

The Police Act with commentary

The Swedish National Police Board

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Foreword

In connection with the Police Act becoming effective on October 1, 1984, the Swedish National Police Board (NPB) published a short commentary to the act. This commentary was very favourably received both inside and outside the police service and was also translated into English. In January 1992 a second edition was published.

This third edition, written by County Police Commissioner Stefan Mann, Norrköping, who also wrote the previous edition, is occasioned by the fairly extensive amendments to the Police Act which came into force on April 1, 1998 and January 1, 1999.

Stockholm November 20, 1999

Sten Heckscher
National Police Commissioner

Introduction

This edition of the NPB commentary to the Police Act is based on the wording of the Police Act as at January 1, 1999.

Additional provisions governing the work of the police are contained in the Police Ordinance (1998:1558), the Ordinance containing Instructions to the National Police Board (1989:773; reprinted 1996:55) and the Police Training Ordinance (1985:751).

Since the publication of the second edition in 1992 several changes have been made to the Police Act, two of which are of a far-reaching nature.

In the autumn of 1991 the government appointed a special commission to carry out a review of the legislation governing the powers of the police (directive 1991:52), and in the spring of 1993 the commission was also instructed to make a review of the provisions in the Code of Procedure relating to certain coercive police measures (directive 1993:33). In its interim report (SOU 1993:60) the commission proposed changes to the Police Act, chiefly with a view to improving the policing of major public events and adapting this legislation to certain commitments that Sweden has made as a signatory to various conventions. The Riksdag subsequently decided that amendments be made to the Police Act, effective as of April 1, 1998.

In the autumn of 1997 the government set up another commission to carry out a review of the direction of the police service and to propose changes to the same (directive 1997:121). The commission proposed a number of changes in its report *The Direction of the Police Service* (1998:74), chiefly regarding the provisions relating to the roles of the county administrative boards and the police boards in the police organisation and to the composition of

police committees. These proposals were adopted by the Riksdag and the amendments became effective on January 1, 1999.

The Police Act first came into force on October 1, 1984 (see SFS 1984:387, bill 1983/84:111, report 1983/84:Ju 27 and government document 331). The Act was based on three reports, viz. The Police Organisation, drawn up by the 1975 Police Commission, The Police Act (SOU 1982:63) by the 1981 Police Commission and Taking Intoxicated and Disorderly Persons into Custody (SOU 1982:64) by a commission set up to review the provisions of the Act on Police Interventions against Intoxicated Persons and the Temporary Custody Act.

The amendments to the Police Act made during the period October 1, 1984 - January 1, 1999 can be summarised as follows:

1. Section 23 was amended on June 1, 1987 as a result of a new and narrower definition of the term 'other member of the armed forces', which term was replaced with 'other person employed by the armed forces'. This change does not affect the application of the provisions of s 23 (see SFS 1986:656, bill 1985/86:9, report 1985/86:JuU 24 and government document 213).
2. Section 19 was amended on July 1, 1987; a second paragraph was added, conferring on police officers the power to search a person and his hand-luggage with a view to looking for certain dangerous articles that may be declared forfeit under Ch 36, s 3 of the Penal Code (see SFS 1987:577, bill 1986/87:115, report 1986/87:JuU 36 and government document 313).
3. Section 23 was amended again on July 1, 1988. The term 'the Coast Guard of the Customs Administration' was replaced with 'the Coast Guard' as a result of

the Coast Guard having become an authority in its own right (see SFS 1988:446, bill 1987/88:142, report 1987/88:FoU 10 and government document 299).

4. Section 5 was amended on July 1, 1989; the fourth paragraph, which empowered the government to issue directives as to the number of staff representatives on the police boards, was revoked. Staff representation is now governed by the provisions in Ch 2, s 3, sixth paragraph of the Police Ordinance, which stipulate that the provisions of the Staff Representation Ordinance (1987:1101) shall be applicable to the police boards.

As a result of this amendment, staff representatives on the police boards no longer have the status of board members, which means that they have no voting rights and may not participate in decisions made at board meetings. However, they have the right to be present at meetings and to take part in discussions (see SFS 1989:128, bill 1988/89:100 (appendix 2, p 9), report 1988/89:AU 14 and government document 126).

5. Section 7 was amended on July 1, 1989. This amendment concerned primarily the National Security Service and consisted in the inclusion of an explicit provision in the second paragraph stating that the government may instruct the NPB to direct police work aimed at detecting and preventing crimes against the safety of the realm. In addition, a provision in the same paragraph stipulating that the government may instruct the NPB to make decisions about police work was revoked (see SFS 1989:445, bill 1988/89:108, report 1988/89:JuU 21 and government document 287).
6. A new s, 5a, was introduced on January 1, 1991 and s 6 was amended. The new provisions, occasioned by the so-called Renewal Bill, gave extended powers to police boards and the county administrative boards.

Thus, s 5a empowers the police boards to set up one or more police committees to direct the police authority under the board in a part or parts of the police district determined by the board, while s 6 was amended in order to stress the importance of co-operation between police authorities in operational, financial, staff and training matters. It was stated explicitly that with a view to promoting efficient and effective policing of the counties, the county administrative boards could also make decisions about police work in their county of a non-regional nature (see SFS 1990:997, bill 1989/90:155, report 1990/91:JuU 1 and government document 1).

7. Sections 12 and 16 were amended on April 30, 1991. These sections contain provisions governing police measures involving young people. The age limit for taking someone into custody under s 12 was raised from 15 to 18, and the amendment of s 16 also gave the police explicit powers to detain for a maximum period of six hours a person under the age of eighteen taken into custody under s 13, second paragraph, with a view to being delivered to an appropriate adult (see SFS 1991:140, bill 1990/91:86, report 1990/91:JuU 19 and government document 179).
8. Section 20 was amended on July 1, 1991. This amendment gave the police extended powers, subject to certain requirements, to search a vehicle with a view to looking for someone who has escaped from a correctional or medical facility (see SFS 1991:665, bill 1990/91:129, report 1990/91:JuU 36 and government document 324).
9. The second paragraph of s 19 was amended on January 1, 1994, following a new definition of the term 'search'. As this term now also included searches of bags etc., the provisions in the second paragraph relating to such articles were revoked (see SFS 1993:1412,

bill 1993/94:24, report 1993/94:JuU 7 and government document 1993/94:67).

10. A new s, 7a, was introduced on July 1, 1994, preceded by a new heading. This amendment was occasioned by changes in the legislation governing state employees.

The provisions in the then Civil Servants Act regarding the transfer of employees in the National Security Service to other posts were moved unchanged to the Police Act (see SFS 1994:264 and 1994:1051, bill 1993/94:65, report 1993/94:AU 16 and JuU 30 and government document 1993/94:257 and 377).

11. Item 5 in the interim provisions preceding the Police Act was revoked on July 1, 1995. This item, which empowered civil defence personnel to use force in a state of emergency, had become outdated as a result of the Wartime Auxiliary Police gradually assuming the police duties of the Civil Defence (see SFS 1994:1734, bill 1994/95:7, report 1994/95:FoU 2 and government document 1994/95:80).

12. Section 5 was amended on January 1, 1997. The provision limiting the number of members of a police board to ten was abolished (see SFS 1996:1437, bill 1996/97:1 expenditure area 4, report 1996/97:JuU 1 and government document 1996/97:96).

13. On April 1, 1998 a number of amendments came into force: new sections were added, others were changed and a few provisions were given new designations.

The provision giving a police officer the right to refrain from reporting an offence, previously found in Ch 5 s 5 of the then Police Ordinance was moved, essentially unchanged, to s 19 of the Police Act.

A new provision was included in s 22 (chiefly with a view to codifying an existing legal practice), empow-

ering a police officer to stop a vehicle or some other means of transport in certain cases, and a new subsection was added to s 10 which gave a police officer the right to use force when stopping a vehicle under the new provision.

A new s, 10a, confers on a police officer the power to restrain a detained person by means of handcuffs. Together with s 15 of the Treatment of Detained Persons Act (1976:371), this section covers all aspects of the use of such restraining devices by the police. Section 10a governs all interventions involving taking a person into custody or otherwise restricting his freedom of movement. Through an addition to the second paragraph of s 29, a public order guard now has the same authority as a police officer to use handcuffs unless otherwise stated in his terms of appointment.

A new s, 13a, empowers a police officer to turn away or remove someone who attempts to enter an area to which access has been prohibited or refuses to leave such an area, or someone who refuses to follow a directed route. Section 24, which was introduced at the same time as s 13a, governs the right of the police to close off or otherwise restrict access to an area or premises in the event of an actual or potential serious disturbance of public order or when public safety is at risk. According to s 24, a police officer may in such circumstances also direct that a crowd follow a particular route.

Section 13b empowers a police officer to turn away or remove people taking part in a public assembly or event, as well as onlookers, where the police authority has decided to call off or disperse the assembly or event in question. Section 13c gives the police the power in specific circumstances to turn away or remove from an area or premises members of a crowd which does not constitute a public assembly or event.

Section 17 states explicitly that a person taken into custody under the Police Act may be placed in a police cell or some other locked room in certain cases.

The provisions of ss 25 and 26 give a police authority the right to request a company transporting goods or people to or from Sweden to provide information about its cargoes, passengers and vehicles.

Sections 27 and 28 require a police officer to make a written record of any measure involving

- a. the turning away, removal, taking into custody or arrest of a person,
- b. a search or some similar measure under the Police Act,
- c. the seizure of articles, or
- d. the use of handcuffs, firearms, tear gas or technical devices for the stopping of a vehicle or some other means of transport.

(See SFS 1998:27, bill 1996/97:175, report 1997/98:JuU 7 and government document 1997/98:138).

14. On January 1, 1999 the provisions in Ch 7 s 14 of the 1984 Police Ordinance regarding the appointment of arrest facility guards and passport control officers were moved to a new section of the Police Act, s 23a. The purpose of this amendment was to remove the prevailing uncertainty as to whether the police actually had the right to appoint arrest facility guards under the current legislation. In the new section it is also stated explicitly that such guards may also be assigned to security duties in premises other than an arrest facility (see SFS 1998:600, bill 1997/98:95, report 1997/98:JuU 19 and government document 1997/98:208).
15. On January 1, 1999 several major amendments were made to the provisions governing the direction of the police service.

It is now laid down in s 4 of the Police Act that each county constitutes a police district. The county administrative board no longer has any responsibility for the policing of the county. As a result, s 6 was abolished and the police boards now have sole responsibility for the direction of the police authorities. Section 5 provides that a police board shall be made up of the county police commissioner and that number of other members determined by the government. Members other than the police commissioner are to be appointed by the government. In addition, it is laid down in s 5a that police committees may be set up under the board to direct the police authority in a part or parts of the police district determined by the board. A police committee is to consist of the county police commissioner or his deputy and that number of other members, at least five and at most ten, decided by the board. The latter are to be appointed by the police board. The board may also decide that the head of a police area shall be a member of a committee (see SFS 1998:1555, bill 1998/99:1, expenditure area 4, report 1998/99:JuU 5 and government document 1998/99:36).

General provisions

Aims of police work

Section 1

The work of the police is one aspect of community involvement in the promotion of justice and security and shall be aimed at maintaining public order and safety, as well as providing protection and assistance for the public.

1.1

The principal duty of the police is to maintain public order and safety. It is moreover explicitly stated that the work of the police is one aspect of society's efforts to provide justice and security for its citizens. In contrast to previous regulations, this section does not describe the provision of assistance to the public as merely a part of the public order duties of the police but as an independent aim.

Police duties

Section 2

It is the duty of the police to

1. prevent crime and other disturbances of public order or safety,
2. maintain public order and safety, prevent disturbances of the same and take action when such disturbances occur,
3. carry out investigations and surveillance in connection with indictable offences,
4. provide the public with protection, information and other kinds of assistance, whenever such assistance is best given by the police, and to

5. perform such duties as are incumbent on the police pursuant to special regulations.

2.1

This section treats of the duties of the police under five subsections. The earlier division into preventive and repressive duties has been replaced by a description based on the various functions of the police designed to accord, broadly, with the operational planning system of the police service. However, as a result of the introduction of results-based management and the development of a performance assessment model for the police service, this division of duties is no longer as important as previously in the planning of police work. It should also be emphasised that overly strict adherence to this division may cause problems in practical day-to-day police work; the boundaries between the various categories of duties are by no means sharply defined, especially now that the police authorities have a free hand to organise their work in the way they find appropriate (see e.g. bill 1989/90:155, p 44 ff). In this, as in other areas, it is important to adopt a holistic view of the work of the police.

The list of duties in this section is not complete; there are duties which are traditionally regarded as police duties but which do not fit neatly into the above categories.

2.2

In a wider perspective one might say that all police duties, or at least the great majority of them, are aimed at crime prevention. However, subsection 1 makes reference to crime prevention in the strict sense of the term, i.e. police initiatives aimed at 'ordinary' people rather than offenders. Examples of such initiatives mentioned in the preliminary work to the Police Act include police schools involvement programmes and other youth activities arranged by the police. Crime prevention talks and the dissemination of information about crime risks and measures that can be taken to reduce these risks, are other elements of this work.

It is explicitly stated in s 2 that in addition to preventing crime it is also the duty of the police to prevent other disturbances of public order and safety.

In the work of preventing such disturbances, as in all kinds of police work, it will of course often be necessary to weigh one interest against another, opposing interest. When making such an assessment a police officer must bear in mind that some disturbances may in fact be generally accepted by the public.

Responsibility for crime prevention in the wider sense of the term lies primarily with bodies outside the law enforcement and judicial sectors, for example educational and labour market agencies. At the national level, the National Crime Prevention Council is responsible for promoting crime prevention initiatives.

It should be noted in this connection that the government has stated in its budget proposals of the past few years that the police should not take on duties incumbent on other agencies but should focus on those duties which their staff are trained to perform.

2.3

Subsections 2 and 3 refer to the public order duties of the police (general public order and traffic duties) and their surveillance/crime intelligence and investigation duties. There is no need for further comments on these subsections.

2.4

Subsection 4 describes the provision of assistance by the police within the compass of what is usually referred to as their service duties. As was pointed out under s 1, the duty of providing the public with various forms of assistance is to be seen as distinct from the duty of maintaining public order and safety.

In order to specify what duties rest with other agencies, such as the social and medical services, it is stated in s 2 that the obligation to provide protection, information

and other kinds of assistance applies to situations ‘where such assistance is best given by the police’. This is to be interpreted as situations in which no other agency is responsible for providing assistance. However, the police must of course always help people in an emergency even though the help provided is normally given by some other agency. An example is where a police officer takes an injured person to hospital even though an ambulance could have been called.

2.5

Subsection 5 refers primarily to the service duties of the police and agrees with the regulations in force prior to the introduction of the Police Act.

Co-operation with other authorities and organisations

Section 3

The police shall co-operate with the public prosecution authorities as well as with other authorities and organisations whose activities concern the work of the police. In particular, it is incumbent on the police to maintain co-operation with the social services and to keep them informed in matters that might call for some measure on their part.

Other authorities shall support the police in their work.

3.1

The first paragraph agrees in all essentials with the regulations in force before the introduction of the Police Act.

It is apparent from the wording of this section that the purpose of providing information about a person to the social services should be to bring about some kind of initiative on their part. Typically, this is done to ensure that someone in need of help and support is given social assistance.

It is essential that the legal rights of the individual be observed in these cases; the information supplied must be based on facts and the recipient must be informed about how it came to the attention of the police so that he can evaluate it (Decision by the Parliamentary Ombudsman of March 15, 1995, nr 3306 and 4166-1992).

In principle, information may be supplied to the social services without the consent of the person concerned. However, since the social services will not normally give assistance to someone who does not want their help, a police authority may sometimes choose not to disclose information about a person if the latter objects to them doing so.

3.2

While this general obligation to supply information to the social services takes precedence over any confidentiality regulations (see Ch 14, s 1, second sentence, and s 3 of the Secrecy Act (1980:100; reprinted 1992:1474)), it is assumed that where the provision of a particular piece of information might counteract the object of a measure decided on by the police or prejudice any future measures, that information may be withheld until such risks no longer exist. An example might be certain kinds of information relating to an ongoing crime investigation.

Special provisions apply to information contained in police and criminal records (see Ch 7, s 17 of the Secrecy Act).

3.3

In the second paragraph it is stated that other authorities shall support the police in their work. This paragraph is to be seen as a recommendation and does not *per se* give the police access to confidential information held by other authorities.

Bodies within the police service

Section 4

Each county constitutes a police district. In each police district there is a police authority responsible for police work in the district. The government or an authority appointed by the government decides whether a police authority is to perform police duties outside its district.

Police officers are state employees attached to a police authority unless the government decides otherwise. The government decides to whom the term ‘police officer’ can be applied. **Act 1998:1555.**

4.1 The first paragraph.

The number of police districts has gradually decreased in recent years. As of January 1, 1999 each county constitutes a police district. Provisions relating to the organisation and duties of a police authority are to be found in Chs 3 and 4 of the Police Ordinance.

4.2

The last sentence of the first paragraph empowers the government to decide that certain kinds of police duties be shared by two or more police authorities, i.e. carried on across county borders. This provision also provides statutory support for the provision in Ch 4, s 9 of the Police Ordinance relating to the authority of a police officer to perform police duties outside his own police district.

4.3

While police officers are normally employed by a police authority, they may also be employed by the National Police Board.

The term ‘police officer’ is defined in Ch 1 s 4 of the Police Ordinance. This definition is applicable to all statutory provisions where this term is used.

Section 5

A police authority is headed by a police board made up of the head of the police authority (the police commissioner) and by that number of other members determined by the government.

The members of a police board, apart from the police commissioner, shall be appointed by the government. For each member a substitute shall also be elected.

Appointed members and substitutes must be Swedish citizens, resident in the police district and eligible to vote in local council elections. They should be chosen in such a way as to ensure that there is some experience of municipal work among them. Furthermore, care should be taken to ensure that the different parts of the police district are represented. **Acts 1989:128, 1996:1437 and 1998:1555.**

5.1 Introduction.

From the introduction of the first Police Act in 1925 until the end of 1998, the county administrative boards had considerable control over the police organisation. As the police were under local government control until the nationalisation in 1965, it was natural that responsibility for co-ordinating matters relating to the police should lie with a regional state authority, i.e. the county administrative board. The boards continued to have this role even after the nationalisation in 1965, as long as there was more than one police district in the county. In 1972, the police boards were set up with a view to strengthening the public's influence on the work of the police, and as the number of county police authorities consisting of one single district continued to grow, the duties of the county administrative boards and the police boards began increasingly to coincide.

As of January 1, 1999 the county administrative boards are no longer in charge of police work in the counties; the police boards are now solely responsible for the direc-

tion of the police authorities. On that date, the National Police Board also took over the supervisory duties of the county administrative boards. This resulted in extensive amendments to s 5 and the following sections, effective as of January 1, 1999.

5.2 First paragraph

Certain important matters must be decided by the police board, but the police commissioner may also choose to refer other matters to the board for decision. However, under Ch 3 s 2, second paragraph, of the Police Ordinance a local police board may not decide in matters relating to 'the direction of police work in certain cases'. This term refers to the command of a police unit during an operation and generally to any situation where an order or assignment involves a specific police officer or group of police officers.

The number of board members is not specified in the Police Act. Due to differences between the police districts, e.g. in size, the number of members may vary depending on the needs of the district. However, it is laid down in Ch 2 s 1 of the Police Ordinance that a police board may have no more than fourteen members.

5.3 Second paragraph

As the members of a police board represent and are responsible for a service under government control, it was thought essential that they should be appointed by the government instead of by a municipal body as previously. The composition of a police board should so far as possible reflect the relative strengths of the political parties in the police district as established in the most recent general elections. However, the government may also appoint people with a special interest in police work or with competencies that may be useful to the police authority.

Under Ch 2 s 1 of the Police Ordinance, the government appoints the chair and vice chair of a police board among the appointed members.

5.4 Third paragraph

A member of a police board must be a Swedish citizen who is residing in the police district and is eligible to vote in the local council elections. Chapter 2 s 4 of the Police Ordinance provides that a member or substitute who no longer meets these requirements must leave the board immediately.

5.5

Further provisions concerning the organisation and duties of a police board are to be found in Ch 2 ss 1 to 9 and Ch 3 ss 1 to 4 of the Police Ordinance.

Section 5a

One or more police committees may be set up by the police board to direct the police authority under the board in a part or parts of the police district determined by the board.

A police committee shall consist of the police commissioner and of that number of other members, at least five and at the most ten, determined by the police board. Members are appointed by the police board. The police commissioner may decide that the head of a police area shall also be a member of a committee. For each member appointed by the police board a substitute shall also be elected.

The first and the second sentences of the third paragraph of s 5 shall be applicable to the members and substitutes appointed by the board. **Act 1990:997 and 1998:1555.**

5a.1 Introduction

The option of setting up police committees in a police district was introduced in 1991 through the so-called Renewal Bill (bill 1989/90:155). The purpose was to give the citizens greater influence over local police work and to stimulate their interest in police matters at the local level.

According to the preparatory work this option was chiefly intended for police authorities in metropolitan areas and authorities whose district comprises more than one municipality or covers a particularly large area.

This provision remains unchanged but it is clear from the preparatory work for the 1998 legislation that this option should be reserved for major police authorities.

5a.2 First paragraph

A further requirement for the setting up of police committees is that the police district is divided into police areas and that the committees are vested with the right to make decisions.

Additional provisions regarding the duties of a police committee are contained in Ch 3 s 5 of the Police Ordinance. Like a police board, a police committee may not decide in matters relating to the direction of police work in special cases (see 5.2 above).

5a.3 Second and third paragraphs

The members of a police committee and their substitutes must be Swedish citizens residing in the police district. In addition, they must be eligible to vote in the local council elections. According to Ch 2 s 4 of the Police Ordinance, a member or substitute who no longer meets these requirements must leave the committee immediately.

It is laid down in Ch 2 s 3 of the Police Ordinance that the appointed members are to appoint a chair and a vice chair among themselves.

5a.4

Further provisions regarding the organisation and duties of a police committee are to be found in Ch 2 ss 2-9 and Ch 3 s 5 of the Police Ordinance.

Section 6

(Revoked through Act 1998:1555)

Section 7

The National Police Board is the central administrative authority of the police service and has supervisory powers over the same. The Board shall strive to achieve systematic planning, co-ordination and rationalisation within the police service.

The Government may entrust the Board with the task of directing police work aimed at preventing and detecting crimes against the safety of the realm. The Government may also instruct the Board to direct other kinds of police work in special respects. Where the Board directs police work any statutory provisions relating to police authorities shall, where relevant, also apply to the Board. **Act 1989:445.**

7.1 First paragraph

As was mentioned under 5.1 above, the National Police Board was given sole responsibility for the supervision of the police service on January 1, 1999.

The NPB performs the other duties incumbent on it under the first paragraph of s 7 by issuing general guidelines and instructions to the police authorities. However, the powers of the NPB in this respect are quite limited. The areas in which the board may issue instructions are specified in ss 13 – 13d of the Ordinance Containing Instructions to the National Police Board. In addition, there are other statutory provisions giving the NPB such powers.

7.2 Second paragraph

The National Security Service is a unit of the NPB responsible for detecting and preventing crimes against the safety of the realm. Certain other duties incumbent on the National Security Service are specified in ss 4 - 4b of the Ordinance containing Instructions to the National Police Board.

The other cases where the NPB is responsible for the direction of police work are given in s 6 of the Ordinance

Containing Instructions to the National Police Board. As laid down in the second sentence of this paragraph the Government may also instruct the NPB to direct police work in a specific case.

According to s 9 of the Ordinance containing Instructions to the National Police Board, the NPB, even in a case where it is not directing police work, has an obligation, subject to availability of resources, to second personnel to a police authority to assist in an ongoing surveillance operation or crime investigation at the request of that authority.

Transfer of staff

Section 7a

An employee of the National Police Board assigned to police work aimed at preventing and detecting crimes against the safety of the realm may be transferred to another government service post. Specific provisions for such a transfer are issued by the Government. If the employee is a police officer he may only be transferred to another police officer post.

A transfer of the kind referred to in the first paragraph to an authority in another field of activity may only be made if the duties are similar or if the employee is suitably qualified for the post.

In cases or matters involving transfers, s 36, second paragraph, and ss 37 and 39 of the Civil Servants Act (1994:260) shall be applicable. **Acts 1994:265 and 1994:1051.**

7a.1

According to s 7a, someone who is employed by the National Security Service must in certain circumstances resign from his post and take up other employment in the government service when this is necessary in view of the activities of the National Security Service. Specific provisions for such transfers are issued by the government and are confidential.

This section, which was added to the Civil Servants Act in 1989, was moved to the Police Act in 1994.

Further provisions relating to compulsory transfers under s 7a are to be found in ss 31a and 31b of the Ordinance containing Instructions to the National Police Board.

General principles of police intervention

Section 8

A police officer exercising an official duty shall, with due observance of the provisions of acts and other statutory instruments, intervene in a way that is justifiable in view of the object of the intervention and other circumstances. If he has to use force, the form and level of force used shall be limited to that required to achieve the intended result.

An intervention that limits one of the basic freedoms and rights of Chapter 2 of the Instrument of Government must not be founded solely on the provisions of the first paragraph.

8.1

This section comprises some general principles for police intervention. Together with the general regulations concerning police work given in s 1, this section is to be seen as a general authorisation for the police to take any measure justifiable in the exercise of their law enforcement duties, provided that it does not limit one of the constitutional rights or contravene any other act or ordinance.

8.2 *The principles of legality, necessity and proportionality*

Section 8 treats of certain basic principles that apply to the work of the police. It follows from the principle of legality that a police intervention must be made within the framework of the law. According to the principle of necessity, an intervention must only be made when it is necessary for the prevention or elimination of a danger or disturbance, while according to the principle of proportionality the damage and inconvenience that may be caused to an opposing interest must not be disproportionate to the purpose of the intervention.

The first sentence of the first paragraph of s 8 reflects the principles of legality and proportionality, which apply to

all forms of coercive measures taken by the police. In consideration of the responsibility to protect the public vested in the police, this provision has been given a positive wording: the police are empowered and obliged to intervene in a way which, with regard to the circumstances, is justifiable to carry out an official duty. The principle of proportionality is reflected in the second sentence of the paragraph.

It should be noted that the phrase ‘shall ... intervene’ in this section is not to be interpreted as implying that a police officer must intervene with some form of coercive measure where correct application of the principles of necessity and proportionality indicates that he should wait and see if the situation can be resolved without his resorting to coercive measures.

8.3 Certain other principles

The principle of purpose, which also applies to all forms of coercive measures, means that a coercive measure may only be taken for a purpose stated in law and that whenever such a measure is taken, the purpose must be that originally decided on in the specific case (see e.g. JO 1990/91 p 63 ff).

The principle of consideration is particularly applicable to interventions involving children (see JO 1996/97 p 86 ff). The UN Convention on the Rights of the Child, which Sweden has signed, is of central importance in this connection (see 8.7 below). Section 17 of the Police Investigations Ordinance (1947:948) provides that an interview with someone who is under eighteen years of age must be planned and performed in such a way as to ensure that the interview does not cause any harm to the person in question and that every effort must be made to avoid attention in connection with the interview. As for the crime investigation duties of the police, the principle of consideration is reflected in Ch 23 s 4, first paragraph, second sentence, which states that a crime investigation is to be carried out so that no person is unnecessarily exposed to suspicion or

put to unnecessary expense or inconvenience. This principle is also manifested in the first sentence of s 17 of the Police Act.

With reference to the principle of consideration, the Parliamentary Ombudsman has stated that uniformed police officers should not be used for the serving of a summons, the provision of certain forms of assistance to other authorities or for coercive measures involving juveniles at school (see references on p 86 ff of JO 1996/97).

8.4 Police interventions must be made within the framework of the law

It is stated explicitly in s 8 that an official duty shall be performed ‘with due observance of the provisions of acts and other statutory instruments’. This means that if there are special provisions for certain kinds of police intervention a police officer is of course required to abide by these provisions. This section also aims to stress that a police officer may not stretch the principle of proportionality to the extent that he breaks the law in order to carry out an official duty, e.g. during a surveillance operation. This does not apply to situations where the self-defence provisions of the Penal Code are applicable, or where it is explicitly stated in the pertaining legislation that exceptions may be made to what is otherwise prescribed, for example in the provisions relating to drivers of emergency vehicles.

Certain so-called special surveillance methods are discussed in the bill proposing the Police Act (bill 1983/84:111 p 44 ff) and in a report by the Police Commission (SOU 1982:63) entitled *The Police Act* (p 138 ff). In addition, the National Police Board KRIPUT reports deal with controlled deliveries of drugs (RPS-rapport 1994:3), re-purchases of stolen goods and tip-off money (RPS-rapport 1994:9), and technological surveillance methods, e.g. the use of concealed body wires or tracking devices (RPS-rapport 1996:4). Moreover, in

recent years the Attorney-General has examined the legality of using controlled deliveries in drugs surveillance operations (JK 1988 p 92 ff), as well as the use of undercover officers (JK 1989 p 61 ff) and disinformation (JK 1994 p 89 ff).

The use of concealed cameras for surveillance purposes is governed by the provisions of the Act on Concealed Surveillance Cameras (1995:1506), and provisions concerning wire-tapping and call monitoring can be found e.g. in Ch 27 ss 18 and 19 of the Code of Procedure. The use of other concealed listening devices (so-called ‘bugging’) is discussed in a government bill (1988/89:124, Certain Aspects of the Use of Coercive Measures, p 55 ff), in a report by the National Security Service Commission entitled Security Service Work Methods (SOU 1990:51 p 154 ff) and in a report called On Bugging and Other Concealed Coercive Measures (SOU 1998:46) by the Bugging Commission.

8.5 Coercive measures and the basic freedoms and rights

An important principle is laid down in the second paragraph: a police officer must have explicit statutory support for an intervention limiting one of the basic freedoms and rights listed in Chapter 2 of the Instrument of Government.

The implications of this principle deserve some further comments.

Chapter 2 s 1 of the Instrument of Government provides that all citizens, vis-a-vis the state, are guaranteed

1. *freedom of expression*; the right to pass on information and express ideas, opinions and feelings, whether orally, in writing, in pictorial representations or otherwise,
2. *freedom of information*; the right to obtain and receive information and otherwise acquaint themselves with the utterances of others,

3. *freedom of assembly*; the right to organise or attend any meeting for the dissemination of information, expression of opinions or other similar purposes or for presenting artistic work,
4. *freedom of demonstration*; the right to organise and take part in demonstrations in public places,
5. *freedom of association*; the right to form associations for public or private purposes, and
6. *freedom of religion*; the right to practise one's religion, alone or together with others.

Chapter 2 of the Instrument of Government also contains other freedoms and rights, some of which may have a bearing on the work of the police:

- A citizen may not be compelled to make known to the authorities his or her political, religious or other beliefs (s 2).
- Information about a citizen may not be entered into a public index solely on the basis of his or her political views unless he or she consents to such an entry being made (s 3).
- Every citizen is protected from corporal punishment and the extortion or prevention of statements by medical means (s 5).
- Every citizen is protected vis-a-vis the state from any forced physical intrusion also in other cases. Furthermore a citizen must not be subjected to a search, a search of premises and similar intrusions, or to examinations of letters or other confidential messages, or the clandestine listening to or recording of telephone conversations or other private messages (s 6).

- No citizen may be expatriated or prevented from entering the realm (s 7).
- Every citizen is protected vis-a-vis the community as regards deprivation of liberty and also otherwise ensured the right to travel in and leave the realm (s 8).

Most of these freedoms and rights can be limited by law (Ch 2 s 12) and this has been done to a great extent. It should also be noted that most of these freedoms and rights also apply to foreigners in the realm (Ch 2 s 20).

Through the second paragraph of s 8 of the Police Act the legislators have stressed that any intervention involving one of the basic freedoms and rights must not be made solely on the grounds that a police officer considers the intervention justifiable in view of its purpose and other circumstances: he or she must be able to invoke the explicit power of an act.

The protection against deprivation of liberty is limited e.g. by the provisions relating to temporary custody in ss 11 - 18 of the Police Act, by the Act on Police Interventions against Intoxicated Persons (1976:511, reprinted 1984:391) and by the provisions concerning arrests in the Code of Procedure. A police officer who is contemplating an arrest under one of these acts is required by s 8 of the Police Act to ask himself whether the measure is justifiable in view of its purpose and other circumstances, and whether the measure is the most lenient and limited form of force needed to achieve the intended result.

What has been said above does not apply to the same extent where a police officer has been assigned to implement a decision made by another body, e.g. a decision by a court of law that a person be detained pending trial. In such a case the decision to deprive the relevant person of liberty has already been made. However, the principles of necessity and proportionality may have an influence on the way in which the decision is implemented.

8.6 The European Convention on Human Rights

The European Convention of November 4, 1950 on Human Rights and Basic Freedoms has had the status of an act in Sweden since January 1, 1995 (SFS 1994:1219). Of particular interest in this connection are Articles 5:1 and 5:2, and Article 2 in the Fourth Protocol:

Article 5:1

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a

person against whom action is being taken with a view to deportation or extradition.

Article 5:2

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Article 2 – Fourth Protocol

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

In summary, Article 5:1 of the Convention and Article 2 of the Fourth Protocol provide that a deprivation of liberty and certain other limitations of a person's freedom of movement may only be effected in the circumstances specified in these articles and that any such measures taken in our country must be based on Swedish law. Amendments have been made aimed at harmonising the provisions of the Code of Procedure (April 1, 1998), the Police Act, the Young Offenders Act (1964:167; reprinted 1994:1760), the Act on Police Interventions against Intoxi-

cated Persons (1976:511) and other acts with the convention, and it is generally held by the Swedish legal community that our legislation governing the work of the police now accords with the commitments Sweden has made in signing this convention. However, a legally binding assessment of this can only be made on a case-to-case basis by the European Court or the Committee of Ministers of the European Council.

Another question in this connection is whether a certain kind of intervention, for which there are no provisions in the Swedish police legislation, may constitute a violation of the European Convention on Human Rights and consequently Swedish law. This question is of importance in the day-to-day work of the police and ultimately it concerns the extent to which a police officer intending to make an intervention must have direct statutory support for that intervention. As can be seen, the assessment that has to be made here is basically the same as that required to determine whether an intervention constitutes a limitation of one of the basic freedoms and rights in Ch 2 of the Instrument of Government and therefore must have direct statutory support (see 8.5 above).

It is not possible to make a complete inventory of all police interventions for which direct statutory support is required. However, deprivations of liberty definitely belong to this category, as do interventions which, while not regarded as a deprivation of liberty, nevertheless limit a person's freedom of movement (cf. Article 2:1 in the Fourth Protocol to the European Convention on Human Rights). It can be difficult to distinguish the latter category from interventions which are not so intrusive as to require direct statutory support. When in doubt, a police officer should submit the matter to a senior officer for decision (see also 10a4 below).

Finally, it might be mentioned that the European Convention on Human Rights is supplemented by the European

Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of November 26, 1987. A special committee has been set up to monitor the application of the latter convention. The committee is to examine how people deprived of liberty are treated and is empowered to visit all facilities where such people are kept. Further provisions concerning the work of the committee can be found in the Act on Sweden's Signing of the European Convention for the Prevention of Torture etc. (1988:659).

8.7 The UN Convention on the Rights of the Child

On November 20, 1989 the UN adopted a convention on the rights of the child. Sweden is one of the signatories to this convention. It is stated in the convention that the best interests of the child shall be a primary consideration (Article 3.1) and that a child may be deprived of liberty only as a last resort (Article 37). A 'child' is defined in this convention as anyone who is under eighteen years of age.

8.8 Warnings and directions given by a police officer

Interventions that do **not** limit one of the basic freedoms and rights and which are not covered by any legal provisions, for example various kinds of warnings, may be based on s 8 of the Police Act.

A warning which, unless heeded, may result in some form of coercive measure is not considered to require explicit statutory support. In the nature of things, a police officer may issue a warning in a situation where he has the authority to take a more intrusive measure. One example is when a police officer, before deciding to remove under s 13 of the Police Act a person who is disturbing the peace, warns that person to stop his behaviour and leave the place. This warning is then based on the police officer's authority to remove the person from the place under s 13 of the Police Act. After a police officer has decided to make an intervention which limits one of the basic freedoms and rights, he

may issue any direction required for the implementation of this decision. For example, he may direct the owner of a flat he is to search to open the door voluntarily. In such a case, the right to issue this direction follows from his authority to perform the search (see also 10.14 below).

Obligation to report an offence

Section 9

Where a police officer learns of an indictable offence, he shall inform a senior officer thereof as soon as practicable.

A police officer may refrain from reporting an offence if, in view of the circumstances in the specific case, it is of a petty nature and it is obvious that no other sanction than a fine would be imposed on the offender should he be charged with it. **Act 1998:27.**

9.1

According to s 13d subsection 3 of the Ordinance Containing Instructions to the National Police Board (1989:773, reprinted 1996:55), the NPB may issue further directives concerning an officer's right to refrain from reporting an offence. Such regulations can be found in RPS FS 1990:3, FAP 101-2.

9.2

This section corresponds to the provisions in force before the introduction of the Police Act. The principal rule is that a police officer must inform a senior officer when he learns of an indictable offence. This applies to all police officers. When a group of police officers are performing a task together, the officer in command of the group is considered to be responsible for reporting any indictable offences detected (see JO 1992/93 p 102 ff).

The provisions governing a police officer's right to refrain from reporting an offence were previously contained in the Police Ordinance but were moved to the Police Act on April 1, 1998. The purview of the provisions remains the same as before.

Certain powers vested in police officers

Use of force

Section 10

A police officer may, if other means are inadequate and if it is justifiable in view of the circumstances, use force to carry out an official duty, if

1. he encounters force or threat of force,
2. a person who is to be detained pending trial or investigation or who is otherwise, with statutory support, to be deprived of liberty, attempts to escape or the officer otherwise encounters resistance when he is to effect such a measure,
3. it is a question of averting a punishable act or a threat to life, health or valuable property or a risk of extensive damage to the environment,
4. he, with statutory support, is to turn away or remove a person from an area or premises or conduct or assist in the search of a person, a bodily examination or some other similar measure, a seizure or some other impoundment of property or a search of premises as defined in the Code of Procedure,
5. he, with statutory support, is to stop a vehicle or some other means of transport,
6. he otherwise with statutory support is to gain entry to, cordon off, shut off or evacuate a building, a room or an area, assist someone who is performing an official duty with such a measure or some similar measure, or in connection with a foreclosure in accordance with what is prescribed thereof, or if

7. the measure otherwise is indispensable for the maintenance of public order and safety and it is evident that it cannot be implemented without the use of force.

In cases of the kind referred to in the first paragraph, subsections 4 and 6, force may only be used against a person if the police officer or the person he is assisting encounters resistance.

Chapter 24 of the Penal Code contains further provisions governing the use force in certain cases. **Act 1998:27.**

10.1

This section deals with the right of a police officer to use force. Force may, as is pointed out in the reference in the third paragraph, also be used under the provisions in Ch 24 of the Penal Code, primarily those concerning self-defence (s 1), use of force against someone who is unlawfully at large (s 2) and acting out of necessity (s 4). The use of force in situations not covered by these provisions is not allowed.

10.2 First paragraph, preamble.

This section deals with the use of force both against a person and against property.

‘Force against a person’ is a rather wide concept which includes not only acts punishable as assault under the Penal Code; someone who is pulling, pushing or holding another person is also using force, as is someone who lifts up and carries a person to another place against that person’s will, even if that person is completely passive.

However, ‘force’ always implies a forcible physical attack. Accordingly, a police officer who lifts up and removes for treatment someone who due to illness or intoxication is unable to take care of himself and who remains passive, is not using force.

The term '**force against property**' does not of course include any physical handling of an article. In principle, it refers to an act designed to cause damage or which is otherwise carried out using violent means. Consequently, a police officer who moves a bicycle which is obstructing the traffic cannot be said to be using force.

10.3

The primary prerequisite for the use of force by a police officer is that it must be required to achieve the object of the duty he is to perform. Otherwise, the use of force is of course not allowed.

In this section, the principles of proportionality and necessity (see s 8) have been given special emphasis as they are of particular importance in situations where force may be used.

According to **the principle of necessity**, a police officer may only use force when necessary. This means that he must believe that other means of carrying out the duty are inadequate and that the use of force will lead to the intended result.

In this section, the principle of proportionality is referred to where it is stated that force must only be used where it is justifiable in view of the circumstances. This means that force must not be used at all if the duty in question is not so important as to justify physical constraint or damage to property. In addition, when force is used, it must remain within reasonable limits in view of what can be achieved thereby.

Furthermore, in a situation where force may be used, the principles of necessity and proportionality are important in deciding the level and kind of force that is permissible. The following points can be made. Forced administration of e.g. psycho drugs or other drugs to subdue a person is not permitted under the Police Act. Generally speaking,

any unnecessary use of force is to be avoided. For example, painful holds or blows must not be resorted to where it would suffice to remove or push aside a person refusing the police entry to premises where a search is to be conducted.

Blows aimed at delicate parts of the body should as rule be regarded as forbidden as of course are kicks, seizing someone by the hair or the throat etc. However, the form of force that is justifiable can only be determined on the basis of the particular circumstances of each case.

10.4

Inevitably, a police officer sometimes has to use special equipment such as firearms or tear gas in situations where force against a person must be resorted to. Such equipment, however, should only be used in exceptional circumstances.

As to firearms the government has issued special regulations in the Ordinance on the Use of Firearms by the Police (1969:84; reprinted 1984:732). Moreover, the NPB has issued instructions and guidelines for the use of tear gas (FAP 104-3). For technical devices for the stopping of vehicles, see 10.9 below. The use of handcuffs is commented on under s 10a below.

10.5

Subsection 1 provides that force, in so far as it is justifiable, may be used to carry out an official duty where a police officer encounters force or threat of force. There is no requirement that the duty must be of a particular type; if someone attacks a police officer, he has the right to defend himself under the provisions concerning self-defence (Ch 24 s 1 of the Penal Code, see also 10.13 below).

10.6

Subsection 2 governs the use of force when someone is to be lawfully deprived of liberty. A condition for the use

of force in such a case is that the relevant person tries to escape or that the police officer otherwise encounters resistance in effecting the measure. Should such a person offer resistance by force, the police officer may of course use force under subsection 1.

The term 'resistance' in subsection 2 also comprises so-called passive resistance, e.g. when a person who is to be taken into custody holds on to something, or simply by using the weight of his body makes it impossible for the police officer to effect the measure. A person who refuses to move or to sit down on a bench in a police station is also considered to offer passive resistance (cf. NJA 1971 p 245).

A police officer is not considered to have encountered resistance unless the resistance is somehow manifest, and consequently the use of force to prevent anticipated resistance is not allowed (Decision by the Parliamentary Ombudsman of February 13, 1998, 3505-1996).

The authority to use force applies not only to cases where resistance is offered by a person who is to be deprived of liberty but extends to cases where a third party prevents such a measure.

As laid down in s 29, first paragraph, subsection 2, this subsection is also applicable to cases where someone who is not a police officer performs a citizen's arrest under Ch 24 s 7 of the Code of Procedure.

10.7

Subsection 3 confers on a police officer the authority to use force when taking a measure aimed at averting a punishable act or a threat to life, health or valuable property, or a risk of extensive damage to the environment. The implication is that the act, threat or risk is actual or imminent.

In some of the cases referred to under this subsection, a police officer may also use force under the provisions concerning self-defence in Ch 24 s 1 of the Penal Code.

A typical situation where a police officer has the right to use force is when he is to avert an actual or imminent criminal attack on a person, e.g. in a street fight. In such a case, a police officer may intervene directly, regardless of whether the person offers resistance or not. Another example of lawful use of force in the face of an imminent criminal act is where a police officer prevents a drink-drive offence by stopping an intoxicated person from driving off in a car.

As was mentioned above, the force used must be justifiable in view of the circumstances (the principle of proportionality). Thus, this subsection is applicable primarily to offences consisting in some kind of action, chiefly aggravated offences. However, offences consisting in criminal neglect may also occasionally justify physical constraint. A case in point is where a person unlawfully remains in ‘an office, a factory, other building or vessel, or at a storage area or other similar place’ (Ch 4 s 6, second paragraph, of the Penal Code; unlawful intrusion). While this offence might be said to consist in not complying with a direction to leave the premises or area, there can be no doubt that a police officer may use force in such a case as a last resort.

However, this subsection is not intended to empower a police officer to use direct force to interrupt a business which is carried on without a licence, even if this is a punishable offence.

An example might be where a restaurant is serving alcoholic beverages without being licensed to do so. Nor does it give a police officer the right to implement an administrative decision by means of force, even though non-compliance with the decision may be punishable by law.

Moreover, proper application of the principle of proportionality will also probably mean that in most situations referred to in this subsection the use of force is not permissible unless the subject of the measure offers resistance.

Where it is a matter of averting a threat to life, health or valuable property or a risk of extensive damage to the environment, i.e. in emergency situations, application of the principle of proportionality will probably mean that force may only be used where the danger concerns a person, for example where a police officer tries to prevent someone from being hurt in an explosion or where he restrains someone who is about to commit suicide.

10.8

Subsection 4 empowers a police officer to use force when taking certain coercive measures (turning away or removing a person, a search of a person, a bodily examination or some other similar measure, a seizure or some other impoundment of property or a search of premises under the Code of Procedure). It appears from the second paragraph that a police officer may use force in these situations only if he, or a person that he is assisting, encounters resistance.

The terms used here are usually defined in other acts, primarily the Instrument of Government and the Code of Procedure. Comments on the term 'removal' can be found under s 13 below. The phrase 'some other similar measure' refers e.g. to procedures under Ch 28 s 14 in the Code of Procedure, i.e. the taking of photographs (cf. JK 1991 p 65 ff) or fingerprints, or the taking of a sample of blood under the Act on Blood Tests etc. in Paternity Investigations (1958:642; reprinted 1982:1060).

10.9

Subsection 5 confers on a police officer the power to use force when he is to lawfully stop a vehicle or some other means of transport. Provisions governing the actual

stopping of a vehicle are to be found in s 22. Decisions about the level of force and technical devices that may be used must be made on the basis of the particular circumstances in each case and with due regard to the principle of proportionality.

Section 13d, subsection 4, of the Ordinance containing Instructions to the National Police Board, empowers the NPB to issue further directives as to what technical devices may be used to stop a vehicle under s 10, first paragraph, subsection 5 of the Police Act. Such directives can be found in General Instructions and Guidelines regarding the Use of Technical Devices for the Stopping of Vehicles (RPS FS 1998:1, FAP 104-1).

10.10

Subsection 6 deals with coercive measures different in kind to those mentioned in subsection 4. The first part refers to cases where a statutory provision other than those of the Code of Procedure empowers a police officer to enter a building, a room or an area for the purpose of carrying out an inspection etc. Examples of such provisions are ss 20, 21 and 23 of the Police Act and the Act on Trade in Scrap Metal and Second-Hand Goods (1981:2). This subsection also applies to situations where the police are to cordon off, close off or evacuate a building, a room or an area (cf. e.g. s 23 of the Police Act and Ch 27 s 15 of the Code of Procedure).

Subsection 6 in addition refers to cases where a police officer is required by law to assist someone in the exercise of an official duty by taking such a measure or some similar measure. An example is provision of assistance under s 72 of the Road Act (1971:948; reprinted 1987:459) or s 26 of the Food Act (1971:511; reprinted 1989:461). The phrase ‘some similar measure’ can refer, for example, to the cutting down of a tree that is blocking the view of motorists under s 53 of the Road Act.

Finally, subsection 6 refers to cases where a police officer provides assistance in foreclosures in accordance with the procedures prescribed therefore (see Ch 3 s 3 of the Debt Recovery Ordinance (1981:981)). The authority to use force in such a case is limited by the provisions of Ch 2 s 17, second and third paragraphs, of the Code of Debt Recovery Procedure, where it is laid down that force against a person may only be used if the executive officer encounters resistance, and only in so far as it can be regarded as justifiable in view of the purpose of the duty.

Like subsection 4, this subsection is limited in its extent by the second paragraph, which provides that the use of force against a person is conditional upon the police officer or the person he is assisting encountering resistance. For example, where an enforcement officer who is being assisted by a police officer encounters resistance when carrying out a measure, e.g. a distraint, the police officer may, provided that all other conditions are satisfied, use force to protect the enforcement officer so that he can carry out the measure.

10.11

In addition to the typical cases specified in subsections 1-6, force may be used in exceptional circumstances under the provisions in **subsection 7**. A condition is that it is indispensable for the maintenance of public order and safety. It must also be evident that the measure cannot be implemented without force.

In the preparatory work for the Police Act there is mention in this connection of the interest in maintaining reliable public communications, i.e. securing the safe use of roads, ports, airports and similar facilities. Another case mentioned is the protection of people's safety, e.g. during a state visit or a public meeting.

It should be added that the term 'public order and safety' essentially covers all kinds of police work, except the

provision of assistance to the public, to officials of other authorities executing an official duty and in certain other cases defined in special legislation.

Finally it should be noted that neither this subsection nor any of the others in s 10 provide statutory support for an intervention that limits a right guaranteed in the Instrument of Government, except the right of protection against forcible bodily intrusions. For instance, by itself, it does not provide support for a search of premises.

10.12

The provision in the second paragraph is important in the interpretation of the first paragraph, subsections 4 and 6. The meaning of the term 'encounter resistance' was explained in the commentary to the first paragraph, subsection 2. Thus, passive resistance is also covered by this provision. As to the kind of resistance required for the use of force under this subsection, the Parliamentary Ombudsman, with reference to a case where a person rushed out of his house in connection with a foreclosure and then flailed his arms with a view to breaking loose when stopped by police officers, stated that this person did not offer the kind of resistance referred to in this paragraph (JO 1994/95 p 86ff).

A person who is to be subjected to a search or a bodily examination may be offering passive resistance even by refusing to co-operate in the manner required for the measure to be effected. However, his refusal must have been manifested in some way (see 10.6 above). In practice, this means that a suspect must be given an opportunity to abide by the directions of a police officer and that force may only be used when it is evident that he will not co-operate.

10.13

The third paragraph calls attention to the fact that there are additional provisions regarding the use of force in Ch 24 of the Penal Code. The provisions referred to con-

cern the right to use force in self-defence (Ch 24 s 1) against a person who is unlawfully at large (Ch 24 s 2) or when acting out of necessity (Ch 24 s 4). Also of importance in this connection is the provision in Ch 24 s 6 which deals with certain instances involving the use of greater force than permissible in self-defence.

A person acts in self-defence if he attempts to avert an actual or imminent criminal attack on person or property. The right to act in self-defence also exists in other cases, for example where an offender caught in the act is obstructing the recapture of stolen property or where someone is preventing a person from unlawfully entering a room or a house. A person who uses force in self-defence shall not be punished unless the act, in view of the nature of the aggression and the importance of its object, was obviously unjustifiable.

The provisions regarding self-defence and acting out of necessity in Ch 24 of the Penal Code apply to all citizens and consequently also to police officers. The right to use force in self-defence is somewhat more far-reaching than the right to use force under the Police Act, which prescribes that a police officer may only use force in so far as it is justifiable. Consequently, if a police officer uses greater force than is justifiable under the Police Act, this may still be lawful under the provisions relating to self-defence, provided that it is not 'obviously unjustifiable'. However, since greater demands are made on police officers than on other people, the different 'tolerance levels' of these two provisions should not be overly stressed.

Under Ch 24 s 2 of the Penal Code force may also be used when someone who is serving a prison sentence or is otherwise deprived of liberty escapes. The same applies where such a person, by force, threat of force or otherwise, offers resistance to someone who has him in charge and is to subject him to a measure aimed at avoiding a threat to order or safety. In these cases, such force as is reasonable

in view of the circumstances may be used to prevent the escape or maintain order. The same applies if resistance is offered by a third party in such a case.

10.14

As was mentioned in 8.8 above, a police officer has the right to issue such directions as are required for the implementation of a measure that has been decided. Thus, besides the power to use force under Ch 24 s 2 of the Penal Code to keep a person who is deprived of liberty in order, a police officer may give such a person any directions needed to maintain order and safety at the place of custody. There can be no doubt that anyone failing to comply with such directions may be restrained by force as a last resort. The authority to use force in such a situation follows from the authority to keep that person deprived of liberty (cf. bill 1996/97:175 p 73 f).

For the provisions relating to acting out of necessity and using greater force than is permissible, see Ch 24 s 4 and Ch 24 s 6 of the Penal Code, respectively.

10.15

A police officer's authority to use **force with a view to preventing an escape** has been commented on in 10.6 and 10.14 above. Since this authority has been the subject of debate, some additional comments might be useful. If a person who is deprived of liberty tries to escape a police officer may use reasonable force to prevent the escape. If the person manages to escape, the provisions of s 10, first paragraph, subsection 2 of the Police Act concerning the use of force when someone is to be deprived of liberty are applicable. This means that if the escaped person offers resistance and if other means are deemed inadequate, reasonable force may be used to capture the escaped person and return him to the facility from which he escaped. If a police officer encounters force or threat of force, he may of course also use force under s 10, first paragraph, subsection 1 of the Police Act.

Section 10a

What is said in s 15, first paragraph, of the Treatment of Detained Persons Act (1076:371) about the right to restrain a person by means of handcuffs shall also apply where a police officer takes someone into custody or otherwise restricts his freedom of movement. **Act 1998:27.**

10a.1

Handcuffs, used to fasten together a person's hands, are one of the tools the police may use to carry out an official duty by force. This term is not defined in s 10a since such a definition would soon be outdated by the rapid technological development in this field.

10a.2

This provision, together with s 15 of the Treatment of Detained Persons Act (1976:371), makes adequate provision in respect of the right of the police to use handcuffs. The provisions of s 10a, which should be read independently from s 10, are more far-reaching in some respects than the general provisions concerning the use of force in s 10 of the Police Act.

10a.3

As was mentioned above, s 15 of the Treatment of Detained Persons Act also contains provisions regarding the use of handcuffs. According to the latter act (see also ss 17 and 18 of the same act), a person who has been detained pending trial or further investigation, arrested on suspicion of an offence or placed in a police cell may be restrained using such devices

- a. when in transit or otherwise when he is outside the room in which he is being kept if this is necessary for safety reasons, and
- b. otherwise with a view to curbing violent behaviour if other means have proved inadequate and the use of

handcuffs is absolutely necessary to avert a threat to the life or health of the person in question or any other person.

Handcuffs may be used 'for safety reasons' e.g. where there is risk that a detained person will try to escape. Thus, handcuffs may be used under the Treatment of Detained Persons Act even on the grounds that the police believe that such a risk exists.

10a.4

The provisions of the Treatment of Detained Persons Act do not apply to someone who has been deprived of liberty on grounds other than the commission of an offence, i.e. to someone who has been taken into custody. Instead, s 10a of the Police Act applies to this category. According to this section, a person taken into custody by the police, or someone whose freedom of movement is otherwise restricted, may be handcuffed on the provisos stated in s 15 of the Treatment of Detained Persons Act (for these provisos, see 10a.3).

Examples of police interventions which do not constitute a deprivation of liberty but which nevertheless limit a person's freedom of movement, are taking a person to a court hearing under Ch 9 s 10 of the Code of Procedure, taking a person to an interview under Ch 23 ss 7 and 8 of the Code of Procedure, taking a person to a correctional facility under s 10 of the Act on the Calculation of Terms of Punishment (1974:202; reprinted 1990:1010), taking a person to a hospital or some other medical facility e.g. under the Care of Substance Abusers Act (1980:870), the Care of Young People Act (1990:52) or the Compulsory Psychiatric Treatment Act (1991:1128), taking young people into custody under s 12 of the Police Act, holding a person at a police station under s 14 of the Young Offenders Act (1964:167) and s 16, second paragraph, of the Police Act, and removing or taking someone into custody under s 13 of the Police Act.

There may be some doubt as to whether taking a person into custody under ss 12 or 13 of the Police Act constitutes a deprivation of liberty or merely a restriction of a person's freedom of movement. If judged by the wording of the Police Act, such a measure definitely belongs to the former category, while in the European Convention on Human Rights it is defined as a limitation of freedom of movement. The classification of this measure, however, does not affect a police officer's right to handcuff such a person, since s 10a covers both deprivations of liberty and other kinds of restrictions of freedom of movement.

Under Ch 28 s 12 of the Code of Procedure a person who is to be subjected to a bodily examination may be detained for some time for this purpose, and consequently this measure must be considered as a limitation of a person's freedom of movement. Provided that all other conditions are satisfied, a police officer may thus handcuff someone who is suspected of drink- or drug-driving and who refuses to submit to a blood test, if this is necessary to enable a sample of blood to be taken.

10a.5

The risk of escape or the threat to safety at the place of custody should be assessed on the basis of the particular circumstances in each case, e.g. that the person in question is known to be prone to escape. Regarding someone who is not deprived of liberty, a police officer assessing whether there is a need to use handcuffs should pay particular attention to the purpose of the intervention. For example, it is hardly justifiable to handcuff a witness who is to be taken to an interview at a police station or to a trial, even though there may be a risk that he will escape in transit. However, when taking a person to a prison where he is to serve a sentence, the use of handcuffs may be justifiable to prevent him from escaping.

10a.6

The mere fact that a police officer is to convey single-handedly a person taken into custody to e.g. a police station is probably not sufficient grounds for using handcuffs.

Assessment of whether handcuffs may be used for safety reasons must be based on the circumstances in each case, bearing in mind the principles of necessity and proportionality in s 8.

10a.7

It should be noted that the power to use handcuffs provided by s 10a is more far-reaching than the general power to use force s 10a, as it may even be exercised to avert certain risks. This is considered justifiable, partly because the use of handcuffs is regarded as a more lenient form of force than others and partly because it often prevents the additional use of force.

10a.8

According to s 29, third paragraph, the provisions in s 10a also apply to a public order guard unless otherwise stated in his terms of appointment. Thus, if such a guard does not have the authority to use handcuffs, this must be clearly stated in his terms of appointment.

The use of handcuffs by a public order guard effecting an arrest is governed by s 15 of the Treatment of Detained Persons Act.

10a.9

It follows from the principles of necessity and proportionality that a decision to handcuff a person must be reviewed on an ongoing basis.

Temporary custody, removal etc.

Section 11

If a police authority is empowered by some special provision to decide that someone be taken into custody, a police officer may take that person into custody pending a decision by the police authority, if he finds that

1. the prescribed conditions for a decision to take the person into custody are satisfied and
2. that delay in effecting the measure will entail a threat to life or health or some other threat.

11.1

In certain cases a police authority has the right to take a person into temporary custody in accordance with special provisions. Such provisions can be found e.g. in s 13 of the Care of Substance Abusers Act (1988:870), s. 47 of the Compulsory Psychiatric Care Act (1991:1128), Ch 2 ss 2 and 3 of the Aliens Act (1989:529; reprinted 1994:515), s 20 of the Extradition Act (1957:668), s 16 of the Nordic Extradition Act (1959:254) and s 9 of the Act on Extradition to Denmark, Finland, Iceland or Norway for the Implementation of a Decision on Care or Treatment (1970:375).

It is, however, doubtful whether the provision in s 11 is intended to give the police the power to take a child into custody under Ch 21 s 10 of the Parental Code or s 20 of the Act concerning Recognition and Enforcement of Foreign Decisions relating to Custody etc. and concerning the Return of Children (1989:14).

11.2

According to this section a police officer may take a person into temporary custody pending a decision by the police authority. Such a measure first requires that the prerequisites for a decision by the police authority given in the special provisions are fulfilled. Secondly, the situation must be such that the officer cannot wait for a decision because of a threat to the life or health of the person in question or any other person, or some other threat.

11.3

As to the contents of the special provisions primarily referred to in this section, the following can be said:

According to **s 13 of the Care of Substance Abusers Act**, a police authority may immediately take a substance abuser into custody 1) if it is likely that he will be given care under the Act and 2) if a court decision cannot be awaited a) because it can be assumed that the abuser's health will seriously deteriorate unless he receives immediate care or b) because, as a consequence of his abuse, he is deemed likely to do himself or some person close to him serious harm.

All categories of substance abusers, i.e. alcohol, drug and solvent abusers, may be referred to compulsory treatment. A condition for such a referral is that the person in question, as a result of chronic substance abuse, needs treatment to overcome his addiction, that this need cannot be met under the Social Services Act or in some other way and that he

1. is seriously jeopardising his physical or mental health, or
2. is running an obvious risk of ruining his life, or
3. can be expected to do himself or someone close to him serious harm.

If there are reasonable grounds to believe that a person is suffering from a serious mental disorder and is dangerous to himself or to someone else, a police authority may take him or her into custody under **s 47 of the Compulsory Psychiatric Care Act** if there is danger in delay.

According to **Ch 6, s 2 of the Aliens Act** an alien of eighteen years of age or over may be taken into custody

1. where, on his arrival in the country or when he applies for a residence permit after having entered the country, there is uncertainty as to his identity and he cannot prove that the identity given is correct and his right of entry or residence cannot be otherwise established, or

2. where such a measure is required to complete an investigation aimed at establishing his right of residence, or
3. where it is likely that he will be refused entry or deported under Ch 4 ss 1, 2 or 3 of the Act, or where a decision that he be refused entry or deported is to be implemented.

In a case referred to in point 3, a decision to take the person into custody may only be made if, in view of his personal situation or other circumstances, there is reason to believe that he may go into hiding or be involved in criminal activities in Sweden.

Chapter 6 s 3 of the Aliens Act contains provisions limiting the powers of the police to take into custody an alien under the age of eighteen.

Decisions to take an alien into custody are made by the agency in charge of the case. A police authority is in charge in the following cases:

1. From the time an alien applies for leave to enter the country until the application is received by the National Board of Immigration or the person in question leaves the country.
2. As soon as the police authority has been directed to implement a court decision on deportation made under Ch 4 s 7 of the Aliens Act.
3. As soon as the police authority has been directed to implement a decision on refusal of entry or deportation made under Ch 8 s 11, second paragraph, subsection 3 of the Aliens Act, or as soon as the police authority has received a decision referred to it for implementation under Ch 8 s 17 of the same act, even if an application referred to in Ch 2 s 5b of the same act has been submitted.

4. When it is not possible to wait for a decision from the competent agency.

In a case referred to in point 4, a police authority must inform the competent agency about its decision without delay, and that agency must immediately assess whether the decision is to remain in force.

According to **s 20 of the Extradition Act** and **s 16 of the Nordic Extradition Act**, a police authority which is to assist in the extradition of a person may, pending implementation of the measure, take that person into custody for a period of no more than 24 hours if necessary.

According to **s 9 of the Act concerning Extradition to Denmark, Finland, Iceland or Norway for the Implementation of a Decision on Care or Treatment**, the police authority in the place of residence of a person who is wanted by the police by virtue of a decision that may lead to extradition under the act, may issue a restraining order confining the person in question to his place of residence, or take him into custody pending a request for extradition. Such a decision may only be made if there are reasonable grounds to assume that the request will be granted and that the wanted person might try to leave the place or otherwise evade extradition.

11.4

Procedural provisions pertaining to the taking of a person into custody under s 11 are to be found in ss 15, 16, first paragraph, and 17 of the Police Act.

Section 12

If someone who appears to be under eighteen years of age is found in circumstances which obviously constitute an imminent and serious threat to his health or development, he may be taken into custody by a police officer with a view to being promptly delivered to his parents or to some other guardian or to the social

welfare board by or through the agency of the officer who took him in charge. **Act 1991:140.**

12.1

Under s 12, a police officer may, in certain situations of an emergency nature, take into custody someone who is believed to be under eighteen years of age and who is found in a harmful or dangerous environment. The basic condition for such intervention is that the minor is found in circumstances which obviously pose a serious and imminent threat to his health or development.

Accordingly, such a measure may only be taken to avert an imminent danger, for instance when a minor is found in a place known to be frequented by drug abusers or under the influence of alcohol, drugs etc. Another example of application would be where a minor is found in the company of an older, anti-social person or otherwise in a situation that might lead to his being unduly taken advantage of.

In these and similar situations which are clearly alarming, a police officer has the right to take a minor into temporary custody for humanitarian and crime prevention reasons.

It is generally held by the Swedish legal community that taking someone into custody under s 12 does not constitute a deprivation of liberty as defined in the European Convention on Human Rights (see 10a.4 above).

12.2

This provision, in accordance with the principle of necessity, is intended to be applied only when a situation cannot be resolved in some more suitable way, e.g. by persuading the minor to return to his home voluntarily or through an immediate intervention by a representative of the social services department.

12.3

It is evident from the use of the term 'promptly' in this section that a police officer taking a minor into temporary

custody must act without unnecessary delay to deliver him to his parents or to some other guardian. While no maximum period of detention is specified in this section, a minor should not of course be kept longer than absolutely necessary. Correct application of the principles laid down in s 8 would probably mean that it would be very unusual for a young person to be under custody for more than a few hours, and only in exceptional circumstances may he be kept beyond that period. If more than six hours is required, the supervision of the young person can no longer be regarded as being the responsibility of the police.

If a young person's identity is unclear, a reasonable time must be allowed to enable the police to establish his identity, seeing that a parent or some other guardian cannot be contacted in such a case. If his identity cannot be ascertained within this time, the police have to rely on a representative of the social services department to assume responsibility for the young person. What constitutes 'a reasonable time' depends on the circumstances in each specific case; the young person's age, the circumstances under which he was found and his ability to look after himself are the main criteria for assessing when he may be released.

The normal procedure is that the police officer tries to contact the parents as soon as possible to ask them to come and get their child. The police officer may also return the young person to his home where practicable and suitable. In the event that a young person refuses to give his name or address, or if there is uncertainty about the best course of action, for instance if his parents are not at home or if for some other reason it is not advisable to return the young person to his home, the police officer should in the first place take him direct to the social services department or to where there are social workers on duty. Before doing so, he should, if possible, contact the social services department. A young person should only be kept at a police station in exceptional circumstances and if so only temporarily.

Provisions governing the placing of someone taken into custody under s 12 in a police cell can be found in s 17.

12.4

Section 14 governs the taking of a person into custody with a view to establishing his identity. In many cases where a young person is to be taken into custody under s 12 it is advisable to identify him, but he may be taken into custody even if his identity is unknown provided that he appears to be under the age of eighteen.

In exceptional cases, there may be grounds for taking an unknown young person into custody for identification under s 14 of the Police Act. However, such a measure may only be taken if there is reason to believe that he is sought by the police or the subject of a warrant of arrest to be lawfully deprived of liberty when found, e.g. under the Care of Young Persons Act (1990:52). An additional condition is that he refuses to give his name or that there are reasonable grounds for doubting the truth of the name he has provided (see s 14).

12.5

There are no provisions in the Police Act giving a police officer the right to inform parents about observations involving their child that have not resulted in an intervention. Such authority is not required, however, since there are normally no legal impediments preventing a police officer from doing this.

Chapter 14 s 4, second paragraph, of the Secrecy Act (1980:100; reprinted 1992:1474) treats of parents' right to information about their underage children (i.e. children under the age of eighteen). It appears from this provision that parents should normally have full access to information relating to their children. Only where it is believed that the disclosure of a particular piece of information will cause a child considerable harm may it be kept confidential (see also JO 1992/93 p 439 ff).

For the obligation of the police to inform a guardian in certain cases when a minor is suspected of an offence, see 12.7 below.

12.6

The procedural requirements in connection with a measure under s 12 are to be found in s 15, first and second paragraphs, and in s 17.

12.7 Other interventions against young people

A sanction cannot be imposed on someone who is under the age of criminal responsibility, i.e. under fifteen years of age. However, according to s 34 of the Young Offenders Act (1964:167; reprinted 1994:1760), any person may **arrest** someone under fifteen who is in the act of committing an offence punishable by imprisonment or is running away from the scene of such an offence. The term ‘any person’ also includes a police officer (cf. bill 1983/84:187 p 26). When such a measure is taken by a civilian the minor must be promptly delivered to the nearest police officer.

The police authority or a public prosecutor must then decide immediately whether the minor is to be released or detained for questioning. Where it is obvious that the need for detention has ceased to apply, it would seem that the police officer who arrested the young person may also decide to release him, provided that he does so immediately after the arrest (cf. s 1 of the Young Offenders Act where reference is made to Ch 24 s 8, third paragraph, of the Code of Procedure. See also 13.11.7a below). It is clear from s 34 of the Young Offenders Act that a minor arrested under this provision must not be placed in a police cell.

It follows from the reference made in s 32 of the Young Offenders Act to Ch 23 s 3 of the Code of Procedure that a decision to initiate an investigation under s 31 of the Young Offenders Act may be made by a police authority

or a public prosecutor. The provisions of Ch 23 s 3 of the Code of Procedure concerning the division of responsibility for investigations are also applicable to investigations under s 31 of the Young Offenders Act (cf. JO 1997/98 p 140 ff). The National Police Board has issued guidelines for the investigation of offences committed by juveniles under the age of fifteen (FAP 403-1).

If a public prosecutor decides not to detain someone under eighteen who has been arrested, the police authority may detain him under s 14 of the Young Offenders Act with a view to promptly delivering him to his parents, some other guardian, a social worker or some other appropriate adult. However, this applies only if the prosecutor has found that there are still reasonable grounds to suspect that the minor has committed an offence. A police authority may for the same purpose detain a person under eighteen who has been taken in for questioning and is reasonably suspected of an offence. The maximum period of detention in cases such as these is three hours, commencing from the time when the prosecutor made his decision or the interview was concluded. A young person who is detained, provided he is over fifteen years of age, may be placed in a police cell if this is necessary to ensure order and safety. For further information about the prerequisites for such a measure, see 17.6.2 below.

Section 5 of the Young Offenders Act contains provisions concerning the obligation of the police to inform a guardian when a person under eighteen is reasonably suspected of an offence.

The provisions concerning **taking someone into custody** and **detention** in s 13 and s 16, second paragraph, also apply to minors. For further information, see the comments under these sections.

Section 13

If a person by his conduct disturbs public order or poses an immediate threat to the same, a police officer may, if this is necessary to maintain public order, turn

away or remove that person from a certain area or certain premises. The same applies if such a measure is required for the aversion of a punishable act.

If a measure referred to in the first paragraph proves inadequate for achieving the intended result, the person may be taken into temporary custody.

13.1

The first paragraph provides statutory support for the removal of a person. Such a measure may be taken when there is a disturbance of public order or an imminent risk of such a disturbance, when an offence has been committed or when there is a risk that an offence will be committed. Prior to the introduction of the Police Act, there was some doubt as to what statutory support the police had for taking such a measure

13.2

While turning away and removal are given as the first alternatives in this section, the rule still applies that a situation must be resolved using the most lenient measure possible, e.g. a warning or a direction.

13.3

If none of the measures mentioned in the first paragraph are considered adequate, the offender may be taken into custody under the provision in the second paragraph. Where it is clear from the start that removal or some other more lenient measure will not achieve the intended result, the person may be immediately taken into custody. In such a case, the reasons for this should be recorded on the custody record.

It is generally held by the Swedish legal community that taking someone into custody under s 13 does not constitute a deprivation of liberty as defined in the European Convention on Human Rights (see 10a.4 above).

13.4

‘Turning someone away’ means preventing a person from entering an area or a building.

‘Removal’ means taking a person who is disturbing the peace away from the place where the disturbance occurred and is clearly a more lenient measure than taking a person into custody. The latter measure always implies taking a person **to** a place, e.g. a police station, while the purpose of a removal is to take a person away **from** a place.

Common instances of removal arise when a person is removed from premises where he has caused a disturbance or from a certain area, e.g. a fun fair or a sports ground. Removal can also involve the conveyance of the person in question a short distance, either on foot or in a police vehicle. If, however, the distance is not short and if the measure involves physical restraint of some duration, the measure should be regarded as a case of taking the person into custody. If, for instance, a police officer takes a person to his home, that person should be considered to have been taken into custody rather than removed. The distinction between removal and taking someone into custody has been discussed by the Standing Committee on the Administration of Justice, e.g. in connection with the preparatory work for the Police Act (see 1983/84:27 p 32, and 1997/98:7 p 12).

A person who is removed should not be taken to a place from which it is difficult for him to proceed on his way.

13.5

The conditions for intervention under this section are otherwise formulated in accordance with those of s 3 of the Temporary Custody Act. This was done so that the legal practice established as regards the application of that section, e.g. through statements made by the Parliamentary Ombudsman, might be used as a guideline for the future practical application of s 13 of the Police Act.

13.6

Under s 13 the police can intervene in four kinds of situations, viz. when someone is disturbing public order, when there is an immediate risk of such a disturbance, when an offence has been committed or when there is a risk that an offence will be committed. Both the Parliamentary Ombudsman and the Attorney General have commented on the conditions that must be satisfied in these situations (see e.g. JO 1988/89 p 74 ff, 1991/92 p 64 ff and JK 1989 p 134 ff).

A basic condition for intervention under this section against a public order disturbance is that someone by his conduct is disturbing public order or is posing an immediate threat to the same. The person's conduct must involve an attack or threat of attack on an object of public order of importance to the public or otherwise important from a general point of view. For an intervention under the provisions relating to an **actual disturbance of public order** to be lawful, the person's conduct must be such that it actually constitutes such a disturbance. The mere fact that a person refuses to obey directions from a police officer to leave the place does not necessarily mean that he is disturbing public order; the decisive factor in such a situation is how his disobedience may affect public order.

For an intervention against someone who by his conduct is posing an **immediate threat to public order** to be lawful, the threat must be manifest; a person may not be taken into custody with a view to averting an anticipated threat. Moreover, the threat must have arisen as a result of the conduct of the person in question. The mere fact that someone is present at a place is not considered sufficient grounds for taking him into custody under this provision, even if he is known to be a rowdy person. A person who is in his home with only police officers and officers from the local enforcement agency present may still pose an immediate threat to public order (cf. JO 1994/95 p 86 ff).

Another condition that must be satisfied for an intervention in the above two cases to be justifiable is that the intervention is necessary to maintain public order. This basic requirement is laid down in the provisions of s 8 of the Police Act concerning the manner in which a public duty should be effected: a police officer is to intervene in a way which is justifiable in view of the purpose of the measure and other circumstances. He should always first consider the possibility of using warnings etc. There is rarely any reason to refrain from using this option (cf. Statement by the Parliamentary Ombudsman JO 1975/76 p 67).

13.7

Interventions under this section with a view to averting a **punishable act** may be made in cases of contraventions of the Penal Code as well as other penal acts. Sometimes, it may be a question of interrupting a course of events, for instance when someone publicly behaves in a manner likely to arouse public indignation (disorderly conduct) and does not heed a warning to cease such behaviour. The provision may, however, also be applied in a case where a person has not yet committed a punishable act but where **there is a risk that such an act will be committed**.

When there is an intervention to avert a punishable act, no assessment needs to be made of whether the person's conduct also constitutes a disturbance of public order or a threat to the same, nor is it necessary to assess whether the intervention is necessary to the maintenance of public order.

An absolute condition for such a strong measure as taking someone into custody to be implemented on these grounds, is that an offence is being committed or that there is imminent danger of an offence being committed. An example of an intervention to avert a criminal act is where a police officer intervenes with a view to preventing an intoxicated person from driving off in a car. If the police officer cannot prevail on him to refrain from driving or to hand over

the car keys, he may remove the person or take him into custody if he has reason to believe that the intoxicated person will use the car if he is left at the scene.

13.8

Collective interventions under s 13 are not allowed. If several people or an entire crowd are disturbing public order, the question of whether an intervention should be made must be assessed individually for each of the persons concerned (cf. e.g. JO 1992/93 p 69 ff). The provisions of s 13c, however, give the police certain powers to take action against a crowd that is disturbing the peace.

13.9

Like the other provisions in the Police Act pertaining to the powers of police officers, this section has been given a facultative wording: it is not stated that a police officer must take a person into custody if the conditions are fulfilled, but that he may do so. This wording was chosen to reiterate the requirement that a police officer should always choose the least extreme form of intervention needed to resolve a situation .

13.10

As to the detention of someone taken into custody under s 13, see s 17. Provisions regarding the procedures in connection with taking someone into custody under s 13 can be found in s 15, first paragraph, and in s 16, first and second paragraphs.

13.11 Police interventions at major public events

13.11.1

In recent years, major public events resulting in serious disturbances of the peace have become increasingly common. As to the planning and policing of such events, the Parliamentary Ombudsman has stated

that thorough planning and co-ordination of the policing of public events are essential and that firm and consistent command is necessary,

that depriving a great number of people of liberty places a great deal of pressure on the police, which in turn may result in non-observance on their part of regulations intended to safeguard the legal rights of the individual,

that a police strategy based on taking a large number of people into custody often creates more problems than it solves,

that it is essential that police officers in command of such public order operations have a good knowledge of the regulations pertaining to public events, and

that any intervention must be recorded so as to make it clear who made the decision, what was decided and what statutory provisions were applied.

A general outline of the powers of the police in connection with such events is given below. The special provisions in the Police Act will be commented on in greater detail under each section concerned. In this outline, a distinction is made between public and non-public assemblies or events.

Regulations pertaining to public assemblies and events can be found in the Public Order Act (1993:1617). A distinction is made in this act between public assemblies and public events.

13.11.2

A public assembly is defined in Ch 2 ss 1 and 2 of the Public Order Act as any

1. assembly constituting a demonstration or which is otherwise arranged for deliberations, the expression of opinions or the spreading of information in a public or private matter,

2. lecture arranged for teaching purposes or to impart general or civic education,
 3. assembly arranged for the practising of a religion,
 4. theatre or film performance, concert or any other assembly for the presentation of artistic work,
 5. other assembly where the freedom of assembly is exercised, and any
6. circus performance.

An assembly is considered to be public if it is arranged for the public or open to the public, or if it is comparable to a public assembly in view of the admission requirements.

13.11.3

A **public event** is defined in Ch 2 s 3 of the Public Order Act as any

1. sporting event or display,
2. public dance,
3. funfair or parade,
4. market or exhibition, or any
5. other event which does not constitute a public assembly or a circus performance.

For an event to be regarded as public, it must be arranged for or be open to the public. However, an event where admission is limited to people who have an invitation, members of an association etc., is also considered an event open to the public if it is arranged by a company whose only or principal business is to arrange events of the type in question. The same applies if the event, in view of the number of people who have access to it, admission requirements etc., is comparable to a public event.

13.11.4

Chapter 2 ss 22 - 24 of the Public Order Act govern the right of the police to call off or disperse a public assembly or event.

A public assembly or event may be called off or dispersed

1. if permission is required for it and it is arranged in contravention of a decision under Ch 2 s 6 not to grant the organiser such permission, or
2. if it is held in contravention of a provision of Ch 2 s 15 or a prohibition laid down in Ch 2 s 25.

In addition,

3. a public assembly may be dispersed if a serious disturbance of public order occurs at the place of assembly, or, as a direct consequence of the assembly, in its immediate vicinity, or if it entails a serious risk to those present, or serious disruption to traffic, and
4. a public event may be dispersed if it involves something that is forbidden by law or if it results in disorder, danger to those present or serious disruption to traffic.

A public event, as well as a public assembly for the presentation of artistic work, may be dispersed

5. if, unless permission to arrange the event has been obtained, it results in a serious disturbance of the peace in its vicinity due to noise or otherwise, or
6. if it continues beyond the time specified in the permit in accordance with Ch 2 s 16, second paragraph.

Even where the conditions for dispersal are satisfied, this may only be done if less drastic measures have proved inadequate to prevent further illegal acts, restore order, protect those present or limit the disruption to traffic.

The fact that the organiser of a public event or assembly for which permission is required has not applied for such permission, does not in itself constitute sufficient grounds

for calling off or dispersing the assembly or event. However, where an event or assembly is held despite the fact that the application for permission has been rejected, either of these measures may be taken.

A situation in which it may be difficult to draw the line is when a procession of demonstrators do not follow the route specified by the police authority in the permit. If the route proposed in the application submitted by the organisers corresponds exactly to that approved by the police authority – i.e. if no section of the new route that the demonstrators have taken has been assessed and rejected by the police authority – the police should deal with the demonstration in the same way as they would a public assembly for which no permission has been sought. If, however, the new route has been assessed and not approved by the police authority, the provisions empowering the police to disperse an assembly may be applicable on the grounds that the procession is violating a decision by the police authority (cf. JO 1996/97 p 89).

Decisions regarding the calling off or dispersal of a public event or assembly are made by the police authority. Unless otherwise decided, such a decision is effective immediately, even if it is appealed against.

13.11.5

As was mentioned in 13.11.4, there may sometimes be cause to call off or disperse a **public assembly or event**. If a police authority has made such a decision, a police officer may turn away or remove participants and onlookers under s 13 of the Police Act if this is necessary to achieve the purpose of the decision.

13.11.6

Measures against a **non-public assembly or event** may be taken under s 13c of the Police Act where a crowd by its conduct is disturbing public order or poses an immediate threat to the same. In these circumstances, members of the

crowd may be turned away or removed if this is necessary to maintain public order. A decision to take such action is to be made by the police authority or, where in view of the situation such a decision cannot be delayed, by a police officer. A decision on removal is also considered to imply the authority to temporarily detain members of the crowd at the place.

13.11.7

In addition, a number of other measures can be taken against both public and non-public events or assemblies:

- a. Under **criminal law**, the provisions regarding public order offences in the Penal Code may be applicable. If a crowd of people disturbs public order by demonstrating their intention to use violence for a common purpose in opposition to a public authority or otherwise to compel or obstruct a certain measure and does not disperse when ordered to do so by the authority, s 1 provides that instigators and leaders may be sentenced to imprisonment for at most four years and other participants in the crowd's proceedings to pay a fine or to imprisonment for at most two years for riot. This provision is applicable e.g. when a crowd attempts to prevent the police from taking a member of the crowd into custody under s 13 of the Police Act. Section 2 provides that if a crowd, with the intent referred to in s 1, has proceeded to use violence towards a person, persons or property for a common purpose, the offence is to be regarded as violent riot. In such a case, instigators and leaders may be sentenced to imprisonment for at most ten years and other participants to imprisonment for at most four years.

A person may be regarded as a 'participant in the crowd's proceedings' even though he himself did not use violence, if he showed that he sympathised with the use of violence, e.g. by shouting in a threatening or encouraging manner or by running alongside an

attacking crowd. A member of the crowd who did not participate in any of these ways cannot be sentenced under the provisions concerning violent riot in Ch 16 s 2 of the Penal Code. In a case of riot, however, a participant may be sentenced under s 1 even if he does not sympathise with the intent manifested by the crowd, since he may still have taken part in the crowd's proceedings (cf. Beckman et al, *Comments to the Penal Code II*, 6th edition, p 238 ff).

Chapter 16 s 3 of the Penal Code deals with the offence of disobeying police order. If a member of a crowd that is disturbing public order does not obey a command aimed at maintaining public order, or if he intrudes in an area that is protected or has been closed off against intrusion, he may be sentenced under this section to pay a fine or to imprisonment for at most six months. The sentence normally imposed by the courts in such a case is day fines. Moreover, under Ch 16 s 4 of the Penal Code, a person who disturbs or tries to prevent a public assembly arranged for the purpose of deliberation, instruction or hearing a lecture, may be sentenced to pay a fine or to imprisonment for at most six months for disturbing a public assembly.

In a case of riot or violent riot the question may arise whether arrests should be made. The maximum penalty for disobeying police order and disturbing a public assembly is six months' imprisonment. This means that an **arrest** under Ch 24 ss 1 and 7 in the Code of Procedure may not be effected, as it is laid down in these sections that a condition for such a measure is that the offence is punishable by at least one year's imprisonment. However, in serious public order situations there may be grounds for arresting members of a crowd on suspicion of other offences, e.g. assault, illegal threats, aggravated criminal damage or theft, or complicity in such offences. Even someone who is not taking direct part in such acts may

be arrested if he induces others to commit such acts in such a way that it can be regarded as complicity, e.g. by shouting encouragement or egging them on.

As a general principle, the assessment of whether there are grounds for arrest rests with the police officer at the scene. If such an assessment can be postponed, however, it should be referred to a public prosecutor. Hence, the chief officer on duty or some other commanding officer who is not present at the scene may not make such an assessment (cf. JO 1992/93 p 105 ff). Likewise, a decision to take someone in for questioning may only be made by a police officer present at the scene (cf. JO 1994/95 p 80 ff). In this connection, it should be borne in mind that under Ch 23 s 9 of the Code of Procedure a person who has been arrested must always be informed about the offence of which he is suspected and the grounds for his arrest. There is no requirement that the family of the arrested person be thus informed, however.

Under Ch 24 s 8 of the Code of Procedure, the police may in certain cases **cancel a decision to arrest** a person, if it is obvious that there are no longer grounds for further deprivation of liberty and if a public prosecutor has not yet been informed about the decision. These powers apply both in cases where an arrest is found to be unwarranted in view of circumstances that have come to light after the decision was made, and where the arrest was unwarranted even from the outset. The main rule is that such a decision is to be made by the police authority. However, it may also be made by police officer if, immediately after the arrest, he or she finds that there are no longer grounds for depriving the subject of his liberty. This authority is usually exercised where a police officer, before taking an arrested person to a police station, realises that he has made a mistake.

- b. In addition to the provisions governing arrests, the provisions in s 13 of the Police Act may of course be applied.
- c. The requirement that the prerequisites for an intervention under s 13 must be assessed on a case-to-case basis may cause practical problems, even though the criteria are fairly simple. For example, in a chaotic and threatening situation a police officer may be justified in **detaining members of a crowd** at the scene. Even though in such a situation the conditions for taking into custody or arresting the members of the crowd may be satisfied, it must be borne in mind that there may be innocent bystanders or passers-by at the scene. Assessing the conditions for an intervention on an individual basis may of course take some time. In such a case, it is essential that the assessments are made rapidly and the detention of people at the scene is effected such that it does not constitute a deprivation of liberty (cf. bill 1990/91:129 p 24 and JO 1992/93 p 69 ff). A crowd that constitutes a public assembly or event must not be detained at the scene in such a manner that the event or assembly has in effect been dispersed (cf. JO 1992/93 p 62 ff).
- d. In a serious disturbance of public order or safety, or when there is a risk of such a disturbance, the police may **prohibit access to an area or premises**, if this is necessary to maintain public order. In the same circumstances, the police may also **order members of a crowd to follow a directed route**. Decisions regarding such measures are made by the police authority or, in urgent cases, by a police officer.
- e. Provisions empowering the police to **close off or otherwise prohibit access to premises** are also to be found in e.g. s 23 of the Police Act and Ch 27 s 15 of the Code of Procedure. Section 23 also empowers the police **to take other measures** such as a **search of a person, a search of premises or an evacuation**.

- f. If a decision to prohibit access to an area or premises or to order a crowd to follow a directed route has been made under one of the provisions mentioned in d. and e. above, or under some other statutory provision, a police officer **may turn away or remove a person who attempts to enter, or refuses to leave, the area or premises** under s 13a of the Police Act, provided that this is necessary to maintain public order or safety.

Section 13a

If a person attempts to gain entry to an area or premises to which access has been prohibited under this act or some other statute, a police officer may turn away or remove him from the area or premises if this is necessary to maintain public order or safety. This also applies to someone who refuses to leave such an area or premises, or to someone who does not abide by an order to follow a directed route issued under this act. **Act 1998:27.**

13a.1

Under s 24 of the Police Act the police may, subject to certain requirements, prohibit access to an area or premises and order members of a crowd to follow a directed route. Section 23 vests in the police a similar power which can be used in the performance of their protective and crime preventive duties, viz. to prohibit access to a building, room or some other place. Moreover, the police may prohibit access to an area under Ch 27 s 15 of the Code of Procedure for the purpose of a crime investigation.

13a.2

A person who violates a decision made under s 13a can probably not be sentenced under Ch 17 s 13 of the Penal Code for violation of official order. However, the provisions of Ch 16 s 3 of the Penal Code regarding disobeying police order may be applicable under certain conditions. If a person, in addition to disobeying a decision made by the police, also behaves in a manner that disturbs public order, s 13 of the Police Act may of course also be applicable.

Section 13a also empowers a police officer to turn away or remove a person who fails to comply with such a decision, provided

1. that a decision to prohibit access has been made under the Police Act or some other act or that a decision regarding route directions has been made under the Police Act,
2. that the person who is to be turned away or removed has attempted to enter or refused to leave the area or premises in question, or refused to follow a directed route, and
3. that the measure is necessary for the maintenance of public order.

The terms ‘turn away’ and ‘remove’ are explained in 13.4 above. The requirement that such a measure must be necessary to maintain public order and safety notwithstanding, this provision is also applicable where the person who is trying to gain entry to the area or premises cannot be considered to be disturbing public order. The assessment of whether it is justifiable to remove someone under this provision must be based on the purpose of the access ban.

Section 13b

If a police authority has decided to call off or disperse a public assembly or event under Chapter 2, ss 22 or 23 of the Public Order Act (1993:1617), a police officer may turn away or remove participants and onlookers if this is necessary to achieve the purpose of the decision.

13b.1

It is not stated in the provisions of the Public Order Act concerning the calling off or dispersal of a public assembly or event what powers the police have when it comes to implementing such a decision. However, it is

assumed that the police may take such measures as are necessary for the implementation of the decision. Since a removal involves a limitation of the constitutional freedom of movement, a police officer must have explicit statutory support for such a measure. Such support can be found in s 13b.

It follows from the principle of proportionality that the authority to remove a person also includes the authority to turn a person away. However, it was thought advisable also to include the latter measure in s 13b, as in s 13.

Section 13b is only applicable to participants and onlookers at a public assembly or event. However, there is no requirement in this section that a person must be disturbing public order to be turned away or removed. The decisive factor here is the purpose of the decision, i.e. that the assembly or event be called off or dispersed. Thus, the removal of a person who is disturbing public order outside the premises where the assembly or event is to take place has to be based on s 13, or on s 13c if he is in a crowd that is disturbing public order.

Section 13c

If a crowd of people who do not constitute a public assembly or a public event under the Public Order Act (1993:1617), by their conduct are disturbing public order or are posing a threat to the same, the members of the crowd may be turned away or removed from the area or premises they are in, if this is necessary for the maintenance of public order.

Such a measure may be taken without a previous decision by a police authority only if it is so urgent that such a decision cannot be awaited. **Act 1988:27.**

13c.1

It follows from the principle of proportionality that the authority to remove a person also includes the authority to turn a person away. However, it was thought advisable

also to include the latter measure in s 13c, as in ss 13 and 13b.

As this provision is formulated, the police officer's assessment may be limited to whether the crowd has caused a public order disturbance or whether it poses a threat to the same, and whether the person or persons against whom the officer intends to intervene can be regarded as members of that crowd. An additional requirement is that the measure must be necessary to maintain public order.

The term 'member of a crowd' is also to be found in the provision concerning disobeying police order in Ch 16 s 3 of the Penal Code. The intention is that the legal practice that has evolved in connection with the latter provision be used as a guide in the application of s 13c. Hence it follows that the provisions of s 13c are applicable to anyone who has joined a crowd and is aware that the crowd is disturbing public order. They are not, however, applicable to a person who happens to be caught in such a crowd or to a passer-by.

13c.2

A decision to remove a person under s 13c is also considered to give the police the power to detain a crowd at the scene for a short while with a view to establishing who are members of the crowd, which of these should be removed and how this can best be done (cf. bill 1996/97:175 p 27 and 1990/91:129 p 24). A crowd may not, however, be thus detained for the sole purpose of arresting a suspect who is in the crowd, as this would be a violation of the principle of purpose. Provided that the original purpose was to remove the members of the crowd from the scene, however, there is nothing to prevent such a measure eventually resulting in some other kind of intervention. A crowd may only be detained at the scene under s 13c a short while, otherwise such a measure might constitute a deprivation of liberty. This kind of measure may not be taken on the grounds that there are not enough police officers at the scene or that transport for those who are to be removed cannot be arranged.

13c.3

It follows from the principles of necessity and proportionality that a removal must be limited to only a section of the crowd where this is considered sufficient to achieve the purpose of the intervention.

13c.4

Measures under s 13 are to be decided by the police authority. The authority to make such decisions is vested in the chief officers of the authority according to Ch 3 s 8 of the Police Ordinance.

If there is danger in delay, however, a police officer may make such a decision. The term ‘danger in delay’ is explained in 20.10 below.

Section 14

If an unknown person is found by a police officer and there is special reason to believe that he is sought by the police or the subject of a wanted notice to be lawfully deprived of liberty when found, he may be taken into custody for identification if he refuses to give his identity or if there is reason to doubt the truth of the identity he has provided.

14.1

There is no general requirement in Swedish law that people must carry proof of identity. Nor can the police demand under Ch 24 s 2, subsection 1, of the Code of Procedure that a person suspected of an offence produce such proof, unless there is reason to doubt the truth of the name and address given by the latter (cf. JO 1997/98 p 147 ff). In practice, however, there is general agreement that a police officer, if this is necessary for the implementation of an official duty, may ask a person encountered in the performance of this duty to give his name and address (cf. JO 1992/93 p 119 ff). Such a request does not *per se* constitute a violation of any of the constitutional freedoms or rights (cf. bill 1983/84:111 p 99). However, it is only

in those cases specified by law - for example s 14 of the Police Act - that a person is obliged to comply with such a request and a police officer has a corresponding authority to take a coercive measure with a view to establishing a person's identity.

14.2

This section confers on a police officer the authority to take an unknown person into custody for identification under carefully defined circumstances, a measure known as 'police identification'. A primary condition is that there is special reason to believe that the person is sought by the police or the subject of a wanted notice and is to be lawfully deprived of liberty when found. A further requirement is that he refuses to give his identity or that there is reason to believe that the identity he has provided is false.

14.3

Provisions concerning the circulation of wanted notices can be found in the Wanted Notices Ordinance (1969:293; reprinted 1982:227). Such a notice is circulated e.g. when the police are looking for someone who has escaped from a prison, a hospital, a treatment centre etc. and also when the police have been summoned to assist in or execute a similar duty, e.g. taking someone to a prison or to a medical examination. As is apparent from the wording of this section, there is no requirement that a formal notice must have been issued; it is enough if the person in question is believed to be sought by the police for a reason just mentioned.

14.4

The person who is sought by the police or the subject of a wanted notice does not have to be known by name. This provision also covers the case where someone of a certain description is sought in connection with an offence recently committed, and a person whose clothing and appearance fits the description is found near the scene of the crime.

14.5

A general requirement for police identification is a refusal on the part of the unknown person to give his identity when requested to do so by a police officer, or that there is reason to believe that the identity given is false. One might ask how convinced a police officer must be that the unknown person is identical with the wanted person and therefore should be taken into custody. According to this section, there must be a 'special reason' for this assumption. Such a reason may be that the person's appearance fits the description of a wanted person.

But there may also be situations where a person's conduct alone gives a police officer cause to believe that he has escaped, e.g. from an institution for compulsory psychiatric care. It is submitted that the requirement that there must be 'special reason to assume...' means that a police officer who decides to take someone into custody for identification must be able to give a concrete reason why he doubts the suspect's identity.

14.6

When looking for a wanted person, it is not unusual for the police to exercise the power to gain entry to premises conferred on them by the provisions concerning the search of premises for the purpose of locating a person. The provisions governing ordinary searches of premises are not considered to empower the police to take a coercive measure with a view to facilitating the identification of someone found during such a search. However, the Parliamentary Ombudsman has stated that the police, in certain situations, may order a person found in premises searched under the former provisions to leave the premises and then carry out the identity check outside (cf. JO 1992/93 p 119 ff, in particular p 125)

14.7

Provisions regarding the procedure in connection with taking persons into custody under this section can be found in s 15, first paragraph, s 16, third paragraph, and in s 17.

Section 15

A person taken into custody under this act shall be informed about the grounds therefore as soon as practicable. The police officer who effected the measure shall report it to a senior officer at the earliest opportunity. The latter shall, if the person is still in custody, immediately consider whether the decision is to remain effective.

Where the senior officer decides that someone taken into custody under s 11 is to be detained further, or where the measure was taken under s 12, he shall promptly notify the police authority about the measure and the grounds on which it was effected.

As soon as practicable after a person has been taken into custody under s 11, the police authority shall make a decision in accordance with what is prescribed thereto.

15.1

In this section it is first stated that any person taken into custody under the Police Act must be informed of the grounds for this as soon as practicable. This is an unconditional obligation which applies to all cases of taking someone into custody under the Police Act.

15.2

As to minors taken into custody under s 12 of the Police Act, the implication is that the information may be adapted to the circumstances in each specific case. Furthermore, an ongoing investigation may sometimes give cause for postponing the notification of a person taken into custody under s 14 of the Police Act.

15.3

Where a person has been taken into custody under s 11 or s 13, second paragraph, of the Police Act, notification should be given at the latest in connection with the

interview mentioned in s 16, first paragraph (cf. below), but preferably earlier. When this can be done depends of course on the circumstances in any given case. A reasonable general rule is that the officer who effected the measure should, as soon as the situation allows and unless it seems completely pointless, inform the person of the grounds for the measure, as well as of the meaning of the provision under which the measure was effected. It may of course also be the case that the officer thinks it obvious that the person already knows why he was taken into custody and consequently does not need to be informed. It is recommended that all measures taken in this respect be recorded on the custody form (NPB form Decision on / Implementation of a Coercive Measure under the Police Act or the Act on Police Interventions against Intoxicated Persons).

15.4

According to this section, the police officer who effected the measure must report it to a senior officer as soon as practicable. The latter shall, unless the person has already been released, immediately assess whether the person should be detained or released. The purpose of the assessment is to rectify any mistake that a police officer may have made in a stressful and chaotic situation. Thus, this assessment is extremely important from the point of view of the legal rights of the individual. The term 'senior officer' usually refers to the commanding officer on duty (cf. JOP 1987/88 p 97 ff). However, in a particular case, e.g. a major incident, the authority to make this assessment may also be given to some other high-ranking officer (cf. Decision by the Parliamentary Ombudsman of February 28, 1995, nr 4240-1993).

The senior officer's assessment will normally be aimed at deciding whether there is reason to detain the person under the Police Act. Should he find that the measure was incorrect, he must of course immediately release the person. If he finds that the measure in itself was correct, but that it should have been effected under some other provision,

he may, by virtue of his supervisory powers, restate the grounds for the measure, i.e. decide which provision is to be invoked. In such a case, a record should of course be made of the senior officer's decision.

The senior officer's decision will also affect the further processing of the person taken into custody, what information he is to be given, how alcoholic beverages found in his possession will be dealt with etc.

To avoid delays in connection with a major public order disturbance where a large number of people have been taken into custody, it may sometimes be necessary to make this assessment at the scene, e.g. in connection with transportation to the police station.

A decision to take someone into custody must be reviewed continually, starting immediately after the measure has been taken. If the senior officer has not yet made his assessment, the police officer who decided to take a person into custody may also decide to release that person.

15.5

Opinion is divided as to whether the senior officer can make his assessment without having met the person taken into custody. In January 1995, the National Police Board issued general guidelines on this point (FAP 255-1) stating that in a case where someone has been taken into custody under the Police Act or the Act on Police Interventions against Intoxicated Persons, the senior officer may make a decision about the release or detention of a person after having been briefed by phone. This practice, known as 'distance assessment', is now widespread in the Swedish police service. In the spring of 1998, however, the Parliamentary Ombudsman stated that the NPB guidelines – which are based on certain statements in bills and an amendment to Ch 3 s 3 of the 1984 Police Ordinance – constitute a deviation from the existing state of law (Decision by the Parliamentary Ombudsman of March 23, 1998 nr 4366-19996)

In the 1999 Budget Proposals the government announced that a committee will be set up with a view to studying this and other matters related to the Act on Police Interventions against Intoxicated Persons.

15.6

When someone has been taken into custody under s 11 and the senior officer has decided that the measure is to remain effective, the police authority must be informed immediately about the measure and the grounds on which it was taken. The police authority must then make a decision as soon as practicable in accordance with what is prescribed thereto. As soon as the police authority has made its decision, the temporary custody is terminated.

The police authority is also to be notified when a person has been taken into custody under s 12. However, this can usually be done only after the person in question has been delivered to a guardian or a representative of the social services board. If such a measure is effected outside office hours, the notification can usually wait until the following morning unless it is essential that it be made sooner.

Where someone has been taken into custody under s 13, second paragraph, or s 14, the police authority need not be informed.

Section 16

A person who has been taken into custody under s 11 or s 13, second paragraph, shall be interviewed as soon as practicable.

If the measure was effected under s 13, second paragraph, the person shall be released as soon as practicable after the interview. A person who is under eighteen years of age may, however, be detained with a view to his being promptly delivered by the police to his parents, some other custodian, an official of the social

services department or some other appropriate adult. No person may be detained for more than six hours. If it is thought that the person taken into custody is in need of help or support from society, the police shall assist him with advice and information and, if suitable, confer with some other body responsible for providing for such needs.

Where a person has been taken into custody under s 14, his identity shall be established as soon as practicable. Anyone taken into custody shall be released as soon as he has been identified. Such a person must not, however, be detained for more than six hours or, if it is particularly important that he be identified, for more than twelve hours. **Act 1991:140.**

16.1

This section deals with the interview that is to be held with someone taken into custody, the release of such a person, the delivery of someone under eighteen to an adult and the provision of advice and support by the police. It also contains provisions for the procedure when someone has been taken into custody for identification under s 14.

16.2

An interview must be held with anyone taken into custody under s 11 or s 13, second paragraph. If possible, this interview should be held at such an early stage that it can be used as a basis for the senior officer's assessment of the measure under s 15.

The interview should primarily focus on the actual circumstances that occasioned the measure and must be conducted by a police officer. In a case where someone has been taken into custody under s 11, this interview is to be seen as the first stage of a more thorough investigation that the police authority may need to make its decision. If the person is strongly under the influence of alcohol or drugs, or if an interview is otherwise obviously pointless, it must be postponed until the situation has improved.

A written record is to be made of the interview, stating the name of the interviewing officer and the date and time of the interview. This information is to be included in the case record (see s 27). If a person who is to be interviewed refuses to co-operate, this should be stated on the custody form (cf. JK 1989 p 134 ff).

16.3

If the measure was effected under s 13, second paragraph, the person shall be released as soon as practicable after the interview. He may be detained, however, if there are indications that he might return to the place where he was taken into custody and resume his disorderly behaviour or commit an offence. The possibility of releasing the person shall be assessed on an ongoing basis, starting as soon as the measure has been effected. In fact, there is nothing to prevent a police officer from releasing a person at the place where he has just been taken into custody. It may also suffice that he is taken to his home and released there.

On no condition may a person taken into custody be deprived of liberty for more than six hours. It should be noted that this is the maximum period allowed; in most cases the deprivation of liberty is of considerably shorter duration. The time is reckoned from the initial implementation of the measure, not, for example, from the time when the person arrived at the police station. Similarly, if a public order guard effected the measure and handed the person over to a police officer, the period is to be calculated from the time when the guard effected the measure, not from the time when the police officer took charge of the person.

16.4

Special regulations apply to the procedure when a person under eighteen has been taken into custody under s 13, second paragraph. In such cases, it is often clearly inadvisable to release him without ensuring that he will be taken care of by an adult, for example because it can be assumed that he will resume his previous behaviour.

Sometimes the immediate release of a young person at the scene of a disturbance may result in his associates behaving in a manner that may call for another police intervention. Where there is believed to be such a risk, the young person, instead of being released immediately after the interview, may be detained with a view to his being delivered to a parent or some other guardian, a social worker or some other appropriate adult.

Arrangements for the young person's release must be made without delay. Preferably, a parent or some other guardian should be contacted. If this is not possible or unsuitable, some other adult who knows the young person may be called, e.g. a relative or some other person who can provide the supervision that the young person needs after his release. Failing this, a social service worker may be called. In places where there is a well-developed partnership between the police and the social services department, the social services may take over responsibility for contacting someone who can take care of the young person. Once the police have handed the young person over to someone else, he is no longer considered to be in custody and he should also be informed about this.

16.5

The time spent on measures in connection with a person being taken into custody under s 13, second paragraph, should be recorded in the case record.

16.6

As to the keeping at a police station of a person under eighteen who has been taken into custody under s 13, second paragraph, reference is made to 17.4.4 and 17.4.5 below.

16.7

If the person taken into custody is considered to be in need of help or support from society, the police are to assist him with advice and information and, if suitable and advisable, consult with some other body responsible for providing for such needs.

It is generally held that the police, in principle, may consult with the social services without the consent of the person in question, since the purpose of such consultation is not to force some form of care on him but to give the social services a basis for supportive action (cf. the comments under s 3 above).

16.8

A decision to release a person is to be made by a senior officer as laid down in s 16.

16.9

In the provisions in the third paragraph concerning the procedure when a person is taken into custody for identification, it is stated how long a person may be detained for such a measure. The identification of a person should always be effected speedily and should primarily be aimed at establishing the person's name and address and, if required, his age and nationality. The methods normally available are interviews, searches of indexes of outstanding wanted notices and other indexes, obtaining information from referees furnished by the detained person and the examination of identity documents, letters, business cards etc. that the person has in his possession. In a crime investigation it may also be necessary to fingerprint the person. As to the reckoning of the period of detention when there are several conflicting provisions, reference is made to what is said below under 18.

Section 17

When a person is to be taken into custody under this act, it must not cause him greater inconvenience than necessary in view of the purpose of the measure, nor attract unnecessary attention. A person taken into custody must not be subjected to any other infringement of his liberty beyond that required by the purpose of the measure or to maintain order or safety. A person taken into custody may be placed in a police cell if this is necessary to maintain order or safety. This does not,

however, apply to someone who is under the age of fifteen. **Act 1998:27.**

17.1

The provision in the first sentence, which applies to all kinds of deprivation of liberty under the Police Act, reflects the principle of consideration (cf. 8.3 above and JO 1992/93 p 69 ff). Moreover, it is clear from this provision that the principles of necessity and proportionality must be observed.

17.2

Where a person is to be taken into custody under s 12, this should be done by plain clothes officers if practicable.

17.3

As to the authority to restrain a person taken into custody by means of handcuffs, see 10a above.

17.4 Placing someone taken into custody under the Police Act in a police cell.

17.4.1

A person taken into custody under the Police Act should not normally be placed in a police cell. However, he is obliged to remain in the place where he has been asked to stay and he should not be allowed to move about freely in the police station. He is also obliged to obey any directions given by a police officer or a guard aimed at ensuring order and safety at the place of custody. A basic rule is that the freedom of movement of people taken into custody may be limited only to the extent called for in each specific case.

17.4.2

A person taken into custody may be placed in an arrest cell or otherwise locked up in a room if this is necessary to maintain order or safety. Such a measure may be required e.g. 1. if he does not comply with a direction given or 2. if he is disorderly or shows signs of intending to escape and there are not enough people to guard him, for example

because a large number of people have been taken to the police station.

17.4.3

As for a measure taken under s 11, all the special provisions referred to in that section under which a person may be taken into custody are also considered to include the authority to place him in a police cell. However, of all those special provisions, it is only the Aliens Act that contains explicit provisions regarding the placing of a person in a police cell. These provisions must of course be taken into account where someone has been taken into custody under the Aliens Act on the basis of s 11 of the Police Act. For example, it is stated in this act that a person under eighteen taken into custody under s 11 may on no condition be kept in a prison, a detention facility or a police cell (cf. Ch 6 s 19 of the Aliens Act).

17.4.4

A decision to place someone taken into custody in a police cell is to be made by a senior officer under s 15. The time and manner of detention shall be recorded (see 27.5 below).

17.5 Placing someone who is the subject of some other form of deprivation of liberty in a police cell

17.5.1

There is some uncertainty as to which forms of deprivation of liberty also include the authority to place a person in a police cell. The legislators' intention is that it should be explicitly stated in each provision concerning a deprivation of liberty whether or not a person subject to that measure may be placed in a cell. Today, however, only a small number of these provisions contain such a statement, and a great deal of legislative work remains to be done to achieve this aim. It is intended that this work should be carried out in connection with any future amendments to these provisions.

17.5.2

As for someone who is suspected of an offence, there are explicit provisions about the placing of such a person in a police cell in Ch 24 s 23 of the Code of Procedure, according to which such a measure, regardless of whether the person in question has consented to it or not, may only be taken if there is statutory support for it. Such support can be found in the following acts:

- a. Under Ch 9 s 10 of the Code of Procedure, a person taken by the police to a court of law where he is to appear in a criminal case, may be placed in a cell if this is necessary in view of the purpose of the measure, or to maintain order and safety. Under the same provisos, a person suspected of an offence who is detained for questioning may be placed in a cell under Ch 23 s 9 of the Code of Procedure.

In the cases referred to so far, the basic rule is that person taken into custody should be kept in an unlocked room. In exceptional cases, however, it may be necessary to place him in a police cell, e.g. if the interview cannot be held immediately, if the person in question cannot be interviewed because he is intoxicated or disorderly or if there is a risk that he will escape or communicate with another person who is also to be interviewed

- b. Under Ch 24 s 22 of the Code of Procedure, a person who is under arrest or detained pending further investigation or trial shall normally be kept in a police cell. However, a person who is under arrest does not have to be placed in a cell unless this is necessary in view of the purpose of the arrest or to ensure order or safety. The assessment of whether such a person may be kept elsewhere in view of the purpose of the arrest should be based on the grounds for the arrest.

17.5.3

In addition there are explicit provisions regarding the **placing of young people in a police cell** in ss 14 and 33 of the

Young Offenders Act (1964:167; reprinted 1994:1760). These provisions are commented on in 12.7 above.

17.5.4

Finally, under s 4 of **the Act on Police Interventions against Intoxicated Persons** (1976:511; reprinted 1984:391), a person taken into custody under this act may be placed in an police cell on the same conditions as those stated in s 17 of the Police Act. However, it is laid down in point 3.2 of the National Police Board Guidelines for the Application of the Act on Police Interventions against Intoxicated Persons (RPS FS 1984:5, FAP 023-1) that every effort should be made to refer a person under fifteen taken into custody under this act to a local medical centre for emergency care.

17.5.5

As was mentioned above, explicit provisions regarding the placing of a person in a police cell are lacking in a majority of the acts under which a person's liberty may be restricted. In such cases, the police must try to interpret the provision in question, paying particular attention to its purpose, with a view to discovering whether it is intended to provide support for such a measure.

17.6 Special forms of deprivation of liberty

17.6.1

A person who is **under the age of fifteen** may not be placed in a police cell. According to Ch 1 s 3 of the National Police Board Instructions and Guidelines for the Keeping of People in a Police Cell (RPS FS 1995:1, FAP 102-1), a minor should be kept at a police station only for a short while and then only under supervision in an interview room or some similar room.

17.6.2

The main provision of s 17 is applicable to anyone who is **between fifteen and eighteen years of age**, which means that such a person may be placed in a police cell. For several reasons, however, not least the provisions of the

UN Convention on the Rights of the Child (see 8.7 above), a person belonging to this age group should not normally be placed in a police cell or in a cell at an arrest facility, or otherwise be locked up. In exceptional cases, however, this may be necessary. Where a young person is not placed in a police cell, he should be kept in the manner described in 17.6.1 above.

17.6.3

According to Ch 1 s 4 of the foregoing NPB Instructions and Guidelines, a person who is assumed to be **suffering from a serious mental disorder** should not be placed in a police cell unless absolutely necessary, e.g. if he is behaving in a manner posing an immediate threat to people around him and keeping him in a cell is the only way to deal with this threat pending a referral to a medical facility.

Section 18

If a person is to be arrested under Chapter 24 of the Code of Procedure, he may not be taken into custody or detained under s 13, second paragraph.

Provisions concerning the taking of intoxicated persons into custody are contained in the Act on Police Interventions against Intoxicated Persons (1976:511).

18.1

It is stated in this section that a person who is obviously to be arrested under Ch 24 of the Code of Procedure may not be taken into custody or detained under s 13, second paragraph, of the Police Act. This provision applies both to arrests and implementations of a decision about detention pending further investigation or trial.

18.2

In s 9, second paragraph, of the Act on Police Interventions against Intoxicated Persons (1976:511; reprinted 1984:391) it is laid down that if a person may be taken into

custody both under s 13, second paragraph, of the Police Act and the Act on Police Interventions against Intoxicated Persons, the latter act shall apply.

It also apparent from s 9, first paragraph, of the Act on Police Interventions against Intoxicated Persons that an arrest under Ch 24 of the Code of Procedure takes precedence over any intervention under the Act on Police Interventions against Intoxicated Persons.

18.3

As to a person who is to be taken to an interview under the Code of Procedure, there is no absolute impediment to taking that person into custody under s 13, second paragraph. However, such a measure should be redefined if the period of detention is to be used for interviews about an offence that the person in question or some other person has committed

Nor is there any legal impediment to taking someone into custody under s 13, second paragraph, in a case where the provisions of ss 11, 12 or 14 might also be invoked.

18.4

Where the conditions for taking a person into custody under s 14 are satisfied at the time when the intervention is made, that section should be applied rather than s 13, second paragraph. If, after a person has been taken into custody under s 13, second paragraph, it is discovered that s 14 is applicable, there is nothing to prevent the senior officer performing the compulsory assessment under s 15, first paragraph, from redefining the intervention. In such a case the detention period should be reckoned from the time when the first intervention was made.

Sometimes, however, circumstances motivating application of s 14 will come to light after this assessment, but before the person has been released. An example is where, in connection with the release of an unknown person taken

into custody under s 13 for disturbing the peace, it is discovered that he may be identical to a person who is unlawfully at large. In such a case, there is nothing to prevent the senior officer from simultaneously deciding that the measure based on s 13 be terminated and that the unknown person be taken into custody for identification under s 14. Strictly speaking, the detention period should then be reckoned from this decision, which means that the overall detention period may exceed six (or twelve) hours. However, this can be allowed only in very exceptional cases: the police must always aim to keep the detention period within the six-hour (or twelve-hour) limit.

Search of a person etc.

Section 19

A police officer who with statutory support arrests or otherwise takes into custody or removes a person, may in connection therewith search that person to the extent required

1. to seize weapons or other dangerous articles for safety reasons, or
2. to establish the person's identity.

A police officer may also search a person to the extent required to look for weapons or other dangerous articles that might be used in the commission of an offence against life and health, provided that, in view of the circumstances, it can be assumed that such an article may be declared forfeited in accordance with Chapter 36, s 3 of the Penal Code. **Acts 1987:577 and 1993:1142.**

19.1

This section empowers a police officer to search a person, either in connection with his being deprived of liberty or

removed, or under certain circumstances where a search is necessary to look for weapons and other dangerous articles.

19.2

The term 'search' is not defined in the Police Act, the reason being that the definition in Ch 28 s 11 of the Code of Procedure is also intended to be used for the purposes of the Police Act (cf. Ch 28 s 15 of the Code of Procedure). A search is the examination of the clothes and other items worn by someone and of any bags, parcels and other articles carried by the latter. For the purposes of this section, rack or seat bags e.g. on a motorcycle are also regarded as bags. It does not matter whether a bag etc. is open, closed or locked

19.3

A search of a person may be made for safety reasons when a police officer with statutory support arrests or otherwise deprives a person of liberty, or when he removes someone. When it comes to the search of someone who is to be detained or placed in a police cell, the provisions of this section are no more far-reaching than those in ss 2 and 18 of the Treatment of Detained Persons Act (1976:371).

However, s 19 of the Police Act also applies to interventions where a person is not to be placed in an arrest facility or a police cell, for instance interventions under s 47 of the Compulsory Psychiatric Care Act (1991:1128), where it is provided that the police shall provide assistance, e.g. in taking or returning a person suffering from a mental disorder to a hospital. Another example is where a person is to be taken to a trial by the police under Ch 46 s 15 and Ch 9 s 10 of the Code of Procedure to answer charges in a criminal case. Section 19 may also be applied where someone taken into custody under the Act on Police Interventions against Intoxicated Persons (1976:511; reprinted 1984:391) is to be taken home or to hospital, rather than placed in a police cell.

Taking a driver to a police station for a breath test constitutes a deprivation of liberty. This means that a protective search may be made in such a case under s 19 (see NPB Directive of February 12, 1991, nr. DIR-102-6027/90).

19.4

A search made for safety reasons (a so-called ‘protective search’) should be aimed at discovering whether the subject is carrying a firearm, tools or other articles by means of which he may do himself, the police officer or someone else harm. ‘Dangerous articles’ should also be interpreted as including dangerous substances. A search is performed by systematically feeling in, or over, the subject’s pockets and clothes.

Any dangerous articles found should of course be seized. If the person is placed in a police cell or taken to an arrest facility or a hospital, the articles should be kept there on his behalf until he is released in accordance with the provisions that apply to the case in question (see. e.g. s 4a of the Treatment of Detained Persons Act (1976:367)). A record must be made of all articles seized. If the deprivation of liberty is terminated before the person has been placed in a cell, taken to hospital etc., the articles are to be returned to him on his release, except of course those which are subject to seizure (see e.g. Ch 36 s 3 of the Penal Code).

19.5

A search of a person made with a view to establishing a person’s identity will often be necessary e.g. when a person suffering from a mental disorder has to be taken to a hospital, or when someone taken into custody under the Act on Police Interventions against Intoxicated Persons is to be taken to a hospital for treatment or to his home.

Such a search will of course be carried out in a somewhat different manner than a protective search. For example, it may involve an examination of a driving licence or other proof of identity carried by the person.

19.6

The power to search a person for crime prevention purposes laid down in the second paragraph should be seen against the background of the provisions regarding forfeiture in Ch 36 s 3 of the Penal Code and seizure in Ch 27 s 14a of the Code of Procedure. Under these provisions, any article that may be used as a weapon in the commission of an offence against life or health found under circumstances which give rise to the apprehension that they might be put to such use, may be seized and declared forfeit. It should be noted that none of these provisions require a concrete suspicion that an offence has been or will be committed. It is enough if – chiefly in view of the circumstances in which the person is found – there is an obvious risk that a knife etc. may be used in the commission of an offence.

According to this section, the police may also search bags and similar hand-luggage to look for weapons or other dangerous articles that may be used in the commission of an offence against life or health, if the circumstances are such that the articles may be declared forfeited under Ch 36 s 3 of the Penal Code.

The right to perform a search under the second paragraph presupposes a situation where there appears to be a great risk that weapons will be used in the commission of a violent crime, e.g. in a confrontation between two rival youth gangs. This provision is also applicable to other situations, such as certain football matches and other public events where the police know from experience that there is a great risk that weapons will be used. Sometimes, this risk may be posed by a single person. Needless to say, only that person may be searched in such a case. In other cases, however, e.g. when the general atmosphere at the scene is threatening, or in connection with a public event of the kind just referred to, the police may carry out routine checks of those present with a view to searching for articles that may be used to harm other people. A

decision about such routine searches should be made by an officer of the rank of inspector or above

Under certain circumstances, the provisions of s 19, second paragraph, may be also applied in situations referred to in the Act on Security Checks at Court Hearings (1981:1064) (cf. JK 1988 p 220 ff).

19.7

The provisions governing **seizures of dangerous articles kept in vehicles** deserve special mention. Under the Act Prohibiting Knives and Other Dangerous Articles (1988:254), such articles may not be carried in a public place. Trains and other public means of transport are regarded as public places but not a car, no matter where it is parked. Thus, it is not illegal to be in possession of a knife in a car and consequently coercive measures under criminal law, such as a search of premises or seizure, cannot be taken in such a case.

Nor can a search for a knife etc. in a car be based on the provisions regarding searches in s 19, second paragraph, of the Police Act, since what is being kept in the boot or the engine or passenger compartment of a car cannot be said to be something that one carries. This means that when a police officer gains entry to such a space with a view to looking for an article, regardless of whether or not the car is locked, he is not performing a search of a person but a search of premises. However, apart from s 23 of the Police Act, which is only applicable in very serious situations, there are no provisions on the search of premises for purposes of crime prevention that can be applied in a case like this (cf. JO 1993/94 p 104 ff, Decision by the Parliamentary Ombudsman of September 27, 1996, nr 1349-1996, Decision by the Parliamentary Ombudsman of September 19, 1997, nr 150-1997, and JO 1997/98 p 190).

19.8

A search under this section should not of course be made if it is obviously unwarranted in view of either the situation

or the subject's person. If, for example, a person is to be removed, a search with a view to establishing his identity will be required only very rarely.

19.9

There are no special procedural provisions in the Police Act regarding the search of a woman. However, under Ch 28, s 13 of the Code of Procedure, which can probably be applied to searches under the Police Act, a woman may only be searched by an officer of the same sex, a doctor or a qualified nurse. If the search only involves an examination of articles carried by a woman, however, it may be performed and witnessed by a man.

19.10

Section 23 of the Police Act contains provisions empowering the police to perform searches in certain exceptional cases.

Special powers in connection with a search of premises and similar measures

Section 20

A police officer, with a view to looking for a person who is to be taken into custody with statutory support, may enter that person's dwelling or some other house, room or place belonging to or utilised by him. The same applies to premises to which the public has access. If there is special reason to assume that the person sought by the police is staying with someone else, the police officer may also enter that place. Similarly, a police officer may gain entry to a dwelling or some other place with a view to looking for an article which is to be seized by the police under an act or some other ordinance; what is said above about a person sought by the police then applies to the owner or holder of the article.

A police officer may search a vehicle at a specified place for the purpose of ascertaining whether it is car-

rying someone who has escaped from a correctional facility where he is serving a sentence of at least four years' imprisonment, provided that there is reason to assume that the escaped person poses a serious threat to another's life or health or to the safety of the realm, and provided that there is special reason to believe that he may pass that place. The same power is vested in a police officer looking for someone who is undergoing compulsory psychiatric care or has been referred to forensic psychiatric care and has escaped from a medical institution, if, in view of the circumstances, there is special reason to believe that the escaped person poses a serious threat to another's life or health or to the safety of the realm.

A measure referred to in the first and second paragraphs may be effected without a previous decision by the police authority only if there is danger in delay. Such a measure may be effected between 21:00 and 06:00 hours only if there are special reasons for this.

The Code of Procedure contains provisions concerning searches carried out with a view to looking for objects which are subject to forfeiture, or for a person who is to be arrested or detained pending further investigation or trial, or who is to be taken to an interview or to a court of law. (**Act 1991:665**).

20.1

Section 20, like the next four sections, vests in the police special powers to search premises and take other similar measures.

The provisions of s 20 do not apply where the prerequisites for a search under Ch 28 of the Code of Procedure are satisfied, as is clearly stated in the fourth paragraph.

The first paragraph deals with the powers of a police officer to enter a closed space with a view to looking for

someone who is to be taken into custody or for articles that are to be seized in a case where the police have been directed to take such a measure. Provisions regarding taking people into custody are to be found e.g. in the Compulsory Psychiatric Care Act (1991:1128), the Aliens Act (1989:529; reprinted 1994:515) and the Care of Substance Abusers Act (1998:870). Additional provisions can be found in Ch 28 s 11 of the Penal Code (cf. also Ch 38 s 12 of the same code) and Ch 21 s 3 of the Parental Code. Provisions regarding the seizure of articles through the agency of the police in special legislation are quite rare. One example is Ch 6 s 4 of the Firearms Act (1996:67) which states that a firearm is to be seized if there is a risk that it might be misused.

There are a number of provisions that empower an authority to gain entry to a dwelling or some other space with a view to performing an official duty, e.g. an inspection. Several of these also provide that the police are to assist the authority concerned in the implementation of such a measure. For example, in the Rescue Services Act (1986:1102; reprinted 1992:948), it is laid down that someone in charge of fire prevention inspections or soot removal has right of access to the facility in question and that the police authority shall provide such assistance as may be required. Similarly, s 26 of the Food Act (1971:511; reprinted 1989:461) provides that a supervisory authority has the right to enter certain areas, premises etc. where foodstuffs are handled to carry out inspections and take samples for analysis, and that the police authority shall assist in such inspections on request. In such situations the right of a police officer to gain entry by force is considered to follow from the provisions under which the measure is effected. The provisions concerning a search of premises in s 20 are not applicable in such cases.

20.2

A distinction of interest in this connection is that between **investigative measures which are to be regarded as**

a search of premises and **general observations** that a police officer can make without applying the provisions concerning the search of premises. A police officer who calls on a person to perform an interview or otherwise obtain information from him can usually also make observations in that connection which may be of importance to the case being investigated. Legally, the line is drawn between observations of a general nature and direct investigative measures. Thus, the provisions concerning searches of premises are applicable to any observation resulting in some form of active investigative measure. If, from the outset, the purpose of such a visit is to look for a person or an article, it always constitutes a search of premises (cf. JO 1985/86 p 149 ff, 1990/91 p 80 and JK 1993 p 32 ff).

20.3

Whether or not a search is effected with the **consent of the owner** is of no practical consequence, at least not where a search of premises is to be made with a view to locating a person. Thus, even if the person whose home is to be searched consents to this, the police must abide by the provisions governing the search of premises (cf. JO 1985/86 p 149 ff and 1997/98 p 133 ff).

20.4

It is not explicitly stated either in the Police Act or the Code of Procedure **when a decision on a search of premises should be deemed to have been executed**. However, the Parliamentary Ombudsman has dealt with this and other similar questions relating to the search of premises under the Code of Procedure. Needless to say, the fact that the person sought was not found during a search does not mean that the decision has not been executed. If, on the other hand, a police officer, without entering the premises, can easily establish that the person in question is not there, this does not mean that the decision has been executed. However, for reasons that will

be explained at the beginning of the next section, observations of this kind may only be made during a brief period of time (cf. JO 1997/98 p 165 ff).

The main principle when it comes to using coercive measures is that the circumstances on which the decision to take such a measure is based must still be present when the measure is taken. It is not possible, however, **to state a definite time limit within which a measure decided on must be taken**. The longer it takes for a decision to be implemented, however, the greater the chances are that the circumstances will have changed. If an officer authorising a coercive measure believes that it will be some time before the measure can be effected, he should state in his decision when the decision expires. A decision on a search of premises aimed at locating a person must not be formulated in such a way as to allow several searches to be effected during a certain period of time (cf. recently published decisions by the Parliamentary Ombudsman).

20.5

The definitions in this section of the prerequisites for where and when a search of premises may be made are quite similar to those found in the Code of Procedure. Where a person is to be taken into custody, a police officer may enter his home or some other house, room or place which belongs to or is utilised by him. 'Place' in this section has the same meaning as in Ch 28 s 10 of the Code of Procedure, i.e. a space which is not closed in the proper sense of the word but which nevertheless is not accessible to the public, such as a yard, a factory area or a building site.

The provisions that apply to searches for articles are also applicable to searches for animals which are to be taken in charge, e.g. by decision of a County Administrative Board under s 31 of the Prevention of Cruelty to Animals Act (1988:534). Moreover, the police may enter premises open to the public, such as shops, restaurants, cafeterias, theatres

and cinemas both when looking for a person and when looking for an article.

Where a decision entailing a search of premises rests with another authority, rather than with an individual police officer, the phrase 'is to be taken into custody' is considered to mean that this decision must have been made before a search may be performed (cf. JK 1995 p 58).

20.6

If there is special reason to assume that the person sought by the police is staying with someone else, the police may also gain entry to that place. The same applies when the police are looking for articles. The Parliamentary Ombudsman has stated that the phrase 'special reason' should be interpreted to mean that there must be some concrete grounds for the assumption that the person sought may be found in that place (JO 1985/86 p 149 ff).

20.7

Another condition for a search is that the police are looking for a particular person - although he may not be known by name - or a particular article. Thus, this section does not empower the police to enter dwellings or other premises to look for wanted persons on a routine basis. For example, when the police are performing routine checks of foreign nationals, they may not enter a place often frequented by such people unless they are looking for a particular person.

Another general condition is that the damage and other inconvenience which an intervention may cause must not be disproportionate to its purpose. Accordingly, the police must have very strong grounds for demanding access to a place used for public meetings. The principle of proportionality is particularly important in cases of seizure of articles: extraordinary circumstances are required for the police to be allowed to gain entry to a person's dwelling with a view to seizing, for instance, a passport (cf. s 18 of the Passport Act (1978:302)), especially since in the

majority of such cases the measure is not likely to lead to the intended result. As to the application of the provisions concerning seizures of firearms in s 20 of the Firearms Act, see JK 1995 p 58. Hospitals are another example of premises where a search is only very rarely possible in view of the principle of proportionality.

20.8

The question of whether coercive measures may be taken in a church or a convent has been discussed by the government and parliament (bill 1988/89:124 p 59 f and report JuU 25 p 30 f). However, it was felt there was no need for special provisions in this area, and consequently the current legislation contains no explicit restrictions regarding such interventions. The basic principles of proportionality and necessity in s 8 of the Police Act must be strictly observed, however. Furthermore, the foregoing bill prompts caution and prudence in connection with such measures and recommends that the police initially talk to someone who is in charge of the premises, e.g. a vicar or a parson. Such a person can then act as an intermediary between the wanted person and the police and help to defuse a potentially dramatic situation (Bill p 61; see also JK 1990 p 42 ff). As for searches in convents, see Decision by the Parliamentary Ombudsman of February 28, 1995, nr 4240-1993.

For the search of premises occupied by an agency to which the Security Protection Ordinance (1981:421) is applicable, see JO 1997/98 p 133 ff

The search of vehicles is discussed under 19.7 above.

20.9

In the spring of 1989, the National Police Board requested that the government grant the police powers to perform routine identity controls and searches of vehicles (road checks) when looking for someone who is suspected of having committed an offence or who has escaped from a prison or a medical facility. As a result, new provisions

were introduced on July 1, 1991 giving the police the authority to perform such checks. Provisions governing such a measure taken in relation to someone suspected of an aggravated offence were included in Ch 28 s 2a of the Code of Procedure, while provisions regarding the search of premises with a view to looking for someone who is unlawfully at large were introduced into a new second paragraph of s 20 of the Police Act.

The provision in **the second paragraph** empowers the police to perform a road check at a specified place with a view looking for someone who has escaped from a correctional facility where he is serving a sentence of least four years' imprisonment. Other requirements for such a measure are that the escaped person can be assumed to be posing a serious threat to another person's life or health or to the safety of the realm, and that there is special reason to assume the he will pass the place where the check is to be made. The same powers apply when someone who is undergoing compulsory psychiatric treatment or who has been referred to forensic psychiatric care has escaped from a medical facility. In such a case the police must also have special reason to believe that the escaped person poses a serious threat to another person's life or health or to the safety of the realm and that he will pass the place where the check is to be made.

This provision is applicable in cases where a wanted person has escaped from a prison or medical facility in Sweden or abroad, or has failed to return to such a facility after a leave. The fact that the search may only be performed at a specific place also means that a decision about such a search may not be made without prior assessment of the likelihood that the escaped person will pass the place in question. Initially, a road check is likely to be organised along the route the escaped person is presumed to have taken. If there is reason to suspect that he may try to leave the country, such a check may also be made at a border crossing etc.

The term 'vehicle' refers not only to vehicles mentioned in the Road Traffic Ordinance but also to trains, underground trains, boats, ships and aircraft. When a vehicle is searched, the police may also search any boxes and other containers large enough to conceal a person carried in the vehicle.

When assessing the danger posed by an escaped person, special attention should be paid to the kind of offences he has been convicted of (e.g. aggravated violent offences) and other circumstances brought to light during the judicial process. For example, he may have stated that he is going to take revenge on another person, or he may have access to weapons or be in possession of information, the disclosure of which to a representative of a foreign state might pose a threat to the safety of the realm.

The assessment of the danger posed by someone who has escaped from a medical facility should primarily be based on what is known about the circumstances of his escape, e.g. that he was in a severely psychotic state, used a weapon while escaping or that he is known to have access to firearms.

20.10

It is stated in **the third paragraph** that decisions about measures under s 20 are to be made by the police authority. The authority to make such decisions is vested in the chief officers of the police authority under Ch 3 s 8 of the Police Ordinance.

If there is danger in delay, however, a police officer may perform a search without a prior decision by the police authority. The term 'danger in delay' is not defined in the legislation. Generally speaking, such a danger exists if postponing a measure, pending a decision by the police authority, would prejudice its purpose. Today, however, a police officer usually has access to modern IT systems which make it easy for him to contact an officer authorised

to make such a decision, and consequently it would seem that this provision can now be invoked only very rarely (cf. JO 1997/98 p 133 ff).

20.11

According to **the second paragraph**, a measure referred to in this section may not be taken between 21:00 and 06:00 hours except for special reasons. Such a special reason might be that the police want to search a restaurant or a night-club at a time when it is open to the public. The search of a vehicle at night does not usually entail the same inconvenience to the person travelling in it as would a search of that person's home, but a late-night search of a ship's cabin or a sleeping-compartment on a train is of course a different matter. When assessing whether there are special reasons for performing a road check, the time at which the suspect can be expected to pass the place may be taken into account.

20.12

Provisions concerning searches can be found both in the Police Act and in the Code of Procedure. The basic principle is that a search of premises in relation to a crime investigation should be made under the Code of Procedure, while a search in connection with measures under administrative law, e.g. taking someone into custody under the Aliens Act, should be made under s 20 of the Police Act. The provision in s 20, **fourth paragraph**, is intended to serve as a reminder of this.

However, the boundary between these two sets of provisions is not as clear-cut as may at first appear: as of July 1, 1990, it is laid down in Ch 28 s 4, third paragraph, of the Code of Procedure that in a criminal case, a decision to effect a search of premises aimed at finding

1. someone who is to be arrested and detained pending trial in accordance with a decision of the kind referred to in Ch 24, s 17, third paragraph, of the Code of Procedure (i.e. someone who is the subject of a warrant of arrest), or

2. someone who is to be taken to a trial by the police, is to be made by a police authority or a police officer in accordance with the provisions of the Police Act. Thus, in these two cases the Code of Procedure refers back to s 20 of the Police Act (cf. JO 1997/98 p 133 ff).

20.13

A question commonly encountered in day-to-day police work is whether the police will pay for damage caused to a third party in connection with a search of premises or some other kind of intervention, for example damage to a door in a block of flats. These matters are governed by the Tort Liability Act (1972:207; reprinted 1975:404). Under Ch 3 s 2 of this act, the state will pay for any damage resulting from error or neglect in the execution of an official duty. In other words no compensation will be paid for damage arising from a properly conducted police intervention. This means that in the case of the damaged door above, the owner of the building will not receive any compensation unless it can be shown that the police officer used greater force than permitted under s 10 of the Police Act or some other provision that is applicable to the intervention (cf. JK 1993 p 89 ff; see, however, also JK 1992 p 132 ff).

Section 21

A police officer may also gain entry to a house, a room or some other place if there is reason to believe that someone in that place has died, is unconscious or otherwise unable to call for help. Such a measure may also be taken when necessary in cases where the police are looking for a missing person, if the latter can be assumed to be needing help.

21.1

This section confers on a police officer the power to effect a search of premises and similar measures in specific cases of an emergency nature. A police officer may enter a house, a room or some other place if there is reason to

believe that someone in that place has died, is unconscious or otherwise unable to call for help. Such a measure may also be taken if need be where the police are looking for a missing person if that person can be assumed to be needing help. This section is not applicable where a person suspected of an offence has escaped, but to situations where someone - usually a child or an elderly person – is missing and for that reason is being sought by the police.

21.2

It is quite common in practice that when looking for missing persons, the police may have to retain temporarily a photograph etc. to be able to issue a missing person notice. In such cases, it can reasonably be presumed that the missing person would not object to this.

21.3

This provision replaces in some part the provision concerning acting out of necessity in Ch 24 s 4 of the Penal Code. However, it will be necessary even in the future to invoke the latter section in certain situations. One situation mentioned in the preliminary work to the Police Act is where it is feared that someone will try to commit suicide. It is apparent from the preliminary work that the police, even in the future, should have both the obligation and the power to try to prevent such an act.

Section 22

A police officer may stop a vehicle or some other means of transport

1. if there is reason to believe that it is carrying someone who has committed an offence,
2. if, for some other reason, this is necessary to lawfully deprive someone travelling in the vehicle of his liberty, otherwise limiting his freedom of movement or subjecting him to a search or bodily examination,

3. if this is necessary to perform a search of the vehicle,
or
4. if this is necessary to control traffic or to perform a check of the driver or the vehicle in accordance with what is prescribed thereto. **Act 1998:27.**

22.1

This section, which became effective on April 1, 1998, does not affect the application of any of the previous provisions in this area; it is aimed only at those cases where the stopping of a vehicle may be combined with a coercive measure and is thus to be regarded as an exercise of public authority. Vehicles may be stopped for purposes other than those mentioned here, e.g. to assist the driver, but the use of force is not allowed in such cases and a driver is under no obligation to stop. Another case not covered by this section is where the police have to use force to stop a driver at risk of an imminent danger. In such a situation, it would seem that the provisions regarding necessity and acting out of necessity are applicable.

This section provides no grounds for the stopping of vehicles for preventive reasons, e.g. to give drivers information about traffic regulations etc. However, a police officer may provide such information in connection with a road-side driver/vehicle check provided that the driver consents to this.

A police officer may only stop a vehicle under s 20 by making a stop sign or by otherwise making it clear to the driver that he must stop. The authority to use force to stop a vehicle is governed by s 10, first paragraph, subsection 5 of the Police Act.

It should be noted that a driver who fails to comply with a stop sign given by a police officer is guilty of an offence under the Road Traffic Act or the Off-Road Vehicle Act only where the sign was given for the purpose of traffic control, i.e. in situations referred to e.g. in subsection 4.

The meaning of the term ‘means of transport’ is the same as in s 20, i.e. it refers not only to road vehicles but also trains, underground trains, boats, ships and aircraft.

22.2

Subsection 1 gives a police officer the power to stop a means of transport if he has reason to believe that someone travelling in the vehicle has committed an offence. This prerequisite is the same as that which must be satisfied for a police investigation to be initiated. Thus, where this prerequisite is satisfied, a police officer may stop a vehicle to take a measure referred to in Ch 23 s 3, third paragraph, of the Code of Procedure, e.g. an interview with the passengers.

The requirement that there must be ‘reason to believe’ that someone has committed an offence, means that a vehicle may not be stopped solely for surveillance purposes.

There is no requirement in this subsection that the offence must be of a particular kind, e.g. one which is punishable by imprisonment. While a driver who fails to observe a stop sign given by a police officer may in some cases be guilty of a violation of the Road Traffic Act, such neglect does not automatically constitute grounds for suspicion that the driver has committed some other offence. Thus, for this subsection to be applicable in such a case, the police officer must have some other concrete reason for believing that someone in the car has committed an offence (cf. JO 1990/91 p 73 ff).

The principle of proportionality is very important in interventions of the kind referred to here. The more aggravated the offence is, and the more convinced a police officer is that someone in the vehicle has committed that offence, the more urgent is the intervention. Where a police officer decides to stop a vehicle merely to establish the identity of the driver for the purpose of reporting a traffic violation, he may not, of course, use such force as might be reasonable

where it is a question of stopping an escaping driver who is reasonably suspected of a serious offence.

22.3

Under subsection 2, a police officer may stop a vehicle if this is necessary to subject the driver to a search or a bodily examination, deprive him of liberty or otherwise limit his freedom of movement. The meaning of the latter two terms is explained in 10.4 above. A condition for an intervention under this subsection is that the intervention is founded on some ground other than the suspicion of an offence.

22.4

While the first two subsections refer to interventions against someone who is travelling in the vehicle, the third deals with a search of the vehicle. This provision applies both to searches of premises made under the Police Act and searches under the Code of Procedure. The search of vehicles is commented on in 19.7 above.

22.5

The fourth subsection refers to measures taken under road traffic acts and ordinances, either for purposes of traffic control or to carry out a check of the vehicle or the driver.

Provisions empowering the police to carry out checks of drivers or vehicles can be found e.g. in

- the Car Registration Ordinance (1972:599),
- the Off-Road Vehicle Ordinance (1972:594),
- the Motor Vehicle Ordinance (1972:595),
- the Road Traffic Ordinance (1972:603),
- the International Road Transports Ordinance (1974:681),
- the Breath Test Act (1976:1090),
- the Transport of Dangerous Goods Act (1982:821),
- the Transport of Dangerous Goods Ordinance (1982:923),
- the Ordinance on Foreign Vehicles in Sweden (1987:27),
- the Vehicle Tax Act (1988:327),

- the Act on Temporary Driving Bans (1990:1079) and
- the Driving Schedules Ordinance (1994:1297).

These acts, however, contain no provisions empowering the police to stop a vehicle with a view to performing such a check, either on a routine or individual basis.

Special powers pertaining to the protective and preventive duties of the police

Section 23

If there is special reason to assume that an offence involving a serious threat to life or health or a serious risk of extensive damage to property will be committed in a certain place, a police officer may, with a view to averting the offence or providing protection against the same,

1. gain entry to a house, a room or some other place to look for explosives, weapons or other dangerous articles,
2. close off, evacuate or prohibit access to a house, a room or some other place, prohibit the removal of a certain object or the use of a means of transport or take some other similar measure.

If there is a serious risk that an offence referred to in the first paragraph will be committed, a police officer may also search persons who are present at that place with a view to searching for dangerous articles.

A measure referred to in this section may be effected without a previous decision by the police authority only if there is danger in delay. **Act 1998:27.**

23.1

This section treats of the special powers vested in the police in their preventive and protective work. The police have the principal responsibility for protecting the public and for taking preventive measures if there is danger of an offence being committed which might threaten people's

lives or health or result in extensive damage of property, e.g. a threat of sabotage or destruction endangering the public.

Prior to the introduction of the Police Act, there were very few provisions governing the preventive and protective work of the police. Specific provisions existed only in two areas, viz. the prevention of offences endangering air traffic safety and offences in connection with court proceedings. These provisions can be found in the Act on Special Controls at Airports (1970:926) and the Act on Security Checks at Court Hearings (1981:1064). Section 23 gives the police certain additional powers in this field.

23.2

If there is special reason to believe that an offence will be committed in a specific place involving a serious threat to life or health, or a serious risk of extensive damage to property, a police officer may take certain measures under this section with a view to averting the offence or providing protection against the same.

For this section to be applicable, there must firstly be a threat that an offence will be committed. Accordingly, s 23 does not apply to situations arising by accident, such as fires or other disasters of the kind referred to in the Rescue Services Act (1986:1102; reprinted 1992:948).

It is moreover required that the offence be of a certain nature, viz. one which involves a serious threat to life or health or a serious risk of extensive damage to property. For example, this section is applicable where a bomb threat has been made or where there is reason to believe that there will be a violent attack on a foreign head of state visiting Sweden. There is no requirement that the crime risk has to be substantiated, as this section is intended to be applicable e.g. to bomb threats which, as experience shows, can almost always be assumed to be false.

Thus, the situations in which this section can be applied are normally of a different nature from those where a police officer in accordance with s 10, first paragraph, subsection 3, has the right to use force against a person or property with a view to averting a punishable act or a threat to life, health or property. In the latter case, the act or threat is presumed to be actual or imminent, while the purpose of the present section is to prevent a crime risk.

23.3

Moreover, the risk must be present at a particular place. Judging by the wording of this provision, it would seem that the legislators' intention was to ensure that any measures taken under this section are geographically limited to this place (cf. JO 1993/94 p 104 ff).

23.4

Measures of such a drastic nature as referred to here should not be taken for general crime prevention purposes - there must be special reason to assume that a crime risk is present. The principle of proportionality is thus of great importance in the application of this section.

This provision coincides to some extent with the provision in s 24. However, the latter provision is intended to be used for more general crime prevention purposes.

23.5

The first measure mentioned in this section is gaining entry to a house, a room or some other place for the purpose of looking for explosives, weapons or other dangerous articles. Other measures that can be taken under this act are those mentioned in Ch 27 s 15 of the Code of Procedure, i.e. closing off a building or a room, prohibiting access to a certain area or premises, prohibiting the removal of an object etc.

There is also mention in this section of what is perhaps the most common police measure in situations such as these, viz. the evacuation of a house, a room or some other place. It is also laid down that a police officer may prohibit the

use of a means of transport. In the preliminary work to the Police Act it is stated that in the case of a bomb threat involving such a means of transport, the responsibility for deciding whether departure or other traffic should be allowed should rest with the police. In practice, however, such a situation will of course be resolved in consultation with the emergency services, the owner of the means of transport and other parties concerned. The listing of measures in this section is not complete.

23.6

A violation of a prohibition issued by the police under this section is in certain circumstances punishable under Ch 17 s 13, first paragraph, of the Penal Code (violation of official order).

23.7

According to **the second paragraph** of this section, a police officer may also under certain conditions search a person who is present at a place where there is a serious risk that an offence will be committed. If, for example, it has come to the attention of the police that an attack is being planned on a certain person, e.g. a foreign head of state visiting our country, such a measure might be justified. The purpose of the search must be the detection of dangerous articles.

23.8

The provisions of the first paragraph, subsection 1, and the second paragraph limit the protection against bodily searches and the search of premises provided by the Instrument of Government. According to established legal practice, any provision limiting a constitutional freedom or right must be interpreted restrictively. While measures such as closing off premises, prohibiting access etc. mentioned in s 23, first paragraph, subsection 2, do not normally involve any such limitation, this provision, too, should be interpreted in the same manner (Decision by

the Parliamentary Ombudsman of December 9, 1998, nr 4044-1996).

23.9

Decisions regarding measures under s 23 are to be made by the police authority. The authority to make such decisions is vested in the chief officers of the authority according to Ch 3 s 8 of the Police Ordinance.

However, a police officer may decide to take such a measure without a previous decision by the police authority if there is danger in delay. The term ‘danger in delay’ is explained in 20.10 above.

23.10

It follows from general principles of administrative law that there is no right of appeal against a decision on so-called ‘concrete action’. In principle, this means that the great majority of measures taken under s 23 should belong to this category. However, there are several examples to the contrary. In the autumn of 1996, the Malmöhus Police Authority decided to evacuate and prohibit entry to two buildings used by a motorcycle club. The decision was based on s 23. The entry ban, which was renewed once a week, was effective for about a month. As grounds for this measure, the police authority stated that there was reason to believe that the premises might be bombed or attacked with firearms and that there was an obvious risk that people living in the area and others might be harmed.

The owner of the building appealed against the measure to the Administrative Court of Appeal. The court found that this decision did not involve ‘concrete action’ and that an appeal could be lodged to the county administrative board under Ch 8 s 1 of the then Police Ordinance in view of the fact that the decision was made in writing, limited the owner’s right to use the building and, in addition, had been in force for a fairly long period of time (see Decision

by the Gothenburg Administrative Court of Appeal of November 20, 1996, case nr 7387-1996).

The County Administrative Board found that the police authority's decision to close off the building, as well as its extensions of this decision, was justifiable in view of the exceptional circumstances, which could be described as being of an emergency nature. On these grounds, the board rejected the appeal (see Decision by the County Administrative Board, nr 657-13358/96).

The Parliamentary Ombudsman, after examining this matter, declared that s. 23 is intended to be applied in specific situations for a short period of time, at most a few days, and that a police authority may not extend this time limit by renewing its decision (Decision by the Parliamentary Ombudsman of December 9, 1998, nr 4044-1996).

Section 23a

A police authority may appoint as arrest facility guard or passport control officer someone who is not employed as such in the police service and who is not a police officer. A person appointed as arrest facility guard may also be assigned to security duties in premises other than an arrest facility. The nature and extent of the duties involved shall be stated in the terms of appointment. Such an appointment may be revoked. **Act 1998:600.**

23a.1

This section, which became effective on January 1, 1999, contains provisions regarding the appointment of arrest facility guards and passport control officers. Similar provisions were previously to be found in Ch 7 s 14 of the 1984 Police Ordinance.

23a.2

The duties of both arrest facility guards and passport control officers involve the exercise of public authority. This

means, to put it simply, that they have the power to make decisions involving the obligations of an individual or decisions which may infringe on his freedom or property. According to Ch 11, s 6, third paragraph, of the Instrument of Government, an authority must have statutory support for assigning such duties to someone who is not employed by the authority.

With a view to removing the uncertainty that used to exist as to whether the previous provisions in the Police Ordinance actually gave the police the power required to appoint arrest facility guards (see JO 1997/98 p 173 ff), these provisions were moved to the Police Act.

23a.3

Under this section, a police authority may appoint a person as arrest facility guard or passport control officer. A person who is employed as such by the police service or a police officer does not need to be specifically appointed for such a duty.

23a.4

It is stated in this section that a person appointed as arrest facility guard may also perform security duties in premises other than an arrest facility. This means that such a person, like a guard employed in the police service, may be assigned to security duties at court hearings or when a detained person is taken to a hospital for treatment.

Section 24

In connection with a serious disturbance of public order or safety, a police authority may prohibit access to a certain area or premises if this is necessary to maintain public order or safety. The same applies when there is a risk of such a disturbance.

On the same conditions as those stated in the first paragraph, a police authority may also direct members of a crowd to follow a particular route.

In urgent situations where a decision by the police authority cannot be awaited, a police officer, pending such a decision, may issue a ban or direction of the kind referred to in the first and second paragraphs. **Act 1998:27.**

24.1

Prohibiting access to an area or premises and giving route directions are measures which usually constitute such a limitation of the freedom of movement of an individual that they may not be taken without explicit statutory support. Such support can be found not only in s 23 but also in s 24. Other statutes, too, confer such powers on the police (see 13a.1 above).

24.2

The situations to which s 23 is applicable are partly the same as those where s 24 may be applied, but s 24 is intended to be used chiefly for preventive purposes. However, there must always be a concrete risk of a serious disturbance of public order or safety for this section to be applicable.

In a situation where route directions may be given under s 24 there may also be grounds for a removal under s 13. Ordering someone to leave a place via a particular route is a measure which in many cases may be taken under the provisions governing removal. However, a removal may only be effected after a disturbance of the peace has occurred or after a threat of such a disturbance has arisen, while route directions can be given at an earlier stage, as soon as there is a risk of such a disturbance.

The police may of course also order someone to follow a directed route to a place.

24.3

For the purposes of this section, the ‘serious disturbance of public order’ does not have to be unforeseen. This means

that access to a certain area may be prohibited under this section e.g. prior to a major sports event or a demonstration. The requirement that there must be a risk of a 'serious disturbance of public order' will probably be satisfied in the cases given as examples above, if a large number of spectators are expected or if the demonstrators are to march along streets where there is a lot of traffic.

24.4

While it is possible to prohibit access to practically all kinds of areas and premises, both indoors and outdoors, such a ban will normally involve areas and premises to which the public has access. However, this provision also gives the police the authority to ban access to a private club if there is a serious disturbance and such a measure is considered necessary to maintain order or safety. In such cases, the principle of proportionality must be strictly observed, however, and the ban may be in effect for a short period only.

24.5

This section contains no information about how a place or an area is to be closed off. However, it would seem that from a legal point of view, the closing off of an area with police tape, signs etc. is adequate information to the public that the police have prohibited access to that area.

24.6

The principle of proportionality referred to in s 8 is also very important in the application of s 24 in other respects. The nature, extent and duration of a police intervention against an actual or potential disturbance of public order or safety must always be proportionate to the severity of the disturbance.

24.7

This section is also applicable in cases where a crowd constitutes a public event or a public assembly under the Public Order Act.

24.8

Section 13a contains provisions which empower the police to turn away or remove anyone who fails to observe an entry ban or route direction.

24.9

Measures under s 24 are to be decided by the police authority. Ch 3 s 8 of the Police Ordinance vests the authority to make such decisions in the chief officers of the police authority.

If there is danger in delay, however, a police officer may make such a decision. The term ‘danger in delay’ is explained in 20.10 above.

Information from transport companies

Section 25

A transport company which carries goods, passengers or vehicles to or from Sweden shall, at the request of a police authority, promptly supply such current information about arriving or departing transports as the company has access to. A transport company is under no obligation to provide any information about a passenger other than the person's name and details about his route, luggage, travelling companions and how his ticket was booked and paid for.

Information of the kind referred to in the first paragraph may only be requested by a police authority if it is believed to be of importance in the fight against crime. **Act 1998:27.**

25.1

This provision empowers the police, for the purpose of combating crime, to obtain information about passengers, cargoes and vehicles from transport companies which carry out such transports to and from Sweden. The cus-

toms legislation gives the customs the same power in their fight against crime.

The term 'fight against crime' means police work aimed at preventing and detecting crime and bringing offenders to justice. Consequently, this provision can be applied both in the course of a crime investigation and during surveillance/crime intelligence operations prior to the initiation of an investigation.

A transport company is obliged to supply any current information about arriving and departing transports that the company has access to. The term 'current information' means information about arrivals and departures in the near future. Where the police need to obtain information about transports carried out by the company in the past, a search of premises has to be effected.

A transport company is only obliged to supply such information about passengers as is mentioned in this section.

25.2

Information of the kind referred to in this section can be obtained even in cases involving relatively minor offences. However, it follows from the principle of proportionality in s 8 that information should not be requested in cases involving trivial offences.

25.3

Any such information obtained by the police is confidential under Ch 5 s 1 and Ch 9 s 17 of the Secrecy Act (1980:100; reprinted 1992:1474) for as long as it is retained by the police.

25.4

The preliminary work to the Police Act stresses the importance of establishing partnerships between the police, the customs and trade and industry in the fight against interna-

tional crime. It is also emphasised that the central police and customs authorities must try to resolve any problems in this area through agreements with the transport companies.

Non-compliance with a request to supply information is not a punishable act.

Section 26

A transport company may supply the kind of information referred to in s 25 by making it available to a police authority via a computer terminal.

A police authority may access information provided via a computer terminal only to the extent required to check transports. Information made available in this manner may not be altered or otherwise processed or stored by a police authority.

Information about individuals supplied in a manner other than via a computer terminal shall be destroyed immediately if it proves to be of no use to the investigation and reporting of an offence. **Act 1998:27.**

26.1

This provision makes it possible for a transport company requested under s 25 to supply the police with information to do so by giving a police authority access to its records via a computer terminal. This provision, too, has an exact parallel in the customs legislation.

This section also contains certain procedural provisions, e.g. about the destruction of passenger information. It is furthermore stated that information may not be processed and stored by a police authority.

Records

Section 27

A written record shall be made of any intervention involving the turning away, removal, taking into a custody or arrest of a person. A written record shall also of be made of any search of premises and similar measures taken under this act, as well of any seizure of articles.

The record must include

1. the name of the authorising officer,
2. the grounds on which the decision to make the intervention was made,
3. the name of the officer who effected the intervention,
4. the name of the subject of the intervention,
5. the date and time of the intervention, and
6. other information pertaining to the implementation of the intervention.

The information referred to in items 1 and 2 in the second paragraph shall be recorded by the authorising officer, and the information referred to in items 3 - 6 by the senior officer in charge of the intervention.

The Code of Procedure contains provisions concerning the recording of seizures, searches of a person or premises and bodily examinations. **Act 1998:27**.

27.1

Section 13d subsection 5 of the Ordinance containing Instructions to the National Police Board empowers the NPB to issue further directives concerning the application

of ss 27 and 28. Such directives have been issued in respect of most of the cases referred to in s 27. In addition, the NPB has issued general guidelines concerning records in certain other cases (RPS FS 1998:2, FAP 100-2). Special regulations concerning the record that is to be made when someone is taken into custody under the Act on Police Interventions against Intoxicated Persons are contained in RPS FS 1984:5, FAP 023-1.

27.2

Section 27 only applies to police interventions, i.e. measures taken in the course of operational police work. Provisions concerning the obligation to make records in so-called police authority matters and other matters of a non-operational nature are to be found in the Administrative Procedures Act (1986:223) and in Ch 3 ss 16 and 17 of the Police Ordinance.

27.3

The recording of police interventions is essential to safeguard the legal rights of the individual and to facilitate accountability and external scrutiny of the work of the police. Moreover, the obligation to keep records laid down in this section serves as a reminder to police officers that they must assess whether the prerequisites for a particular intervention are satisfied before the intervention is made. For these reasons, s 27 requires police officers to make a record of certain types of interventions.

27.4

Provisions concerning the turning away and removal of a person are to be found in ss 13, 13a, 13b and 13c of the Police Act, and provisions regarding taking someone into custody are contained e.g. in s 1 of the Act on Police Interventions against Intoxicated Persons (1976:511) and in ss 11 - 13 and 14 of the Police Act.

Provisions governing searches of premises can be found in s 20. The term 'similar measures' refers to entry under s 21 of the Police Act.

A seizure of articles under the Code of Procedure shall be recorded in the manner prescribed in that code. There are no other provisions empowering the police to seize articles for the purpose of preventing crime. A seizure record may be required in connection with a protective search (see e.g. 19.4 above) or a search of premises under s 20.

27.5

A record must always contain the information listed in the second paragraph.

The subject of an intervention should always be identified, if possible. If this cannot be done, some form of description of the person in question should be included in the record. If, for example, the police have removed members of a large crowd that was disturbing public order, the record should at the very least state approximately how many people were removed and where these people were when the intervention was initiated.

The phrase ‘other information pertaining to the implementation of the intervention’ refers to e.g. the date and time when the subject was placed in an arrest cell, interviewed and released, whether he was informed about his rights, whether he appeared to be injured or ill, whether his family was informed about the measure and whether he consulted a lawyer.

27.6

It is essential that correct and established terminology be used. Vague terms, professional jargon etc. must not be used in a record.

The grounds on which the intervention was made must be described so precisely that the decision can be reviewed afterwards. Imprecise statements such as ‘subject unable to take care of himself’ and ‘intervention necessary to maintain public order’ must not be used.

27.7

The authorising officer is responsible for commencing the record and for including the grounds and the date and time of the decision in the record. For example, if a chief officer on duty decides that a search of premises be made under s 20 of the Police Act, he is responsible for recording the decision.

It is stated in this section that the other compulsory items of information are to be entered by the senior officer in charge of the intervention. The term 'senior officer', however, is normally used about someone who directs and is responsible for a particular area of police work (cf. Ch 4 s 3 of the Police Ordinance and the term 'assessment by a senior officer' in s 15 of the Police Act). In the case of a specific police operation, the officer in charge of the operation is usually referred to as 'the officer in command' (see Ch 4 s 4 of the Police Ordinance). Consequently, the term 'senior officer' in s 27 should be read as 'officer in command' and the question of who is responsible for recording this information should be determined on the basis of the provisions of Ch 4 s 4 of the Police Ordinance.

The officer who is responsible for commencing a record is not required to make the record himself. He is, however, responsible for its content, even where the record is made by someone else.

27.8

While a record does not have to be made immediately, it should be made as soon as practicable.

27.9

The legislators left it to the National Police Board to decide whether a record has to be signed and whether each intervention made in a case must be recorded on a separate form.

It appears from the special forms provided for this purpose by the National Police Board that a record should in cer-

tain cases be signed by the person who made the record, or by the officer in charge of the measure. Moreover, the layout of the forms shows that several different kinds of measures can often be recorded on the same form.

According to the NPB application provisions, any local routine meeting the requirements of s 27 may be used instead of these forms. Since these requirements are not very strict, a police authority has considerable leeway in adapting its recording routines to local conditions.

27.10

It is stated in the NPB guidelines that a record should also be made when someone is taken to an interview and when a person is searched under s 19, second paragraph or s 23, second paragraph, of the Police Act. The NPB forms are designed to be used in such cases, as well as for protective searches under s 19, first paragraph, of the Police Act.

27.11

In addition to police officers, certain other categories of officials, e.g. public order guards, may effect some of the interventions referred to in s 27 and 28. This section is not, however, applicable to these categories. In such a case, it would appear that the obligation to record the intervention applies only after the matter has been taken over by a police officer.

However, in view of the provisions of s 6 of the Act on Public Order Guards (1980:578), it would seem that a police authority may decide that a public order guard should have the same obligation to record an intervention as a police officer.

27.12

Finally, the signing of a **decision made under administrative law** deserves some comment. Such a decision is sometimes made by an officer on standby duty in his home or otherwise by someone who cannot sign it immediately.

The Parliamentary Ombudsman has stated that any decision which a) according to the form must be signed by the person who made the decision, b) is to be served on the person to whom the decision applies, c) can be appealed against and d) which in addition has important legal consequences for the person in question, must be signed in the manner prescribed on the form. To this category belong decisions to refuse an alien entry into Sweden, decisions to place a person in a police cell or injunctions ordering an alien to leave the country under the legislation governing aliens. In exceptional cases, e.g. when such a decision is made by someone on standby duty in his home and the decision must be served immediately, it is acceptable for someone else to sign the decision on behalf of that person. In such a case the latter must, at the very least, check afterwards that the decision was formulated in accordance with his instructions. If the signing of a decision can wait, it may also be signed the next day (cf. JO 1992/93 p 69 ff).

Section 28

A record shall be made of any intervention involving the use of handcuffs, firearms or tear gas, or technical devices for stopping a vehicle or some other means of transport. Such a record must include the grounds for the intervention. The authorising officer is responsible for ensuring that a record is made. **Act 1998:27.**

28.1

Section 13d, subsection 5, of the Ordinance containing Instructions to the National Police Board empowers the NPB to issue further directives regarding the application of ss 27 and 28. The NPB has issued such directives regarding s 28 (RPS FS 1998:2, FAP 100-2).

28.2

All interventions referred to in this section involve the use of force by a police officer (see 10.4 above). For the same reasons as those stated in the comments on s 27, it is essential that a record also be made of such interventions

28.3

The record must include the grounds for the intervention. As to the provisions governing the use of these devices, see 10.4 above. The officer who decided that such a device should be used is also responsible for making the record.

28.4

A record need only be made where a device referred to in this section has been used in the course of a police intervention. Thus, a firearms practice need not be recorded. 'Use of ...firearms' means, here as in the Ordinance on the Use of Firearms by the Police, the discharge of a firearm.

28.5

As laid down in s 29, a public order guard may also be empowered to use handcuffs under s 10a. However, he is not obliged to make a record of such a measure. This obligation applies only after the matter has been taken over by a police officer (see 27.11 above).

Final provisions

Section 29

What is said in s 10, first paragraph, subsection 1, 2 and 4, shall also apply to a sentry or any other person employed by the armed forces who is assigned to guard duty or to maintaining order, and the provisions in s 10, first paragraph, subsections 1 to 4, shall also apply to an officer of the coast guard who, pursuant to special regulations, is taking part in a police public order operation. The provision in s 10, first paragraph, subsection 2, also applies to a person who is otherwise to lawfully deprive someone of liberty, and the provision in the same section, first paragraph, subsection 4, shall also apply to a person who in the exercise of an official duty is empowered to effect a measure there specified. In interventions under Section 10, first paragraph, subsection 4, the second paragraph of that section also applies.

Where a person referred to in the first paragraph lawfully deprives someone of liberty, s 19, subsection 1, also applies.

The provisions in ss 10a and 13 also apply to a public order guard unless otherwise specified in his terms of appointment. If a guard has taken somebody into custody he shall, however, turn that person over to the nearest police officer without delay. Special provisions govern the right of an officer of the coast guard to apply s 13. (**Acts 1986:656, 1988:446 and 1998:27**).

29.1

This section specifies which of the powers in ss 10-28 are vested in persons other than police officers.

29.2

In the first sentence of the first paragraph it is initially stated that a sentry, or any other person employed by the

armed forces, assigned to guard duty or to maintaining order has the right to use force in accordance with s 10, first paragraph, subsections 1, 2 and 4. Military personnel are responsible for the maintenance of order e.g. under s 41 of the Act on Responsibility for Maintaining Discipline in the Armed Forces (1994:1811) and the Ordinance on the Use of Firearms by Sentries in the Armed Forces (1992:98).

The military police perform actual police duties. They are given some basic police training and are also partly made up of civilian police officers who in the event of war are deployed to service in the military police. Military police officers should be regarded as police personnel and, in principle, they have essentially the same powers as civilian police officers when it comes to maintaining public order and safety in the Armed Forces (cf. the Ordinance containing Instructions to the Military Police (1980:123). Thus, all of the provisions in ss 8-22 of the Police Act extend to the military police where applicable, not just the right to use force in certain cases. The same applies to officers of the Wartime Auxiliary Police who are to be stationed at the police authorities in times of military preparedness or war (see the Ordinance on the Wartime Auxiliary Police (1986:616) and the NPB Instructions and Guidelines concerning the Wartime Auxiliary Police Organisation (RPS FS 1991:10, FAP 134-1)).

In the latter part of the first sentence it is laid down that the powers in s 10, first paragraph, subsection 1-4, also apply to officers of the coast guard taking part in police public order operations in accordance with special regulations. The special legislation referred to here is the Act on Coast Guard Participation in Police Public Order Operations (1982:395).

29.3

The second sentence of the first paragraph also consists of two parts. In the first part it is stated that the provision

in s 10, first paragraph, applies not only to police officers but also to a person who is otherwise to lawfully deprive someone of liberty. In the second part it is laid down that the provision in s 10, first paragraph, subsection 4 also applies to someone who, in the exercise of an official duty, is empowered to effect a measure mentioned in that subsection.

This sentence deals with the powers vested in a number of different categories of officials such as public order guards, sentries, hunting and fishing inspectors, officials of the Forest Service and certain officials at airports. One requirement is, however, that these powers are needed for specifically stated interventions of a police nature which the official is empowered to make under various acts. Reference is made to bill 1979/80:122 p 75 f. where an account is given of the duties and acts involved here. The second sentence also governs such deprivations of liberty as any citizen has the right to make under Ch 24 s 7, second paragraph, of the Code of Procedure, e.g. apprehending someone who has committed an offence punishable by imprisonment and who is caught 'in the act or running away from the scene of the crime'.

29.4

The third sentence of the first paragraph calls attention to the rather obvious fact that the limitation in s 10, second paragraph, when a police officer uses force in accordance with s 10, first paragraph, subsection 4, also applies when other kinds of officials use force under s 10, first paragraph, subsection 4 or under s 23. This means, for example, that where an officer of the coast guard is to lawfully turn someone away from a certain area, he may use force against that person only if he encounters resistance.

29.5

In **the second paragraph** has been included the right of a public order guard and other officials referred to in the

first paragraph, to carry out a provisional protective search in connection with a deprivation of liberty or a removal. This provision also applies to such deprivations of liberty as any citizen may effect under Ch 24 s 7 of the Code of Procedure.

29.6

The provisions of **the third paragraph** empower a guard to use handcuffs in accordance with the provisions of s 10a, unless otherwise stated in his terms of appointment.

In addition, the provisions of the third paragraph govern the extent to which the power to turn away, remove or take a person into temporary custody may be applied by officials other than police officers. According to the first sentence, a public order guard has such powers unless otherwise stated in his terms of appointment. The provisions of ss 15 - 18 concerning the procedure when a person is taken into temporary custody under s 13, second paragraph, are written in such a way that they are also immediately applicable in a case where a public order guard has effected such a measure. The only modification (in the second sentence of this paragraph) is that a guard who has taken someone into custody must promptly turn that person over to the nearest police officer. A reminder is included in the third sentence of this paragraph about the powers of an officer of the coast guard to take a person into custody pursuant to the Act on Coast Guard Participation in Police Public Order Operations.

Section 30

Further provisions regarding the implementation of this Act will be issued by the Government or by an authority appointed by the Government. **Act 1998:27.**

30.1

Central provisions concerning the implementation of the Police Act are contained in the Police Ordinance

(1998:1558) and the Ordinance containing Instructions to the National Police Board (1989:773; reprinted 1996:55).

In addition, other provisions issued by the government or, by proxy, by the National Police Board should be seen as implementation provisions, e.g. the Ordinance on the Use of Firearms by the Police (1969:84; reprinted 1984:732).

Provisions concerning the coming into force of the Police Act

Of the provisions concerning the coming into force of the Police Act and subsequent amendments to this act (SFS 1984:387), it would seem that subsection 3 in the original wording of these provisions (SFS 1984:387) is the only one that is still of practical importance. This subsection prescribes that the provisions pertaining to the police boards prior to the Police Act becoming operative, shall henceforth (i.e. after September 30, 1984) apply to the police authorities.