

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Police powers etc.

Sections 110 and 111: Powers of arrest

236. **Section 110** amends the powers of arrest available to a constable under the Police and Criminal Evidence Act (PACE) 1984. These currently derive primarily from sections 24 and 25 of PACE and are based on the application of the concept of seriousness attached to the offence.
237. The exercise of arrest powers will be subject to a test of necessity based around the nature and circumstances of the offence and the interests of the criminal justice system. An arrest will only be justified if the constable believes it is necessary for any of the reasons set out in the new section 24(5) of PACE. Further guidance will be given to a constable on the exercise of the powers in a new Code of Practice to be issued under section 66 of PACE (as amended by section 110(3)). The new section 24A of PACE sets out the power of arrest for persons other than constables. The exercise of the citizen's power of arrest will be limited to indictable offences. Section 111 and Schedule 7 make consequential and other amendments and repeals. In particular Part 1 of Schedule 7 repeals specific powers of arrest which are now unnecessary following the introduction of a general power of arrest. Part 2 of Schedule 7 provides a gloss for the same purpose on enactments where the power of arrest could not be separated out. A very limited number of specific powers of arrest have been retained in their existing form. These primarily relate to powers of arrest in connection with transport offences. This approach may be contrasted with section 26 of PACE which contained a general repeal of powers of arrest existing before that Act came into force. Some of the specific repeals in Schedule 7 may overlap with the effect of section 26 of PACE. Part 3 of Schedule 7 contains amendments consequential on the repeal of the definitions and concepts of an arrestable offence and a serious arrestable offence. In general police powers which available in cases involving serious arrestable offences and arrestable offences will now be available in cases involving indictable only or triable either way offences. Part 4 of Schedule 7 contains purely consequential amendments.

Section 112: Power to direct a person to leave a place

238. This section provides for a new offence of failing to obey a police direction to leave an exclusion area. It applies to those offenders, both adults and juveniles, who have had an exclusion requirement imposed as part of a community sentence, a suspended sentence order or a licence condition on release from custody. The offence carries the power of arrest without warrant. The maximum penalty is a term of imprisonment not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or both.

239. *Subsection (1)* provides that a constable may direct a person to leave a place where he has reasonable grounds to believe that the person is in an exclusion area at a time when he is prohibited from entering that area under the requirements of his sentence or licence condition.
240. *Subsections (2) and (3)* establish the scope of the offence.
241. *Subsection (6)* provides the power of arrest without warrant and is a transitional provision that will fall, by virtue of *subsection (7)*, once the arrest provisions in section 106 come into effect.
242. *Subsection (8)(a)* extends the meaning of “sentence of imprisonment” and “prison” so as to include juvenile detention and conditions of release. *Subsection (8)(b)* clarifies the meaning of “release”, to ensure that its meaning is clear in relation to a prisoner serving intermittent custody.

Section 113: Search warrants: premises

243. This section extends the current provisions under PACE for the issue of warrants to search premises and seize evidence. It also introduces an extension to the specific premises warrant to cover more than one set of premises.
244. *Subsections (2) to (4)* amend section 8 of PACE. *Subsection (4)* introduces a new type of warrant known as an “all premises warrant”. A constable will be able to apply for this type of warrant when it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practicable to specify all such premises at the time of applying for the warrant. The warrant will allow access to all premises occupied or controlled by that person, both those which are specified on the application, and those which are not. It will still be possible to obtain a warrant which relates to one set of premises, now known as a “specific premises warrant” (*subsection (4)*).
245. *Subsections (5) to (8)* amend section 15 of PACE, which sets out the safeguards for applications for search warrants. *Subsection (7)* sets out what must be included in an application for a “specific premises warrant” or an “all premises warrant”. *Subsection (8)* makes a consequential change.
246. *Subsection (9)* amends section 16 of PACE so as to require, in the case of an “all premises warrant”, for any entry into premises which have not been specified in the warrant to be authorised in writing by an officer of at least the rank of inspector.
247. *Subsections (10) to (15)* amend Schedule 1 to PACE. *Subsection (14)* inserts a new paragraph 12A, setting out the grounds on which a judge may issue an “all premises warrant”, namely that there are reasonable grounds for believing it is necessary to search more than one set of premises occupied or controlled by a particular person, and that it is not reasonably practicable to specify them all. *Subsections (11) to (13)* and *(15)* make consequential changes.

Section 114: Search warrants: other amendments

248. This section makes further amendments to PACE in respect of search warrants.
249. *Subsection (2)* inserts new subsections (1C) and (1D) into section 8 of PACE; these provide that a warrant (either an “all premises warrant” or a “specific premises warrant”) may authorise access on more than one occasion, if necessary.
250. *Subsections (3) to (7)* amend section 15 of PACE. *Subsection (4)* sets out the information which an application for a warrant authorising multiple entry must include. In particular, the applicant must set out the grounds on which a multiple entry warrant has been sought.
251. *Subsection (8)* amends section 16 of PACE to provide that the second and any subsequent entries must be authorised in writing by an officer of the rank of inspector

or above. It also extends the lifetime of the warrant from one month to three months (see the amendment to section 16(3)).

Section 115: Power to stop and search for prohibited fireworks

252. The [Fireworks Regulations 2004 \(SI no. 2004/1836\)](#), which were made under the Fireworks Act 2003, make it an offence, subject to certain exceptions, for persons under the age of 18 to possess adult fireworks in public places, and for any person to possess category 4 fireworks (professional display fireworks). This section amends section 1 of PACE to provide the police with the power to stop and search in respect of these two offences. Where any prohibited fireworks are found as a result of a search, the constable conducting the search will be able to seize the fireworks in question. The use of the power will be governed by the procedures and safeguards set out in PACE Code A (Exercise by police officers of statutory powers of stop and search).

Section 116: Photographing of suspects etc

253. This section amends section 64A of PACE. *Subsection (2)* enables a person to be photographed, with or without his consent, by a constable elsewhere than at a police station. The power is exercisable if one of the following conditions is met: the person has been arrested by a constable for an offence; been taken into custody by a constable after having been arrested for an offence by a person other than a constable; been made subject to a requirement to wait by a CSO; or issued with a fixed penalty notice by a constable, CSO or accredited person.
254. *Subsection (3)* amends section 64A to allow the police to pass a photograph to the court for the purposes of enforcing the orders of the court. This new power is in addition to that which allows the police to pass a photograph to the court for the purposes of prosecution.
255. *Subsection (5)* amends the definition of photograph in section 64A of PACE to include a moving image.

Section 117: Fingerprints

256. PACE already contains a detailed regime governing the taking of fingerprints without consent. In summary, fingerprints may be taken from a person in police detention following their arrest for a recordable offence, on charge/summons for such an offence and following conviction for such an offence (sections 61 and 27 of PACE). Fingerprints can be taken in other circumstances with the consent of the individual.
257. When the police are dealing with a person suspected of an offence, but prior to any arrest, questions may arise as to the person's identity. The police will try to verify the person's identity but if this is not possible the suspect will normally be arrested.
258. The police have been developing mobile digital fingerprint readers that can be connected to the National Automated Fingerprint Identification System (NAFIS) by mobile communications technology. This will provide the police with the capability to take fingerprints away from the police station. Fingerprint impressions of two fingers are taken and checked against NAFIS in a matter of minutes. Where the check against NAFIS results in a match the officer will then be in a more informed position to decide on the appropriate course of action. The fingerprints would also be subject to a speculative search against the database of fingerprints recovered from crime scenes.
259. This section amends section 61 of PACE so as to provide a power for the police to take a person's fingerprints prior to an arrest and away from a police station in circumstances where:-
- the constable reasonably suspects that the person is committing, or attempting to commit an offence, or has committed or attempted to commit an offence; and

- either the name of the person is unknown to, and cannot be readily ascertained by, the constable or the constable has reasonable grounds for doubting whether the name given by the person is his real name.
260. *Subsection (5)* amends section 63A of PACE so as to allow fingerprints taken as above to be checked against the NAFIS database of fingerprints and speculatively searched against the database of fingerprints recovered from crime scenes.
261. *Subsection (7)* amends section 64 of PACE to enable DNA samples and fingerprints taken from deceased persons to be checked against the national DNA and fingerprint databases for identification purposes. Section 64 currently restricts the purposes for which the National Fingerprint Database, known as NAFIS, and the National DNA Database may be used to those related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution. Consequently, where a person is suspected of having died as a result of a crime, if necessary the databases may be used to help identify the victim. However, in circumstances where a person has died of natural causes or as a result of a disaster such as the tsunami in South East Asia at the end of 2004, neither database may be used to help identify a deceased person's body or body parts.
263. The amendment to section 64 of PACE made by *subsection (7)* has therefore been introduced to remove the disparity in the circumstances in which the databases may be used to help identify a deceased person. The amendment will also allow the database of footwear impressions to be used for identification of deceased persons or body parts although in practice it is unlikely that database will be of any assistance. This amendment came into force on Royal Assent.
263. *Subsections (8) to (10)* amend section 64 of PACE to make it clear that fingerprints taken prior to arrest will not be retained nor added to NAFIS.

Section 118: Impressions of footwear

264. The Forensic Science Service (FSS) maintains two databases of footwear impressions. One database (the Mark Intelligence Index) contains impressions recovered from crime scenes. Footwear impressions are recovered from around 20-30% of all crime scenes. The other database (the National Footwear Reference Collection) contains impressions from different items of footwear not linked to any individual and is registered under the Data Protection Act 1998. Most manufacturers supply the FSS with photographs and footwear impressions from any new product for loading on to the database.
265. *Subsection (2)* of this section inserts a new section 61A into PACE. The section will allow the police to take an impression of a person's footwear with or without consent. An impression may only be taken without consent where a person has been arrested for, charged with, or informed that he will be reported for a recordable offence and he has not previously had an impression of his footwear taken in the course of the investigation for the offence.
266. *Subsections (3) and (4)* make a number of consequential amendments to sections 63A and 64 of PACE to allow footwear impressions to be retained and searched against the National Footwear Reference Collection and speculatively searched against the Mark Intelligence Index.

Section 119: Intimate samples

267. Section 65 of PACE contains definitions of both an intimate and non-intimate sample. The distinction is important in that an intimate sample can only be taken with consent; a non-intimate sample may be taken without consent. Section 65 defines an intimate sample as:
- a sample of blood, semen, or any other tissue fluid, urine or pubic hair;

- a dental impression;
 - a swab taken from a person's body orifice other than the mouth.
268. In a suspected case of sexual assault, the police may want to take swabs of the coronal sulcus, shaft or glans of the penis from a male suspect and also perineum or vulval swabs and swabs from matted pubic hair from a victim or female suspect. These types of swab fall outside the current definition of an intimate sample. This section amends the definitions of both non-intimate and intimate samples to make it clear that such swabs are intimate samples with the result that such a swab can only be taken with consent. It will consequently avoid any possible allegation of assault against the police if they decide they need such a swab to be taken in the course of an investigation and it gives added protection to the rights of the suspect.
269. Under section 62(10) of PACE, if the appropriate consent to the taking of an intimate sample from a person is refused without good cause, in any proceedings against that person the court may draw such inferences from the refusal as appear proper.

Sections 120 and 121: Staff custody officers: designation and amendments to PACE

270. **Sections 120 and 121** will provide chief officers of police with the ability to designate police staff as 'staff custody officers' under section 38 of the Police Reform Act 2002 (the "2002 Act"). Designated staff custody officers can be appointed custody officers of designated police stations under section 36(2) of PACE and can perform the functions of a custody officer under section 36(7) of that Act. Police staff cannot be designated as staff custody officers unless the chief officer is satisfied that they are suitable, capable and adequately trained. Designated custody officers will be subject to the PACE Codes and to the complaints process of the Independent Police Complaints Commission.

Section 122: Powers of designated and accredited persons

271. This clause amends the provisions of Part 4 of the 2002 Act in respect of designated and accredited persons. *Subsection (2)* amends section 42 of the 2002 Act in order to provide that an investigating officer designated under section 38 of that Act may, on the authority of an Inspector or above, be directed not to wear a uniform for specific and individual operations.
272. *Subsection (3)* amends paragraphs 1 and 15A of Schedule 4 to the 2002 Act. Part 1 of that Schedule sets out the powers which may be conferred on community support officers. Community support officers are civilian employees of police authorities designated by chief officers to exercise a range of powers. Those powers include the power to issue a fixed penalty notice for certain offences, including the offences mentioned in the first column of the Table in section 1(1) of the Criminal Justice and Police Act 2001, but the Secretary of State may limit community support officers' powers insofar as they relate to particular, listed, offences. The effect of the amendment is to make a technical change to the procedure by which the Secretary of State may add to or remove from the list of offences for which community support officers may not issue fixed penalty notices. Instead of making a separate order which has to be read in conjunction with that list, the Secretary of State is given a power to amend the list itself. *Subsections (4), (5) and (6)* make corresponding amendments for accredited persons. These are suitably skilled and trained non-police employees involved in the provision of community safety who, pursuant to a scheme established and maintained by a chief officer of police under the 2002 Act, may be accredited by chief officers with powers to undertake specified functions in support of the police. *Subsection (7)* introduces Schedules 8 and 9. These amend Schedules 4 and 5 to the 2002 Act, which set out the powers which may be given to designated and accredited persons.