

CRIMINAL JUSTICE AND POLICE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Powers of seizure

Outline of proposals

Section 54: Obligation to return items subject to legal privilege

169. Legally privileged material is protected from seizure under PACE and other legislation. It includes communications between a professional legal adviser and his client in respect of legal advice or proceedings. However, it is possible to seize it under sections 50 and 51, and under PACE (if the constable making the seizure did not have grounds to believe it was legally privileged when he made the seizure). This section is designed to give specific protection to legally privileged material, to oblige the police and others to return such material if seized and, in conjunction with section 59, to give a judge the power to order its return.
170. *Subsection (1)* sets out the obligation to return and *subsections (2) and (3)* provide that legally privileged material can be retained if it is inextricably linked to other seizable material. The obligation to return legally privileged material and the right to apply to a Judge for its return applies not only where the powers in sections 50 and 51 are exercised but in most other circumstances where material is seized.