

# CRIMINAL JUSTICE ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Amendments of Police and Criminal Evidence Act 1984**

##### *Section 1: Extension of powers to stop and search*

101. This Section extends the definition of prohibited articles under section 1 of the Police and Criminal Evidence Act 1984 (PACE) so that it includes articles made, adapted or intended for use in causing criminal damage. It does this by amending the list of offences in section 1(8) of PACE to include offences under section 1 of the Criminal Damage Act 1971. The effect is to give police officers power to stop and search where they have reasonable suspicion that a person is carrying, for example, a paint spray can which they intend to use in producing graffiti.
102. Section 1(1) of the Criminal Damage Act 1971 makes it a criminal offence for a person to destroy or damage any property belonging to another without lawful excuse if he intends to destroy or damage that property or is reckless as to whether that property would be destroyed or damaged. Section 1(2) of that Act creates a related offence of destroying or damaging property with intent to endanger life.

##### *Section 2: Warrants to enter and search*

103. This Section enhances the powers of persons authorised to accompany constables executing search warrants. Section 16(2) of PACE allows a search warrant to authorise persons to accompany any constable who is executing the warrant.
104. New subsection (2A) provides that any such person has the same powers as the constable whom he is accompanying in relation to executing the warrant and seizing anything to which the warrant relates. Subsection (2B) ensures that the person can only exercise these powers when he is accompanied by a constable and under that constable's supervision.
105. This addition to PACE will ensure that persons who accompany police officers in the execution of warrants can play an effective role in searching and seizure. For example, it will often be necessary for someone who is expert in computing or financial matters to assist a constable in searching premises where particular types of records are likely to be found. This provision enables such experts to take an active role in carrying out searches and in seizing material, rather than being present in a merely advisory or clerical capacity.

##### *Section 3: Arrestable offences*

106. **Section 3** add, the following offences to the list of specified offences which are arrestable offences:-
  - the offence of making a false application for a passport;
  - the offence of possession of cannabis or cannabis resin (which are controlled drugs);

- the offence of making a false application for a driving licence, etc;

In relation to drugs, this provision allows the police to continue to arrest without a warrant persons in possession of cannabis or cannabis resin following the drugs' reclassification from Class B to Class C under the Misuse of Drugs Act 1971. The date of reclassification is 29 January 2004.

#### ***Section 4: Bail elsewhere than at a police station***

107. This Section amends section 30 of PACE to enable police officers to grant bail to persons following their arrest without the need to take them to a police station. It provides the police with additional flexibility following arrest and the scope to remain on patrol where there is no immediate need to deal with the person concerned at the station. It is intended to allow the police to plan their work more effectively by giving them new discretion to decide exactly when and where an arrested person should attend at a police station for interview.
108. *Subsections (2) to (6)* amend section 30 to take account of the new power to grant bail. The basic principle remains that a person arrested by a constable or taken into custody by a constable after being arrested by someone else must be taken by a constable to a police station as soon as practicable. However, this is subject to the provisions dealing with release either on bail or without bail.
109. *Subsection (4)* expands existing section 30(7) of PACE to provide that a constable must release the person concerned without bail if, before reaching the police station, he is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under the new provisions.
110. *Subsection (5)* replaces existing sections 30(10) and (11) of PACE to make it clear that a constable may delay taking an arrested person to a police station or releasing him on bail if that person's presence elsewhere is necessary for immediate investigative purposes. The reason for such delay must be recorded either on arrival at the police station or when the person is released on bail.
111. *Subsection (6)* adapts some existing exclusions in section 30(12) of PACE to take account of the new arrangements for granting bail.
112. *Subsection (7)* inserts a series of new sections into PACE which provide police officers with the framework of powers to grant bail following arrest. *Section 30A* provides that a constable has power to release a person on bail at any time prior to arrival at a police station. It specifies that the person released on bail must be required to attend a police station and that any police station may be specified for that purpose. No other requirement may be imposed on the person as a condition of bail.
113. *Section 30B* requires that the constable must give the person bailed a written notice, prior to release, setting out the offence for which he was arrested and the ground on which that arrest was made. It must tell him that he is required to attend a police station and may specify the relevant station and time. If these details are not specified in that initial notice, they must be set out in a further notice provided to the person at a later stage. Police have the capacity to change the specified station or time if necessary and the person concerned must be given written notice of any such change.
114. *Section 30C* contains various supplemental provisions. *Section 30C(1)* allows for the police to remove a requirement to attend a police station to answer bail, provided they give the person a written notice to that effect.
115. *Section 30C(2)* makes it clear that where someone attends a non-designated police station to answer bail following arrest he must be released or taken to a designated police station within 6 hours of his arrival. Designated stations are those nominated by chief

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officers as suitable for detention purposes and are generally stations with appropriate facilities to cater for extended periods of custody.

116. *Section 30C(3)* specifies that nothing in the Bail Act 1976 applies in relation to bail under these new arrangements. The law which applies to this form of bail is set out in PACE as amended by the Act.
117. *Section 30C(4)* clarifies that a person who has been released under the new bail provisions may be rearrested if new evidence justifying that has come to light since their release.
118. *Section 30D* deals with failure to answer to bail under the new arrangements. *Section 30D(1)* allows a constable to arrest without a warrant a person who fails to attend the police station at the specified time. *Section 30D(2)* states that a person arrested in such circumstances must be taken to a police station as soon as practicable after the arrest. *Section 30D(3)* defines the station relevant for the purposes of subsection (1) as whichever station is defined in the latest notice provided to the person concerned. *Section 30D(4)* clarifies that such an arrest for failure to answer to bail is to be treated as an arrest for an offence for certain PACE purposes.

***Section 5: Drug Testing for under eighteens***

119. Section 57 of the Criminal Justice and Court Services Act 2000 inserted new provisions in the Police and Criminal Evidence Act 1984 (PACE), enabling custody officers after charge, to detain a person to enable a sample to be taken to test for the presence of any specified class A drug, subject to the conditions detailed in section 63B of PACE. The conditions include that the person concerned has attained the age of 18. The provisions currently apply only within certain police areas where section 57 has been brought into force.
120. *Section 5* amends these provisions in PACE (in respect of section 63B and section 38) to enable persons under the age of 18 to be tested for specified Class A drugs and for custody officers to detain a person after charge to enable a sample to be taken for that purpose. The person concerned must have attained the age of 14. The Section also makes provision for an appropriate adult to be present during the testing procedure in the case of a person who is under 17 years old. The Secretary of State is given power by order (under the draft affirmative procedure) to change the minimum age.

***Section 6: Use of telephones for review of police detention***

121. This provision enables reviews of the continuing need for detention without charge carried out under section 40 of PACE to be conducted over the telephone rather than in person at the police station. Such reviews have to be carried out by an officer of at least inspector rank. PACE currently only allows telephone reviews where it is not reasonably practicable for the reviewing officer to be present at the police station.
122. New *section 40A(1)* allows a review to be carried out by means of a discussion over the telephone with one or more persons at the police station where the arrested person is held. In practice, the reviewing officer would normally speak to the custody officer at the police station, as well as to the detained person or their legal representative if they wanted to exercise their right to make representations about the continuing need for detention.

New *section 40A(2)* specifies that telephone reviews are not applicable where it is reasonably practicable to carry out the review using video conferencing facilities in accordance with regulations under section 45A of PACE. Where such video conferencing facilities are readily available, it is appropriate that they should be used.

### ***Section 7: Limits on periods of detention without charge***

123. This provision extends the scope for an officer of at least superintendent rank to authorise detention without charge up to a maximum of 36 hours. As the law currently stands, an officer of superintendent rank or above can extend detention without charge up to an overall period of 36 hours if satisfied that detention is necessary to secure, preserve or obtain evidence, that the investigation is being conducted diligently and expeditiously and that the relevant offence is a serious arrestable offence. Serious arrestable offences are defined in section 116 of PACE and are either offences which are specified to be “always serious” (e.g. murder) or offences which give rise to serious consequences.
124. The amendment will allow detention to be extended for up to an overall period of 36 hours where the relevant offence is an arrestable offence, provided the other conditions are satisfied. Section 24 of PACE defines an arrestable offence as (a) any offence for which the sentence is fixed by law, (b) any offence for which a sentence of imprisonment of 5 years or more may be imposed or (c) any offence specifically listed in Schedule 1A to PACE.
125. This broadened capacity for extended detention without charge will assist the police in dealing effectively with a range of offences, for example robbery, where it will sometimes be extremely difficult or impossible to complete the necessary investigatory processes within 24 hours.

### ***Section 8: Property of detained persons***

126. This provision removes the requirement on the custody officer, currently in section 54(1) of PACE, to record or cause to be recorded everything a detained person has with him on entering custody. The custody officer will still be under a duty to ascertain what the person has with him, but the nature and detail of any recording will be at the custody officer’s discretion. He will also have discretion as to whether the record is kept as part of the custody record or as a separate record. This seeks to reduce the serious burden on officers which can arise from recording large volumes of property. Clearly, it will still be necessary to make records, not least to ensure against claims that property has been mishandled or removed. However, it will now be open to the police to make judgements about how to balance the need for recording against the amount of administrative work involved.

### ***Section 9: Taking fingerprints without consent***

127. This Section extends the circumstances in which the police may take a person’s fingerprints without consent to include taking fingerprints from a person arrested for a recordable offence and detained in a police station.
128. Section 61 of PACE currently provides powers for taking fingerprints from those in police detention without consent in the following circumstances:
- following charge with a recordable offence or notification that a suspect will be reported for such an offence;
  - on the authority of an inspector, which can only be given where the officer has reasonable grounds for believing the suspect is involved in a criminal offence and the fingerprints will tend to confirm or disprove his involvement or facilitate the ascertainment of his identity;
  - an authorisation may only be given for the purpose of facilitating the ascertainment of the person’s identity where the person has either refused to identify themselves or the authorising officer has reasonable grounds to suspect they are not who they claim to be.

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129. Fingerprints may also be taken from a person convicted of a recordable offence or cautioned, warned or reprimanded in respect of such an offence.
130. *Subsection (2)* replaces the existing provisions about the taking of fingerprints on the authority of an Inspector with a wider power to take fingerprints from any person detained in consequence of his arrest for a recordable offence.
131. The existing requirement to give a person whose fingerprints are taken without consent reasons for doing so and for recording the reason as soon as practical applies to the new power (see subsection (5) of section 9).
132. This amendment to section 61 of PACE will prevent persons who come into police custody and who may be wanted on a warrant or for questioning on other matters from avoiding detection by giving the police a false name and address. Using Livescan technology, which enables the police to take fingerprints electronically and which is linked to the national fingerprint database (NAFIS), the police will be able to confirm a person's identity whilst he is still in police detention if his fingerprints have been taken previously. It will also assist in enabling vulnerable or violent people to be identified more quickly and dealt with more effectively. A speculative search of the fingerprint crime scene database will also reveal if the person may have been involved in other crimes.

***Section 10: Taking non-intimate samples without consent***

133. This Section extends the circumstances in which the police may take without consent a non-intimate sample from a person in police detention to include taking such a sample from a person arrested for a recordable offence.
134. Section 63 of PACE provides powers for taking a non-intimate sample without consent from a person in the following circumstances:
- following charge with a recordable offence or notification that the person will be reported for such an offence;
  - if the person is in police detention (or is being held in custody by the police on the authority of a court), on the authority of an inspector which can only be given where the officer has reasonable grounds for believing the suspect is involved in a recordable offence and the sample will tend to confirm or disprove his involvement;
  - following conviction for a recordable offence.
135. In relation to a person in police detention, *subsections (2) and (3)* replace the existing provisions about the taking of a non-intimate sample on the authority of an inspector with a wider power to take a non-intimate sample from any person in police detention in consequence of his arrest for a recordable offence. This is conditional on him not having had a sample of the same type and from the same part of the body taken already in the course of the investigation or if one has that it proved insufficient for the analysis.
136. The new power is available whether or not the sample is required for the investigation of an offence in which the person is suspected of being involved. But of course the police will be able to use the new power to obtain samples in cases where under the present law an inspector's authorisation would be given (for example, in a rape investigation, to obtain a foot impression, a hair sample and a mouth swab).
137. The existing requirement to give a person from whom a non-intimate sample is taken without consent the reason for doing so and for recording the reason as soon as practicable applies to the new power. (see subsection (5) of Section 10).
138. The amendments do not affect the existing powers to take samples from persons held in custody by the police on the authority of a court.

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139. DNA profiles extracted from non-intimate samples taken from arrested persons will be added to the samples already held on the National DNA Database and checked for matches with DNA taken from crime scenes.

***Section 11: Codes of practice***

140. This section makes fundamental changes to the process for establishing and amending codes of practice under PACE. At present there are codes covering stop and search, searching of premises, detention, identification, and the recording of interviews. The amendments provide for a less bureaucratic and more targeted consultation process for new and revised codes and for a simpler process of seeking parliamentary approval for minor or straightforward changes to existing codes. The amendment to section 67 of PACE will maintain the requirement for an order bringing a new code into operation to be laid before Parliament and approved by each House.
141. *Subsection (1)* establishes a new procedure whereby orders bringing revisions into operation to the codes may be either laid before Parliament or subject to the draft affirmative procedure. The Government has undertaken (see Hansard, 7 July 2003, col. 45) to be bound by the advice of the Home Affairs Select Committee on the appropriate procedure to be followed for proposed changes.
142. *Subsections (2) to (4)* amend the procedure for making and revising codes of practice applicable to the military police to require codes and revisions simply to be laid before Parliament. .

***Section 12: Amendments related to Part 1***

143. This section introduces Schedule 1, which deals with amendments related to this Part of the Act.