front and rear endpapers are printed in green, burgundy and blue intaglio (raised printing).

- **Note:** The laminate on page 32 fluoresces strongly; different versions of this passport exist (e.g. Jersey, Guernsey, Isle of Man, and Gibraltar); the holes of the laser perforated number are larger at the front of the book and reduce in size to the back.

UK Passports Introduced in 2010

- **Validity:** Adults, normally 10 years up to a maximum of 10 years 9 months; Children, normally 5 years up to a maximum of 5 years 9 months.
- **Size:** Approximately 125 x 88 mm.
- **Number of pages:** Standard issue book is 32 pages; business book is 48 pages.
- **Location of the bio-data page:** Page 2.
- **Laminate:** Page 2 contains a thin film patch that is clear in colour but has UV visible printing and holograms contained within it. Page 3 is not laminated.
- **Photograph:** Digitally printed on pages 2 and 3.
- **Numbering:** 9 digits, printed on page 1. These are entered on the bio-data page (page 2) in the same style as the personal details; the serial number is perforated from page 1 through to the rear cover of the passport; the thin film patch contains a unique serial number which consists of 3 alpha characters and 4 numeric followed by a check symbol. This number is located beneath the holder's image should not be confused with the 9 digit passport number.
- **Observations:** Passport visa pages feature a cross-page security printed design; a secondary image of the passport holder is located on page '3' of the passport; additional information about the passport holder is written on page '3' of the passport; a check symbol is included within the laser perforated passport number. This symbol is not replicated within the printed serial number of the book on pages 1 and 2 and differs to the check symbol that is present for each thin film patch; observation data is bounded above and below by lines consisting of a unique character; the passport stitching method utilises a process that is different to any previous UK passport; the gold foil on the front cover is more lustrous than that of the previous UK passport; where the passport holder does not require any additional data to be inserted into the passport, the passport observations page (page 3) will read "There are no official observations".

- **The bio-data (personal details) page:** This is at the front of the passport and located on page 2; the passport chip is located in the cover of the passport; the invisible printing of the laminate fluoresces strongly; the laser perforated number consists of variable hole shapes (circle, square and triangle)
- When checking security features of documents **feel, look, tilt!**

Passports of Foreign States

The most common foreign passport features that can be detected by the naked eye or by using an ultraviolet light, are those required in all Machine Readable Passports (MRP) by International Civil Aviation Organisation standards:

- Paper that does not reflect ultraviolet light or whose fluorescence is easily distinguishable from the blue used in commonly available fluorescent materials
- Watermarking on the biographical data and visa pages
- An intricate, repetitive pattern as the background design on each page
- A background design on the biographical data page that is different to the design(s) on other pages in the passport
- Ultra-violet fluorescent ink on the biographical data page
- MRPs issued since 2010 should have a unique number on all pages except the inside covers; and
- Many passports include optically variable features on the biographical data page. An optically variable feature (most commonly a hologram) changes appearance in colour or design as the page is tilted. However, the standards allow devices offering equivalent protection to be used instead.

For further assistance, the Public Register of Authentic Identity and Travel Documents Online (PRADO) is a database of European Union passports and identity cards with images and details of security features.

Driving Licence

For information and security marks on driving licences please refer to your roads policing modules.

Military Identification Cards:

Armed forces personnel may use their military identification cards as proof of age.

- **Validity:** Held by all serving members of the Royal Navy, Royal Marines, Army and Royal Air Force (who may be aged 16 or 17), and by members of the Reserve Forces. The expiry date of the card appears at bottom right.
- **Size:** Approximately 85 x 53 mm (credit card size).
- **Personal details:** The holder's rank, date of birth, height and name appear on the left hand side of the card. The holder's Service Number is reproduced at the top centre.
- **Holder's photograph:** A crown is superimposed over the bottom left of the holder's photograph.
- **Holder's signature:** There is no requirement for a Military Identification Card to be signed.
- **Holographic feature:** The holographic feature at the top left is the MOD Badge, made up of the fouled anchor of the Royal Navy, the crossed swords of the Army and the eagle of the RAF, contained within a circle of laurel leaves and the surmounted by the Royal Crown.

You should be aware that military personnel are under instructions not to hand over their ID card to anyone not specifically authorised to receive it, or to allow it to leave their sight.

5.4 Commonly used forms of fake ID

Listed below are some of the more popular types of Fake ID that are known to be used. These are offered by false ID Websites.

National Identification card: Made to look like a driving licence; the flag in the top left differs to that in a driving licence as it contains GB or nothing in the middle rather than UK; some versions of the National Identification have alphabetised and numbered lines as used on a driving licence; "National Identification" appears at the top left instead of "Driving Licence" at the top centre; the top portion of a driving licence has the words "driving licence" written in different languages. The National Identification card has the same patterned surface all round; some come with a small Union Jack under the EU flag which does not feature on the driving licence; some will have the photographs in the wrong place and not include signatures on the front.

International/European Driving Permit: Made to look like a driving licence; International and European Driving Permits do not exist; the European Driving Permit looks almost identical to a driving licence. The only noticeable differences are the writing at the top and the symbol on the back. The steering wheel symbol on a driving licence is replaced with “EDP” surrounded by stars in the European Driving Permit. You can use the security features detailed above to identify fakes. The International Driving Permit has more noticeable differences as follows:

The International Driving Permit features 2 photographs rather than one; International Driving Permit is written at the top left rather than top centre; the top portion of the driving licence has “driving licence” written in different languages; the International Driving Permit card has the same patterned surface all round; the hologram on the front of the International Driving Permit is “IDP” written in a circle rather than a steering wheel; and the International Driving Permit is missing the golden steering wheel on the back.

Provisional Motorcycle Permit: Made to look like a provisional driving licence. The Provisional Motorcycle Permit does not exist. These appear almost identical to the International Driving Permit listed above, differences include the red L on the top left, the colour of the card and the letters in the hologram say MDP.

Other cards offered by false ID websites

International Student Card	Student Offers Card
University Library Card	Student Union Card
Age Card	United Kingdom Entitlement Card
British Students Union Card	United Kingdom Identity Card
European Identity Card	International Age Card
European Works Permit Card	National Registry Card
Freelance Reporter Licence	European Union Travel Card
Proof of Age Card	ID Check Card

5.5 What to do with handed in or confiscated ID documents

It is essential that you understand how to identify genuine and false ID that has been found or confiscated, for example by a supervisor at a nightclub and handed into the police and how to deal with it.

Dealing with fake ID that has been seized: One practice, employed by licensed premises involves the issue of bailment forms. These forms enable various details to be recorded, including information about the venue where the ID was seized and details of the person presenting the ID. The unique feature of this bailment form is a section that is torn off and given to the person who presented the ID. A telephone number is provided for those who wish to contest the action being taken. This number goes through to a single point of contact in the police station where IDs will be held.

What should be done with fake ID: Fake ID should be kept according to evidence policy and destroyed once it is no longer of use. Speak to your trainer or your supervisor to find out local police procedures.

Dealing with genuine ID that has been seized/handed in: Genuine passports and driving licences should be held by your police force for 10 working days. This gives owners of the ID enough time to attend the police station and request the return of their ID before it is sent to the issuing authority.

Driving licences: Since the use of false ID with the intention of entering licensed premises or to purchase alcohol is not a road traffic matter, it is up to your police force if they decide to hold the licence as evidence and prosecute the user or forward it to Driver and Vehicle Licensing Agency (DVLA). If the genuine owner of the ID calls at the station to reclaim their driving licence, enquiries should be made as to how the driving licence came into the possession of a third party. Before returning the licence to the genuine holder they have to be in possession of the paper counterpart licence. Beyond 10 working days unclaimed driving licences should be sent to DVLA Swansea SA99 1AB.

Passports: Passports recovered in the course of your duties or handed in should be returned to the Identity and Passport Service (IPS) with an R01 form. This form is used to report details of passports that have been recovered in circumstances where identity fraud or related crime is known to have taken place, or it has been out of the control of the holder (i.e. lost/mislaid). The passport should be returned to the IPS with the form. However, where the passport must be retained for evidential purposes this should be indicated on the form,

which should then be sent ahead of the passport. The passport can be returned under separate cover at the conclusion of the case.

Any found passports must be sent direct to IPS and not returned to the passport holder. As all found passports must be sent direct to IPS no enquiries should be completed to try to locate the passport holder. For security purposes, prior to returning any passports to the IPS, you should cut off the top right-hand corner of the passport's front cover before posting it. This prevents it from being used again. The R01 form should be available on police computer systems. It is possible that someone may come to the police station after the 10 day deadline. If the passport is still at the police station, it is suggested that the procedures in the paragraph above be followed. If the passport has been sent back to IPS, the passport holder needs to be informed that they need to contact Identity and Passport Service.

PASS approved cards: PASS approved cards should be returned to the card issuer.

Subsequent Action

When someone attends to collect a genuine passport or driving licence, it is important to check their details against those on the bailment form to establish whether they are the person who presented the ID at the licensed premises. After checks, if it appears that they did present their own ID, you should explain the process, including the reasons why the ID was confiscated and explain that they will provide feedback to the party concerned. The genuine ID should be handed back to the person in these circumstances.

If it appears that someone else presented the ID, you should question how the ID came to be used by another person. If the person states that the ID has been used without their consent, you can offer to investigate whether an offence has been committed, with the ID being held as evidence. If the person admits that the ID has been used with their knowledge, it is possible that an offence contrary to the Fraud Act 2006 may have been committed and you should take appropriate action. Returning the ID is at the discretion of the police officer dealing with the situation. However, in the case of a repeat offence, the ID should be returned to the issuing authority.

It is possible that someone may come to the police station after the 10 day deadline. If the passport is still at the police station, it is suggested that the procedures in the paragraph above be followed. If the passport has been sent back to IPS, you can explain the process, and then provide details of the urgent passport application service.

5.6 Offences relating to identity documents

There are offences contrary to the Identity Documents Act 2010 that are not covered by this curriculum that specifically relate to improper use or manufacture of identity documents.

These offences are often involved in cases relating to immigration and refugee issues and if you suspect any of these type of offences may have been committed you should seek advice from a supervisor or force specialist.

Examples of the offences include:

- Possession of false identity documents etc. with improper intention, section 4 of the Identity Documents Act 2010.
- Apparatus designed or adapted for the making of false identity documents etc., section 5 of the Identity Documents Act 2010.
- Possession of false identity documents etc. without reasonable excuse, section 6 of the Identity Documents Act 2010.

These include identity documents that are false, used improperly or that relate to someone else and that are, or intended to be, used to obtain personal information about themselves or another. In these circumstances identity document means immigration documents, passports and driving licences.

5.7 Offences relating to forgery and counterfeiting

There are also offences contrary to the Forgery and Counterfeiting Act 1981 that may link to Fraud 2006 or Identity Document Act 2010 offences reported to you. Cases of forgery sometimes relate to forgery of money (coins or bank notes). You should seek advice from your supervisor if you suspect that offences linked to forged or counterfeit money have been committed.

6. Criminal Damage

There are a range of criminal offences linked to damage of property. In England and Wales a large number of criminal damage offences are reported to the police every day. Many offences of criminal damage never get reported to the police. You will learn what criminal damage is, what powers you have and how you are to use them. The notes below cover the following criminal damage offences:

- Destroying or damaging property – Section 1(1) Criminal Damage Act 1971
- Arson – Section 1(3), Criminal Damage Act 1971
- Racially or religiously aggravated criminal damage – Section 30, Crime and Disorder Act 1998
- Damage endangering another's life – Section 1(2), Criminal Damage Act 1971
- Threats to destroy or damage property – Section 2, Criminal Damage Act 1971
- Custody or control of anything with intent to destroy, damage or endanger life – Section 3, Criminal Damage Act 1971

You will be able to select the appropriate offence following investigation depending upon the specific circumstances in each case. Some of the offences linked to criminal damage are often known as 'preventive measures' as they seek to stop those who make threats to damage property and to outlaw the possession of anything intended to damage property. Preventive measures give specific powers to try to prevent an offence taking place before a potential offender has a chance to cause damage.

6.1 Destroying or damaging property

Destroying or damaging property – Section 1(1) Criminal Damage Act 1971

In England and Wales a large number of criminal damage offences are reported to the police every day however many offences of criminal damage never get reported. This Section 1(1) offence is sometimes known as 'simple' damage to differentiate from the more serious or aggravated forms of offences relating to damage.

The Offence

Section 1(1) Criminal Damage Act 1971 states that:

‘A person who without lawful excuse destroys or damages any property belonging to another:

- intending to destroy or damage any such property, or
- being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.’

Lawful excuse: Damage becomes an offence when committed without lawful excuse. A person is deemed to have lawful excuse if:

- at the time of the damage he believes that he has consent to damage the property, including where the accused honestly, (but wrongly), believes he owns the property, or
- he destroys or damages the property in question in order to protect property he believes is in need of immediate protection. The means used must be reasonable under the circumstances.

Destroyed or damaged? To ‘destroy’ includes breaking up a machine, burning down a building or tearing up a document and would usually amount to the article being beyond repair.

To ‘damage’ property has a much wider meaning. It can mean that the property has been harmed, made less useful, made less valuable, made unworkable, or just defaced such as by graffiti. The damage does not have to be permanent.

Property: Means any property of a tangible nature, real or personal property, including money. In relation to property, ‘real’ means real estate, i.e. land and things forming part of that land.

Exceptions are:

- mushrooms, flowers, or the fruit or foliage of any trees, shrubs or plants which are growing wild
- wild creatures not belonging to anyone and not normally kept in captivity.

Belonging to another: For the purposes of the Act, property is treated as belonging to any person:

- having the custody or control of it
- having in it any proprietary right or interest, or

- having a charge on it

The terms 'proprietary right or interest' and 'legal charge' may extend ownership of the property to include others who may have a legal interest in or a responsibility for that property.

Intending to damage or destroy property: The question you now have to answer is whether there was an intention to destroy or damage the property of another. In this context, 'intentional' means 'deliberately meaning to destroy or damage the property of another.'

For example, a stone thrower intending to damage the property of A throws a stone, but misses and damages the property of B. This is still intentional damage, as they intended to damage the property of another, although it is not the person against whom the damage was originally intended. This is known as 'transferred malice'.

Reckless: The meaning of 'reckless' in respect of criminal damage has been reviewed by the courts on a number of occasions over the years 'Reckless' can be defined as follows:

A person acts recklessly within the meaning of the Criminal Damage Act 1971 with respect to:

- a circumstance where that person is aware of a risk that exists or will exist
- a result when he is aware of a risk that it will occur

In other words, a person cannot be deemed to have acted recklessly by doing something that involved damage to property if they genuinely did not perceive the risk.

In cases of accidental or careless damage that do not amount to recklessness, civil remedies should be considered.

6.2 Arson

Arson Section 1(3), Criminal Damage Act 1971

The Offence

Arson is criminal damage with the points to prove as above but the damage or destruction must be caused by fire.

Due to the potential for extensive damage and danger to life the available maximum penalty for Arson is higher than for the 'simple' Section 1(1) offence.

6.3 Racially or religiously aggravated criminal damage

Racially or religiously aggravated criminal damage Section 30, Crime and Disorder Act 1998

The Offence

A person is guilty of an aggravated offence if they commit an offence under Section 1(1) of the Criminal Damage Act 1971, which is racially or religiously aggravated.

Definition of ‘Racially or Religiously Aggravated’

Section 28 of the Crime and Disorder Act defines an offence as being ‘racially or religiously aggravated’.

An offender may be guilty of this offence if they commit the offence on the victims presumed membership of a racial or religious group; or

Where the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

Racial group: This is defined as ‘a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins’.

Religious group: This means ‘a group or person defined by reference to religious belief or lack of religious belief’.

The aggravated offence has a maximum penalty of 14 years in prison.

Disposal Options: Your actions may vary in cases of criminal damage. For example you may decide to report for summons, arrest and charge or consider out of court disposal options if the damage is not serious or unlikely to be repeated. Minor offences of criminal damage (Section 1 – destroying or damaging property only) where the value of the property damaged or destroyed does not exceed a certain amount may be dealt with by issuing a penalty notice for disorder. You should check your own force policy with regard to this procedure with your tutor and or supervisors.

6.4 Damage endangering another’s life

Damage endangering another’s life – Section 1(2), Criminal Damage Act 1971

The Offence

This offence is committed when:

- a person who without lawful excuse destroys or damages any property whether belonging to himself or another intending to destroy/damage any property or being reckless as to whether any property would be destroyed or damaged, and
- intending by the destruction/damage to endanger the life of another or being reckless as to whether the life of another would thereby be endangered.

Imagine that people are dropping pieces of concrete on to passing vehicles from a motorway bridge, smashing windscreens or causing other damage. Most people would regard this as dangerous but you would need to consider whether the offence of destroying or damaging property, thereby endangering life had been committed.

To decide whether a person has committed this offence, ask yourself these three questions:

- Has some person destroyed or damaged property, without lawful excuse, whether their own or someone else's?
- Did the person either intend the damage/destruction or were they reckless as to the possible damage/destruction?
- Did the person intend the damage to endanger someone else's life or were they reckless as to whether it might endanger life?

Only if the answers to all the above questions are YES can you say that the full offence has been committed.

Lawful excuse: If you compare the offences you will see that all the ingredients of this offence are the same as for the 'simple' damage offence under Section 1, with the exception of the defence of 'lawful excuse'.

There is no lawful excuse however for destroying or damaging property when life may be endangered therefore 'lawful excuse' does not apply to the offence under Section 1(2) of the Criminal Damage Act 1971 of damage endangering another's life.

Intoxication: Self-induced intoxication through alcohol and dangerous drugs is a defence to a charge of a crime requiring specific intent but not to a charge of a crime requiring recklessness. Therefore, if a defendant is alleged to have committed an offence of criminal damage by acting recklessly, it is no defence to claim voluntary intoxication, i.e. drunkenness.

Note that the offence can be complete even if nobody's life is actually put at risk. For example, if someone burns a house down, intending to kill the occupants, the offence is complete even if the occupants are not in the house.

6.5 Threats to destroy or damage property

Threats to destroy or damage property – Section 2, Criminal Damage Act 1971

The Offence

This offence is committed when a person who, without lawful excuse, makes to another a threat intending that the other would fear it would be carried out:

- to destroy or damage any property belonging to that other or a third person or
- to destroy or damage their property in a way which they know is likely to endanger the life of that other or a third person.

During an industrial dispute an employer makes a telephone call to a striker threatening to damage his car. Has the offence been committed?

Ask yourself these questions.

- Has the person threatened someone else that they will damage that person's or any other person's property?
- Did they intend that the threatened person would fear that the threat would be carried out?

If the answer to both questions is YES then the offence is complete.

Intending that the other would fear: The offender must be shown to have the intention to make the other person fear that the threat would be carried out. It does not matter if the other person is not put in fear. It is the offender's intention that is vital, not the effect upon the victim.

Threats: The threat may be oral or written. It may be made to the person whose property is to be damaged, or it may be made to another. In the example, if the offender telephoned the factory and told the operator that a striker's car would be damaged, the offence would be complete.

Own property: The offender's own property could be the subject of the offence but only if the threatened damage or destruction would be likely to endanger another's life. An example

would be if a person threatened to cut the brake pipes on their own car, which was used by someone else.

Lawful excuse: If a threat to life is involved, the offender cannot use the defence of 'lawful excuse'.

6.6 Having articles with intent to destroy, damage or endanger life

Having articles with intent to destroy, damage or endanger life Section 3, Criminal Damage Act 1971

The Offence

An offence is committed by a person who has anything in their custody or under their control intending, without lawful excuse, to use it or cause or permit another to use it to:

- destroy or damage any property belonging to some other person, or
- to destroy or damage their own or the user's property in a way which they know is likely to endanger the life of some other person.

This is a preventive measure, designed to prevent people from using anything to cause damage. The offence has two forms, the first is a 'simple' form, simply possession with intent to damage and the second involves danger to life.

Example:

- You receive information that petrol bombs are being stored in a garage and go to the premises and find them there. You suspect that the person who has custody of them intends to use them during disorder linked to the visit of a politician to the town hall.

To decide whether this is an offence, ask yourself:

- Was the item in their custody or control (anything, anywhere)??
- Did they intend to use it, or allow another to use it, to cause damage to property?
- Did the property belong to another?
- Did they have no lawful excuse?

- If the property belonged to themselves or the user, did they intend to use it, or cause or permit another to use it, in a way in which they knew was likely to endanger the life of another?

If the answer to all of these is YES, the offence is complete.

Anything: Virtually anything could be used to cause damage. Notice there is no need to show it is made or adapted to cause damage. Intention is the crucial part.

Custody or control: These are wider terms than 'possession'. For example, the petrol bombs in the person's garage would be in the person's custody or under their control, even when they worked five miles away, whereas they might not be in their possession.

Intention: Whatever the anything is, and however it is 'in their custody' or 'under their control', the test is, what is the offender's intention? You must prove that the person intended to use it or allow another to use it, to cause damage to property.

6.7 Investigating criminal damage

When attending a report of damage having been caused there you might well face the anger and indignation felt by victims of damage and there is also the existence of danger to yourself and the public. Offences of criminal damage can be committed in a 'simple' form or an 'aggravated' form. If danger to life is intended or likely, then experience will help you to identify many risks but, in the meantime, act with caution for others and yourself.

Finally, you may encounter damage offences that are caused or threatened for a specific reason. The offences described in these notes are serious. They are often committed by people acting for reasons based on strong, personal beliefs of their own. These reasons may include a political cause or a family grievance. They may stem from racial or religious motivation or a concern for animal rights. If you suspect that an offence is inspired by such a cause or motive, the suspicion should be reported. Your force will have a special reporting procedure for racially or religiously motivated offences. Aggravated offences will also attract a higher penalty.

7. Revision Questions

- What is the definition of theft?
- What is the meaning of property within the theft definition?
- How does robbery differ from theft?
- What is the difference between a burglary under section 9(1)(a) and 9(1)(b) of the Theft Act 1968?
- How does the offence of taking a conveyance without consent differ from theft?
- What is the definition of going equipped?
- What type places are defined as an 'abode'?
- What aggravating circumstances are needed to increase an offence from taking a conveyance without consent to aggravated vehicle taking?
- What are the three types of identification numbers on a vehicle?
- Why can electricity not be stolen creating a need for the offence of abstracting electricity?
- What is the definition of handling stolen goods?
- What is the definition of a 'criminal attempt'?
- What type of offences cannot be attempted?
- What is the impossibility rule?
- What are the three basic fraud offences listed under section 1 of the Fraud Act 2006?
- How would you describe the role of action fraud to a victim?
- What are the five different types of false document?
- Following an act of criminal damage to property how would you identify which of the six offences in the notes had been committed?

8. Key Legislation

Key pieces of legislation applicable to this topic are:

- Sections 1 to 6, 8, 9(1)(a), 9(1)(b), 10, 12, 12A, 12(5), 13, 22, 24 and 25 of the Theft Act 1968
- Section 3(1) of the Theft Act 1978
- Sections 1, 2, 3, 4, 6, 7 and 11 of the Fraud Act 2006
- Sections 4, 5 and 6 of the Identity Documents Act 2010
- Sections 1(1), 1(2), 1(3), 2, 3 of the Criminal Damage Act 1971
- Section 30 of the Crime and Disorder Act 1998
- Criminal Attempts Act 1981

9. E-learning

In addition to this book the following e-learning is available via the College of Policing Managed Learning Environment (MLE):

There is an e-learning package titled 'Vehicle crime' available that you may wish to complete after reading these notes. It covers the methods employed by criminals to enter and take vehicles, including the "tools" they use.

There is also a fraud e-learning package.

The MLE is regularly updated with new learning programmes and materials.