

# CRIMINAL JUSTICE AND POLICE ACT 2001

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 2: Provisions supplementary to Part 2*

#### **Part 3: Police and Criminal Evidence and the Terrorism Act**

#### **Execution of process in other domestic jurisdictions**

216. The Act fills a gap in the law relating to the execution in Scotland of search warrants issued or production orders made in England & Wales in respect of ‘special procedure’ and ‘excluded’ material as defined in the Police and Criminal Evidence Act 1984. It amends the Police and Criminal Evidence Act 1984 to apply section 4 of the Summary Jurisdiction (Process) Act 1881 to orders and warrants for special procedure and excluded material. The 1881 Act currently enables process issued by a court of summary jurisdiction in England & Wales to be endorsed for execution in Scotland and *vice versa*. However these arrangements do not apply to search warrants and production orders in respect of ‘special procedure’ material (e.g. bank details) or excluded material, since such warrants and orders can be issued and made only by a circuit judge, i.e. not by a court of summary jurisdiction. The Act makes comparable provision for Northern Ireland.

#### *Section 71: Arrestable offences*

217. This section adds the offences of kerb crawling and failure to stop and report an accident (in which personal injury is caused) to the list of offences in section 24 (2) of the Police and Criminal Evidence Act 1984 for which a power of summary arrest exists. Making these offences arrestable enables the police to take offenders into custody and question them rather than having to summons them to appear at a magistrates’ court to answer the charge.

#### *Section 72: Importation of indecent or obscene material*

218. Section 170(2)(b) of the Customs and Excise Management Act 1979 makes it an offence knowingly to evade any prohibition or restriction for the time being in force. Section 42 of the Customs Consolidation Act 1876 prohibits the importation into the United Kingdom of indecent or obscene articles. Together these sections make it an offence to import or bring into the United Kingdom indecent or obscene articles. Existing legislation provides that this offence is one to which the summary arrest powers of the Police and Criminal Evidence Act 1989 and the Police and Criminal Evidence (Northern Ireland) Order 1989 apply. The effect of section 72 will be to make this offence a serious arrestable offence in England and Wales and Northern Ireland by adding it to the list of such offences set out in Schedule 5 to the Police and Criminal Evidence Act 1984 and the Police and Criminal Evidence (Northern Ireland) Order 1989.

219. Making this offence a serious arrestable offence will, whilst retaining the existing powers of summary arrest, allow an officer of Customs and Excise to exercise greater powers than would be available in relation to the investigation of an offence which was not a serious arrestable offence, in relation to the investigation of that offence. It will allow applications to be made for access to certain material and for warrants to enter and search premises during the course of an investigation. It will also give officers of Customs and Excise greater powers in relation to the detention of a person who has been arrested for this offence.

***Section 73: Use of video and telephone links for decisions about detention***

220. This section inserts a new section 40A into PACE which allows for an officer of at least the rank of inspector to conduct a review of detention before charge, by telephone. *Subsection (1)* of section 40A prescribes the situations in which a telephone review is to be used: where it is not reasonably practicable for the review officer to be present at the police station where the person is held and where the review is not one which is authorised by regulations in section 45A to be carried out using video conferencing facilities, or where in the circumstances it is not reasonably practicable to use such facilities. The effect of this is that telephone reviews will be used in very limited circumstances.
221. *Subsection (3)* of section 40A alters some of the obligations of the review officer where he is not in the same police station as the detainee. PACE contains several references to functions which imply that the review officer and detainee should be in the same police station. For example, section 37(4) and (5), (duty to make a written record and written record to be made in the presence of person arrested) and sections 40(12) to (14) (opportunity to make representations orally or in writing). Where the review officer is not in the same police station as the detainee, the obligation is to cause another officer to make a written record in the presence of the detainee.
222. *Subsection (4)* of section 40A authorises the means by which representations are to be made to the review officer. *Subsection (4) (a)* allows for the use of email or fax where those facilities exist and *(4)(b)* for use of the telephone.
223. *Subsection (3)* of section 73 inserts a new section 45A after section 45 of PACE to enable the Secretary of State to make regulations to allow a police officer to perform certain functions where he is not present in the same police station as the arrested person but where he has access to the use of video conferencing facilities to communicate with persons in that station.
224. Section 30(2) of PACE sets out the normal rule that those arrested should be taken to a designated police station, that is one which is designated for the detention of arrested persons. Section 30(3) to (6) sets out the circumstances in which an arrested person may be taken to a non-designated police station for a maximum of six hours. For example, where it appears to a constable that he will be unable to take an arrested person to a designated police station without the arrested person injuring himself, the constable or some other person. Section 36(7) sets out how the functions of the custody officer should be carried out at a non-designated police station. The Act provides that as an alternative to an officer at the non-designated police station having all the powers and duties of a custody officer, a custody officer at a designated police station should be able to carry out some of those functions by means of video conferencing facilities.
225. *Subsections (2)(a) and (b)* of new section 45A set out the functions as those of a custody officer under sections 37, 38 and 40 of PACE in relation to an arrested person who is taken to a non-designated police station; and the function of carrying out a pre charge review of detention under Section 40(1) (b) of PACE by an officer of at least the rank of inspector. *Subsections (3) and (8)* are regulation making powers enabling the regulations to specify how the facilities should be used and in which police stations. *Subsection (4)* provides that the regulations shall only authorise a custody officer at a designated police station to perform any of the functions in subsection (2) (a).

*Subsections (5) to (7) of section 45A make provision similar to subsections (3) and (4) of section 40A except that the oral representations may be made by video conferencing facilities.*

***Section 75: Video links for proceedings about Terrorism Act detention***

226. This section amends paragraph 33 of Schedule 8 to the Terrorism Act to enable the judicial authority proceedings to be conducted by video links. This is in line with similar arrangements for immigration and bail hearings. The decision whether the hearing will be conducted by video link is at the discretion of the judicial authority who must first hear any representations the detainee wishes to make as to venue. The judicial authority must be satisfied that the detainee can see and hear proceedings and be seen and be heard. Section 75 applies to England, Wales and Northern Ireland only.

***Section 76: Visual recording of interviews***

227. By inserting a new section 60A to the Police and Criminal Evidence Act, this section will allow for the visual recording of interviews with suspects. The section allows the Secretary of State to issue a code of practice on video recording (similar to section 60 (1) (a) of PACE on tape recording) and enables the Secretary of State to make an order requiring that certain interviews, in certain police force areas be videoed in accordance with the code. The order will be subject to the negative resolution procedure.

***Section 77: Codes of practice***

228. This section allows proposals for limited modifications to the Codes of Practice under PACE for trial purposes to be made subject to the negative resolution procedure. Such modifications may have effect in relation to particular areas, offences or classes of offenders and may only have effect for a maximum of two years. Permanent amendments to the Codes of general application would still be subject to the existing requirements for public consultation and subject to the affirmative resolution procedure in parliament.

***Section 78: Taking fingerprints***

229. *Subsection (1)* allows the police to retake fingerprints where an individual has been convicted of a recordable offence when the initial set of prints they took were incomplete or of poor quality or there were errors in the data capture process. This will also apply to cautions for recordable offences and warnings or reprimands for recordable offences under section 65 of the Crime and Disorder Act 1998.
230. *Subsection (2)* allows officers of the rank of inspector or above to authorise the compulsory taking of fingerprints.
231. *Subsection (3)* allows the police to retake fingerprints where an individual has been charged with a recordable offence, when the initial set of prints they took were incomplete or of poor quality or there were errors in the data capture process.
232. *Subsections (4) and (5)* allow for the compulsory fingerprinting of a person who has been arrested, fingerprinted and bailed to reappear at a police station or a court, if at the time of answering bail there is dispute over the identity of the individual.
233. *Subsection (6)* allows for compulsory fingerprinting of those cautioned for recordable offences or warned or reprimanded for recordable offences under section 65 of the Crime and Disorder Act 1998. This will enable the details of these offences which are held in national police records to be supported by fingerprints.
234. *Subsection (7)* provides that where fingerprints are taken electronically, the device used must have type approval from the Secretary of State. This is to ensure that the device will produce images of the appropriate quality and integrity to be used for evidential purposes.

*These notes refer to the Criminal Justice and Police Act  
2001 (c.16) which received Royal Assent on 11th May 2001*

235. *Subsection (8)* extends the definition of fingerprints to include records of fingers, palms and other parts of the hand where there are characteristic skin patterns and makes it clear that a fingerprint does not have to be produced as a print but may be recorded by other means.
236. *Subsection (9)* repeals Section 39 of the Criminal Justice Act 1948. This was used to give proof of previous convictions but has largely fallen into disuse because it could only be used to prove identity if the individual concerned had received a custodial sentence and was fingerprinted during their term of imprisonment.

***Section 80: Samples***

237. *Subsection (1)* allows officers of the rank of inspector or above to authorise the taking of intimate samples and the compulsory taking of non-intimate samples
238. *Subsection (2)* provides that intimate samples which may at present only be taken by a registered medical practitioner (samples of blood, semen or other tissue fluid, pubic hair; or a swab taken from a body orifice other than the mouth) may also be taken by a registered nurse.
239. *Subsection (3)* permits the retaking of impressions if an impression previously taken as part of the investigation is insufficient or of inadequate quality to allow a match to be made.
240. *Subsection (4)*. As with fingerprints, when skin impressions of other parts of the body are taken electronically the device used must have type approval.
241. *Subsection (5)* makes it clear that the term “analysis” in relation to skin impressions includes comparison and matching. The existing definitions of “footprints or similar impressions” is replaced with a new definition of “skin impression” covering impressions made by any means of parts of the body other than the hand.
242. *Subsection (6)* sets out circumstances in which samples may be regarded as insufficient (and may therefore be retaken) including where scientific failure inhibits the production of a DNA profile or where the sample has been damaged or destroyed prior to analysis. This would give the police the ability to retake samples if for example the laboratory was damaged by fire or where other unforeseen circumstances prevented the production of a profile from the sample.

***Section 81: Speculative searches***

243. *Subsections (1) & (2)*. Police forces in the UK and Islands can cross search an individual’s fingerprints against those held by another UK or Island force and can check DNA profiles against the DNA database. This section extends the power to check fingerprints and DNA samples and the profiles derived from them against records held by those listed in section 63A(1A) of the 1984 Act (for example foreign police forces, the Ministry of Defence and the Armed Forces police forces) on the same basis that already exists between UK and Island forces.
244. *Subsection (2)* also adds a new subsection (1C) to section 63A(1A). There are occasions when an individual, who is not a suspect, provides fingerprints or samples voluntarily for the purposes of elimination. An example of this is a DNA intelligence (or mass) screen. This subsection would enable the fingerprints or DNA profile derived from the sample to be entered onto the database for cross matching purposes if the individual concerned consents in writing.

***Section 82: Restrictions on use and destruction of fingerprints and samples***

245. *Subsection (2)* removes the obligation to destroy fingerprints and samples when the individual is cleared of the offence for which they were taken or a decision is made not to prosecute. The obligation to destroy is replaced by a rule to the effect that

any fingerprints or samples retained can only be used for the purposes related to the prevention and detection of crime, the investigation of any offence or the conduct of any prosecution. The term “use” includes retaining fingerprints and information derived from samples on databases that will allow speculative searches. Thus if a match is established between an individual who has been cleared of an offence at a subsequent crime scene the police are able to use this information in the investigation of the crime.

246. *Subsection (3) and (4)* have the effect that if a person, who is not a suspect, provides a sample or fingerprints voluntarily e.g. for the purposes of elimination, there is no obligation for him to allow his samples or fingerprints to be retained or used other than for the purpose for which they were taken. He will be asked whether he wishes to consent to their retention and use. Where consent is not given the fingerprints or samples must be destroyed and the information derived from them can not be used in evidence against the person concerned or for the purposes of investigation of any offence.
247. *Subsection (5)* preserves the existing gateway in the Immigration and Asylum Act 1999 for disclosure of police information to the Secretary of State for Home Affairs, for use for immigration purposes.
248. *Subsection (6)* will allow all fingerprints samples that have already been taken on suspicion of involvement in a crime to be retained and used once the section is in force.

### ***Section 83: Provision for Northern Ireland corresponding to s.82***

249. This section amends the Police and Criminal Evidence (NI) Order 1989 so that the restrictions on the use and destruction of fingerprints and samples correspond to the new provisions for England and Wales contained in section 82.

### ***Section 84: Amendment of Terrorism Act 2000 equivalent to s.82***

250. This section makes consequential amendments to the Terrorism Act 2000. It modifies the restriction on the use of fingerprints and samples taken under the provisions of the Act in England and Wales and Northern Ireland to allow their use additionally for the purposes set out in section 82 (the prevention and detection of any crime, the investigation of any offence or the conduct of any prosecution).

### ***Section 85: Power to apply 1984 Act provisions***

251. This section amends the Police and Criminal Evidence Act 1984 to enable the Secretary of State by order to apply the “special procedure” material provisions of Schedule 1 to the 1984 Act for the purposes of certain investigations as they apply for the purposes of investigations of offences conducted by police officers. *Subsection (2)* limits the investigations to which the provisions will apply to investigations of serious arrestable offences conducted by an officer of the Department of the Secretary of State for Trade and Industry (or another person authorised to act on his behalf). *Subsection (3)* provides that the provision applies to the investigation of offences committed before the coming into force of the order or the section and *subsection (4)* provides that any order made under *subsection (1)* shall be subject to the negative resolution procedure.

### ***Section 86: Process for obtaining excluded and special procedure material***

252. This section amends the Police and Criminal Evidence Act 1984 to apply section 4 of the Summary Jurisdiction (Process) Act 1881 to orders and warrants for special procedure and excluded material. The 1881 Act currently enables process issued by a court of summary jurisdiction in England & Wales to be endorsed for execution in Scotland and vice versa. However these arrangements do not apply to search warrants and production orders in respect of ‘special procedure’ material (e.g. bank details) or excluded material, since such warrants and orders can be issued and made only by a circuit judge, who does not constitute a court of summary jurisdiction. Comparable provision is made in relation to Northern Ireland.