Feature

Surveillance by the State v Surveillance of the State

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What is all the fuss about?

During the Today Programme, Lord Carlile of Berriew Q.C. eloquently remarked that "the police must bear in mind that when criticisms are made that there is greater surveillance by the State, there is also greater surveillance of the State".[2] The remark was made in the context of events that included a video recording taken by a member of the public of police manhandling a bystander who died shortly thereafter, and the photographing[3] of unshielded confidential documents that were held in the hands of senior public figures as they walked towards No.10 Downing Street. In response to the latter situation, a former Home Secretary (Mr David Blunkett MP) voiced the opinion that it was right to ask "what restrictions might have to be placed on what is taken, and how, and when".[4] There have also been cases of train-spotters being forbidden from photographing stations and trains.[5] In order to allay their concerns, statements have been issued by railway companies and other interested groups, clarifying the position.[6] These events (which are merely examples) have triggered a much wider debate about whether there is imbalance between the ability of the State to carry out surveillance (e.g. at demonstrations), and the freedom of members of the public to monitor and to record the actions of the State. The National Union of Journalists, and various organisations that represent amateur photographers, have expressed concern that recent anti-terrorism legislation[7] might be used against them to prevent photographs being taken of public places as well as of persons (e.g. police officers) carrying out state business.

Is there a general law against the taking of a photograph?

There is a popular but unreliable photographer's maxim that "if you can see it: you can photograph it". Most rules that restrict or prohibit the taking of photographs are imposed as a matter of civil law (principally in contract but also in trespass[8]) and usually concern photography of a commercial kind. Amateur photographers are not given unbridled freedom to photograph public places, objects, or persons. However, restrictions and prohibitions are usually lifted upon the payment of a fee, the receipt of written authority, or the issuance of a licence. This article concentrates on those laws that impose *criminal* liability for taking photographs contrary to a statutory restriction or prohibition. For a useful summary of civil laws relating to photography, see "*Photographers Rights in the United Kingdom*" It is pertinent to bear in mind that the mere taking of a person's photograph, in a public place, does not constitute an interference with privacy: "[the] snapping of the shutter of itself breaches no rights, unless something more is added ... the bare act of taking the pictures, by whoever done, is not of itself capable of engaging Article 8(1) unless there are aggravating circumstances" (per Laws L.J., *Wood v Commissioner of the Police for the Metropolis* [2009] EWCA Civ 414.[9]

Photographing "prohibited places"

A photograph[10] that is taken of a "prohibited place", which is "*calculated to be* or *might be* or is *intended to be* directly or indirectly useful to an enemy", for a purpose prejudicial to the safety or interests of the State, is a criminal offence triable on indictment: s.1(1)(b) Official Secrets Act 1911. The expression "calculated to be" appears to mean "likely to be" rather than an intended consequence.[11] It follows that the 1911 Act does not impose a blanket ban on the taking of photographs. However, the reach of the offence is wide and the mental element is narrow. Liability under s.1(1) is extended by paragraph (c), which makes it an offence to obtain, collect, record, publish, or to communicate to any other person, a photograph (etc) of a prohibited place with the aforementioned intent/purpose.

A "prohibited place" includes all of Her Majesty's defence establishments[12] as well as places declared by Order of the Secretary of State to be 'prohibited places' (s.3 of the 1911 Act). Although the Secretary of State may include within an Order places such as railways, roads, waterways and other

1 The author wishes to express his gratitude to Lord Carlile of Berriew QC Professor Clive Walker and Professor David Ormerod for their helpful comments on an earlier draft of the article. They are not to be taken as endorsing the views expressed herein.

2 BBC, April 11, 2009, 8:45 a.m.

3 For the purposes of this article, "photographing" includes the recording of images by whatever means.

4 *http://news.bbc.co.uk/1/hi/uk/7992527.stm*

5 See for example, *http://news.bbc.co.uk/1/hi/uk/2943304.stm* in which it is reported that US security officials in Washington reportedly classified "people sitting on train platforms who appear to be monitoring the timing of arrivals and departures" as suspicious behaviour (BBC, May 28, 2003). See also the Daily Mail "*Trainspotters to be banned from stations after 170 years because of 'security risk'*", March 16, 2009.

6 See, for example, *Transport Photography,* a policy briefing paper from the Chartered Institute of Logistics and Transport's (CILT) Passenger Transport Security Forum, November 2007.

7 Notably new s.58A of the Terrorism Act 2000 inserted by s.76 of the Counter Terrorism Act 2008.

8 Consider, for example, the taking of aerial photographs over private land: *Bernstein v Skyviews & General Ltd* [1977] EWHC QB 1, and the absurdity of trespass being committed every time a satellite passed over a suburban garden, per Griffiths J, referring to the opinion of Lord Wilberforce in *Commissioner for Railways v Valuer-General* [1974] A.C. 328 at 351.

9 Linda MacPherson, formerly a lecturer in law at Heriot Watt University; *http://www.sirimo.co.uk/wp-content/uploads/2009/05/ukphotographersrights-v2.pdf,* and see P. Harris, "Photo Opportunity", Solicitors Journal, April 21, 2009.

10 Note that s.1 encompasses the making of sketches, plans, models and notes, of such places. Section 12 of the 1911 Act provides that the expression "sketch" includes any photograph or other mode of representing any place or thing.

11 Consider *Aworinde* [1995] Crim. L.R. 825, and the commentary, and *Davison* [1972] 1 W.L.R. 1540.

12 Including any station, factory, dockyard, mine, minefield, camp, ship (including hovercraft, and places connected with hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971), or aircraft, belonging to, or occupied by, or on behalf of, Her Majesty.

works "of a public character", only nuclear facilities have been specified: see the Official Secrets (Prohibited Places) Order 1994 (SI 1994/968). Other "prohibited places", for the purposes of the Act, include property belonging to, or used for, the purposes of the Atomic Energy Authority[13] and the Civil Aviation Authority.[14] The potential impact for "plane spotters" (e.g. at Heathrow Airport) of the inclusion of the CAA, is not entirely clear.

Although the Official Secrets Acts of 1911 and 1920 were enacted to prevent spying (especially on behalf of enemy foreign governments[15]) the reach of the Acts extends to guarding prohibited places from "destruction, obstruction or interference that would in the result be useful to an enemy": see *Chandler v DPP* [1962] 3 All E.R. 145.[16]

In *Chandler v DPP*,[17] the meaning of the word "purpose" was variously explained by their Lordships. Arguably, some of the explanations might need to be reconsidered in the light of s.8 of the Criminal Justice Act 1967 (Lord Devlin, for example, said that "all results which a man appreciates will probably flow from his act are classifiable as 'purposes' within the meaning of s.1"). The effect of *Chandler* appears to be that "purpose" has a subjective meaning, but the question of whether the selected purpose was "prejudicial" or not, is to be objectively determined. Thus, the photographer need only be shown to have acted for a purpose which was *in fact* "prejudicial to the *safety* or *interests* of the State", notwithstanding that neither result had actually been desired by the photographer. For example, a person might take a photograph of a prohibited place for a commercial or political purpose but, the question of whether or not the information provided by that image was "prejudicial", is one that must be determined objectively. Where a person has taken a photograph of a prohibited place without lawful authority then he/she will be deemed to have taken it for a purpose prejudicial to the safety or interests of the State "unless the contrary is proved" (s.1(2)). It is unclear whether s.1(2) imposes only an evidential burden on the accused (having regard to the Human Rights Act1998; and contrast with *R. v Keogh* [2007] EWCA Crim 528, in the context of ss.2 and 3 of the Official Secrets Act 1989).

The word "State" is not easy to define but it appears to mean "the realm" or "the organised community": *Chandler v DPP* [1962] 3 All E.R. 145 HL. Equally difficult to define, is the expression "interests of the state".[18] In *R. v Ponting* [1985] Crim. LR.318, McCowan J. ruled, at first instance, that the "interests of the state" are referable to the interests according to the state's recognised organs of government and its policies as expounded by the particular Government of the day (see Thomas, R, "The British Official Secrets Act 1911 - 1939 and the Ponting case", [1986] Crim. L.R. 491). However, it is clear that it is no defence to the s.1 offence that the photographer judged his[19] own conduct as having been harmless, or in the interests of the state or (if there is a difference) in the public interest: *Chandler v DPP*, and see *Betteney* [1985] Crim. L.R. 104.

Photographing railway stations and train spotters

Railways are not "prohibited places" for the purposes of the Official Secrets Acts but that does not mean that a person can take photographs of trains, railway stations, ships or buses, with impunity. Much misinformation has been disseminated concerning the precise legal bases for restricting the taking of photographs of vehicles or stations. Railway Byelaws, made under s.219 of the Transport Act 2000 by the Strategic Railway Authority, do not prohibit the taking of photographs of stations or trains at all. The actual position is explained in a detailed *Policy Briefing Paper*, issued in November 2007, by the Chartered Institute of Logistics and Transport, UK (CILT).[20] Service providers, including transport operators, are entitled to stipulate (within lawful limits) activities that are permitted or forbidden to take place in respect of property that they own and/or control. Such stipulations often take the form of "rules", "guidelines" or "policy statements", which tend not to be directly legally binding, but which may be relevant to the question whether (e.g.) a photographer was a trespasser. Since 2005, "Guidelines for rail enthusiasts" have been produced under the auspices of the Association of Train Operating Companies (ATOC) and these have been made available to members of the public.[21] Flash photography is forbidden both on the railways and on underground stations. But, the reason for this appears to be in the interests of safety (e.g. not distracting drivers). The Policy Briefing Paper makes the point that "the unpredictable and sometimes irrational application of different 'rules' by officials can be said to actually undermine security" [para.3.5]. The Paper highlights the importance of applying "consistent guidelines".[22]

A perception – perhaps a misperception – is that prior to the enactment of the Terrorism Act 2000, public and private organisations had been transparent about the actions that they took in order to protect the public from a particular peril. The CILT's Policy Briefing Paper suggests that after 2001 "security became an all-embracing term which was, and still is, frequently used in inappropriate circumstances". It suggests that consistency "is one of the three key elements in transport security" [para.2.3]. In 2006, the then Home Secretary (Mr Charles Clarke MP) stressed, albeit in the context of the presence of railway enthusiasts at railway stations, that the use of anti-terrorist powers should "always be an appropriate and proportionate response to the threat [of terrorism]".[23] He observed that rail enthusiasts can be a valuable asset in the fight against terrorism: a point that is echoed at para.3.3 of the CILT's briefing paper.

Making a photographic record: is it an offence under s.58(1)(a) of the Terrorism Act 2000?

It is an offence if a person "collects[24] or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism": s.58(1)(a) of the Ter-

13 See s.6(3), Atomic Energy Authority Act 1954, and see the Nuclear Installations Act 1965.
14 Civil Aviation Act 1982 s.18(2).
15 Including "a potential enemy with whom we might some day be at war": Parrott (1913) 8 Cr. App. R.186.
16 See the speech of Lord Radcliffe. Note that the Official Secrets Act 1889 was concerned with Crown Servants, espionage and treason: see J. Griffith (1989) 'The Official Secrets Act 1989', Journal of Law and Society, Vol.16, No.2, Autumn 1989.
17 See *Chandler v DPP* [1962] 3 All E.R. 145.
18 See *Chandler v DPP* and see the commentary to R. v Ponting [1985] Crim. L.R. 318.
19 The masculine includes the feminine gender.
20 *Transport Photography*, A policy briefing paper from CILT's Passenger Transport Security Forum, November 2007.
21 See para.3.1, *Transport Photography*, A policy briefing paper from CILT's Passenger Transport Security Forum, and see Appendix B of that paper for a copy of the Guidelines.
22 See para.3.5.
23 Hansard, 31 Jan 2006 : Column 376W.
24 This article does not dwell on the meaning of the word "collects" except to point out that in *R. v Boutrab* [2007] N.I.C.A. 23 the Court of Appeal in Northern Ireland remarked (in the context of s.58(1) Terrorism Act 2000) that "a person may collect information but not necessarily record it."

rorism Act 2000.[25] By s.58(3), it is a defence for the accused to prove that "he had a reasonable excuse for his action or possession".

"Record" includes "a photographic or electronic record" and therefore s.58(1)(a) is sufficiently wide to include anyone who makes a record of an image with a camera. It is submitted that the word "record" means that the image-data has been preserved for a period of time but, it is unclear whether a momentary keeping of the data (e.g. on a camera flash card) would be sufficient for the purposes of s.58(1)(a), notwithstanding that the *information* had been "of a kind likely to be useful" to a terrorist.

The expression "information likely to be useful" means "likely to provide *practical assistance*" to a person "committing or preparing an act of terrorism": see *R. v G.* [2009] UKHL 13 (see [2009] 3 *Archbold News* 4). The House of Lords accepted as correct the Crown's interpretation of s.58(1) of the Terrorism Act 2000 that Parliament cannot have intended to criminalise the possession of information of a kind which is useful to people for everyday purposes simply because that information could also be useful to someone who was preparing an act of terrorism. It will be seen that the definition of "terrorism" in s.1 of the Terrorism Act 2000 is wide – worldwide. Accordingly, s.58 is structured on the premise that somebody, somewhere, is committing or preparing an act of terrorism. It is not a requirement of s.58(1)(a) that the photographer intended, or was even reckless, that his/her actions were likely to be useful to a person carrying out or preparing an act of terrorism. However, in *R v G*, the House of Lords held that, for the purposes of s.58(1)(a), knowledge of the *nature* of the information is certainly a necessary element in the offence which the prosecution must prove.[26]

Despite the breadth of the s.58 offence, there are three safeguards:

(i) Unlike some jurisdictions, it is not the policy of either the investigative agencies or the prosecuting authorities of the United Kingdom that all detected violations of the criminal law must be prosecuted. The exercise of discretion (the exercise of good judgment) is a major check against the unwarranted or overzealous use of any criminal offence or (more likely) the use of the police powers that relate to it. Police officers will need to have regard to the interpretation of s.58 of the Terrorism Act 2000 by the House of Lords in *R v G* (referred to above) and the PACE Codes of Practice.

(ii) The consent of the DPP is required before proceedings for a s.58 offence may be instituted (s.117).

(iii) In the event of a prosecution, and notwithstanding that it is for the accused to prove that he had a reasonable excuse for his action (s.58(3)), the burden is considerably lightened by the operation of s.118(2)–(5) of the 2000 Act. Accordingly, if the accused adduces evidence which is sufficient to "raise an issue" with respect to the matters alleged by the prosecution, the court or jury "shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not": s.118(2).[27] As the House of Lords remarked in *R v G*, it is not a defence that can "be answered in the abstract, without knowing exactly what the defendant did and the circumstances in which he did it. In an actual case where the issue arose, the specific facts of the case would inform the decision as to whether the defendant's excuse for doing what he did either could or should be regarded as reasonable in the circumstances." [para.83].

Notwithstanding the potential reach of s.58(1)(a), there is little beyond anecdotal reports that this offence has, in practice, restricted the ability of journalists and professional or amateur photographers, to pursue their activities or that it has criminalised such activities.

Photographing the police, members of the intelligence services, and armed services personnel

Section 58A of the Terrorism Act 2000 (inserted by s.76 of the Counter-Terrorism Act 2008) provides that a person commits an offence if he/she "(a) *elicits or attempts to elicit information* about an individual who is or has been (i) a member of Her Majesty's forces, (ii) a member of any of the intelligence services,[28] or (iii) a constable, which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or (b) publishes or communicates any such information." The offence is punishable on indictment for a maximum term of 10 years' imprisonment, a fine, or both (or 12 months' imprisonment and/or a fine, on summary conviction): s.58A(3). It is a defence for the accused to prove that he had a reasonable excuse for his action (s.58A(2)) – a burden considerably eased by s.118(2)–(5) of the Act for the reasons given above in relation to the s.58 offence.[29]

When s.58A was debated as part of the Counter Terrorism Bill, no point was taken concerning whether photography constitutes "eliciting information".[30] But, since the February 16, 2009, when s.76 of the 2008 Act came into force,[31] anxiety over this point has gathered pace and it has become linked to a wider concern about whether civilians are lawfully entitled to photograph the actions of police officers who are engaged in (e.g.) crowd control duties. This aspect of the history of the legislation is summarised in 'Photographing The Police' by Alexander Horne, in a Standard Note deposited at the library of the House of Commons.[32] In March 2009, the Joint Committee on Human Rights[33] did not share the concerns expressed in the media that s.58A criminalises the taking of photographs of the police. A similar view was expressed in the House of Commons by the Parliamentary Under-Secretary of State (Shahid Malik), when he said that s.58A "does not criminalise the normal taking of photographs of the police".[34] However, the JCHR did accept that *legal uncertainty* about the reach of the criminal offences "can have a chilling effect on the activities of journalists and protesters". The Committee recommended that guidance ought to be issued to the police about the scope of the new offence [para.95]. Much may turn on the meaning of the word "elicit" which, it is submitted, means something more than merely "to obtain", but to 'draw out' or, to make apparent, information that had been kept personal, confidential, or secret. There might be he beginning of an argument under s.58A if a person takes and enhances a photograph of, for example, documents on a desk, that reveals information about an individual who comes within one of the classes of persons specified in s.58A, which is information of a kind

25 The offence is triable on indictment or summarily. In *R. v G.*, the House of Lords remarked that the offence "is the current embodiment of a provision which was first found in legislation applying to Northern Ireland and was later extended to Great Britain by the Criminal Justice and Public Order Act 1994" [para.41].
26 Judgment, para.47.
27 Which applies to the s.58 offence: see s.118(5)(a).
28 By s.58A(4) Terrorism Act 2000, "the intelligence services" means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of s.3 of the Intelligence Services Act 1994).
29 s.118(5)(a) of the Terrorism Act is amended by s.76(3) of the Counter Terrorism Act 2008 to include the new s.58A offence.
30 During debates in the House of Lords it was said that the existence of the statutory defence (reasonable excuse: s.58A(2)) should allay concerns that a journalist, merely publishing the names of service chiefs which are already in the public domain, would be caught by this offence: *Hansard*, House of Lords, October 21, 2008, col.1072; Lord West of Spithead, Parliamentary Under Secretary (Security and Counter-terrorism).
31 See SI 2009/58: Counter Terrorism Act 2008 (Commencement No.2) Order 2009.
32 SN/HA/5023.
33 Report 'Demonstrating Respect for Rights? A Human Rights Approach to Policing Protest', Paper 47/HC 320, 7th Report, HC320-I, March 23, 2009.
34 *Hansard*, April 1, 2009, House of Commons, col.268,WH

likely to be useful to a person committing or preparing an act of terrorism. Whether information has been 'elicited' is arguably a question which, along with s.58 of the Act, cannot be answered "in the abstract, without knowing exactly what the defendant did and the circumstances in which he did it" (see *R. v G.*, above). During debates in the House of Lords it was said that the existence of the statutory defence under s.58A(2) of the 2000 Act (reasonable excuse) should allay concerns that a journalist, publishing the names of service chiefs which are already in the public domain, would be caught by this offence (*Hansard*, HL, October 21, 2008, col.1072, Lord West of Spithead). But, eliciting information relating to the movements of any of the persons mentioned in s.58A is likely to be caught by the section. Less clear, arguably, are cases where information is elicited of (e.g.) persons whom the police intend to arrest: but note s.39 of the Terrorism Act 2000 (disclosing to another anything which is likely to prejudice an investigation, or interfering with material which is likely to be relevant to the investigation).

Indirect prohibition/restriction

Concern has been voiced that statutory anti-terrorism powers such as stop-and-search or arrest, might be used or threatened (or have been so used) in order to deter the taking of photographs of places, objects or, any of the persons specified in s.58A of the Terrorism Act 2000. Much of the debate has centred around s.44 of the Terrorism Act 2000 which gives police officers the power to stop and search vehicles (and their occupants) and pedestrians. Those categories are obviously wide enough to embrace roving reporters, train-spotters and tourists.

The frequency with which the s.44 powers have been used since the Act came into force, will come as a surprise to many people. For the seven years from 2000/01 to 2006/07, the proportion of s*tops-and-searches* (under s.44) to *arrests* for terrorism offences, was 6400:1, 10200:20, 32100:19, 33800:19, 37000:64, 50000:105, 41900:28. But, between October 2007 and September 2008, the Metropolitan Police Service alone conducted 154,293 stop and searches under s.44.[35] These statistics do not tell us the number of persons stopped and searched on the grounds that they had taken (or were in possession of) photographs that were likely to be useful to a person committing, or preparing to commit, an act of terrorism.[36]

The requirements of ss.44–46 of the Terrorism Act 2000 appear sufficiently rigorous to ensure that the powers of stop and search are used for the purpose for which the legislation was enacted and with due regard to the terms of the Human Rights Act 1998. The powers under s.44 are not available unless authorisation has been granted in accordance with ss.45 and 46 of the 2000 Act. In theory, authorisation is not a mere formality. First, only a high-ranking officer can give authorisation (typically an officer of at least the rank of assistant chief constable: s.44(4)), if he/she "considers it expedient for the prevention of acts of terrorism" (s.44(3)). Secondly, an officer's authorisation must be confirmed by the Secretary of State within 48 hours (s.46). Even when authorisation has been granted, the powers are exercisable only within a *place* that is specified in the authorisation (see s.44), for a *period* up to 28 days (renewable), by a constable *in uniform* (s.44(1)) for the purpose of searching for articles "of a kind which could be used in connection with terrorism" (s.45(1)(a)). Those powers "may be exercised whether or not the constable has grounds for suspecting the presence of articles of that kind" (s.45(1)(b)). A diligent constable will have regard to the PACE Codes of Practice,[37] as well as the opinions of their Lordships in *R (on the application of Gillan) v Commissioner of Police for the Metropolis* [2006] UKHL 12. The use of the s.44 powers has been the source of much concern and adverse comment.

In his statement to the House of Commons on the 1 April 2009, the Parliamentary Under-Secretary (Mr Malik) remarked, (a) that s.44 does not prohibit the "taking of photographs in an authorised area", and (b) that the police "should not use the powers to prevent people from taking pictures".[38] His first comment is indisputable: the second comment may or may not be heeded. Lord Carlile Q.C. has reported that s.44 has been used by some police forces "without full consideration". He recommended that, in future, "authorisations should be examined more critically by the Home Office"[39] and that s.44 should be used less than had been the case prior to 2007.[40] Time will tell if these recommendations have been followed.

An officer who is minded to make an arrest for an offence allegedly committed under s.58 or s.58A, may choose between using standard powers of arrest under s24 of the Police and Criminal Evidence Act 1984, or under s.41 of the Terrorism Act 2000.[41] The latter power is framed in emotive terms, namely, that the officer has reason to suspect the accused to be a "terrorist" - a word that is defined by s.40 of the Terrorism Act 2000 to mean a person who has committed any of the offences specified in s.40(1), which includes the offences created under s.58 and s.58A. The expression "terrorist", for the purpose of the 2000 Act, is not consonant with the definition of "terrorism" as it appears in s.1 of the Terrorism Act 2000 (i.e. the threat or use of "action" that falls within s.1(2) of the 2000 Act, which is "designed to influence the government or to intimidate the public or a section of the public … for the purpose of advancing a political, religious or ideological cause"). On the other hand, the power of arrest under s.41 of the Terrorism Act is narrower than the power under s.24(1) of the Police and Criminal Evidence Act 1984 because the latter includes a power to arrest a person whom the officer has reasonable grounds for suspecting to be *about to commit* an offence.

Conclusion

The concerns voiced by amateur and professional photographers who fear that anti-terrorism legislation will be used to restrict the 'normal taking of photographs' of the police are not to be lightly disregarded. However, the extent to which photography might be improperly restricted or prohibited must not be overstated. The greatest risk is that misunderstandings about the true reach of anti-terrorism powers will be self-perpetuating, needlessly producing a "chilling effect" on actions that are in fact legitimate. That said, there may be cases where a police officer, or a particular building, is photographed for a terrorist purpose, in which case the Terrorism Act 2000 has its place.

35 *http://www.mpa.gov.uk/committees/sop/2009/090507/10/*
36 *Hansard*, 24 Feb 2009; Column 695W.
37 Code A: Codes of Practice Under the Police and Criminal Evidence Act 1984.
38 *Hansard*, April 1, 2009, House of Commons, col.266,WH
39 "Report on the Operation in 2007 of the Terrorism Act 2000 and of Part I of the Terrorism Act 2006", by Lord Carlile of Berriew Q.C., para.128.
40 ibid, para.130.
41 The power of arrest under s.41 of TA 2000 is accompanied by powers of detention that differ from powers of detention in cases where an arrest is made under s.24 of PACE 1984.