

# **POLICE AND JUSTICE ACT 2006**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 2: Powers of police etc**

##### ***Section 10 and Schedule 6: Police bail***

142. *Section 10* and *Schedule 6* amend the Police and Criminal Evidence Act 1984 (PACE). As PACE stands, a police officer may only attach conditions to bail if the person bailed has been charged, or if his case has been referred to the CPS for a decision on whether or not to charge him. The effect of the amendments made by section 10 and Schedule 6 is that a police officer may attach conditions to bail granted at a police station before charge under section 37(2) and 37(7)(b) of PACE, and to bail granted elsewhere than at a police station (“street bail”) under section 30A.
143. *Section 10* and Schedule 6 will enable the officer granting bail to consider attaching conditions relevant and proportionate to the suspect and the offence. The conditions that can be imposed must be necessary to secure that the person surrenders to custody, that the person does not commit an offence while on bail, or that the person does not interfere with witnesses or otherwise obstruct the course of justice. Where the person is under the age of 17 conditions may also be applied for their welfare, or in their own interest. No recognizance, security or surety may be taken and no requirement to reside in a bail hostel may be imposed.
144. Where conditions are applied to street bail, the person who has been bailed subject to conditions will have the right to apply for variation of conditions to a custody officer and to a magistrates’ court. A record will be made of the exercise of the power and a copy provided to the person explaining their rights.
145. The proposed measures reflect bail provisions already available in relation to people at the charging stage of the process.

##### ***Section 11: Power to detain pending DPP’s decision about charging***

146. The amendment made by *section 11* to section 37 of PACE is designed to enable a custody officer to detain a person, under section 37, whilst consideration is being given by the Director of Public Prosecutions (in practice the relevant Crown Prosecution Service lawyer) on whether the person should be charged.
147. As it stands, section 37(1) of PACE provides that the custody officer at each police station where a person is detained must determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested, and may detain him at the police station for such period as is necessary to enable him to do so. Section 37(7) of PACE provides that when the custody officer has determined that he does have before him sufficient evidence to charge the person with the offence for which he was arrested, the person must be (a) released without charge and on bail for the

purpose of enabling the Director of Public Prosecutions to make a decision on charge; (b) released without charge and on bail but not for that purpose; (c) released without charge and without bail; or (d) charged.

148. The effect of the amendment made by section 11 is that, where the custody officer has determined that he has before him sufficient evidence to charge a person, that person may be detained at a police station pending the prosecutor's decision as to whether or not to bring a charge. It will be a matter for the custody officer to determine on an individual basis whether the person should be detained or granted bail whilst awaiting the outcome of the statutory charging process.

### ***Section 12: Power to stop and search at aerodromes***

149. *Section 12* inserts new section 24B in Part 3 of the Aviation Security Act 1982 (policing of airports) following the recommendation made by the Rt. Hon. John Wheeler in his report on airport security (published by the Department for Transport, 2002). This enables a police constable to stop and search, without warrant, any person, vehicle or aircraft in any area of an aerodrome, whether designated or non-designated, for stolen or prohibited articles, where he has reasonable grounds to suspect that he will find such articles. Designation takes place under Part 3 of the Aviation Security Act 1982. If applied to an aerodrome, it allows police constables additional powers that are not available at non-designated aerodromes. The term aerodrome, as defined by section 38(1) of the 1982 Act, is used rather than airport, as it has wider meaning and covers major airports as well as airfields used only by private flying clubs.
150. New section 24B(4) enables a constable to seize items discovered during a search which he reasonably suspects to be stolen or prohibited articles.
151. New section 24B(5) defines a prohibited article as something made or adapted for use in the course of or in connection with criminal conduct, or an article intended for such use by the person having it with him or by some other person.
152. New section 24B(6) defines "criminal conduct" as conduct which constitutes an offence in the part of the UK in which the aerodrome is situated or conduct which would constitute an offence in that part of the UK if it occurred there.
153. New section 24B(9) prevents a constable from entering a dwelling during the exercise of the powers conferred by section 24B.
154. *Paragraph 8(4)* of *Schedule 14* repeals subsections (1), (4), and (5) of section 27 of the Aviation Security Act 1982. These are no longer necessary since the search powers in new section 24B are exercisable at both designated and non-designated airports.

### ***Section 13: Supply of information to police etc by Registrar General***

155. Prior to this legislation the Registrars General for England and Wales and for Northern Ireland did not have the legislative power to disclose death registration information, in a timely manner or on a bulk basis, to public and private sector organisations for the prevention, detection, investigation or prosecution of offences. This section changes that situation and confers a power that enables the Registrars General for England and Wales and for Northern Ireland to supply bulk information contained in any register of deaths to the police and other organisations in a timely manner for use in the prevention, detection, investigation or prosecution of offences. (It is envisaged that the power will be particularly useful in relation to offences involving identity fraud.) The power does not enable disclosure to be made for any other purpose. The section does not limit the other circumstances in which the Registrars General already supply death information. The supply of information may be subject to conditions imposed by the Registrars General and to the levy of a reasonable fee. (This section extends to Northern Ireland by virtue of section 54(3).)

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

156. *Subsection (1)* confers a power on the Registrar General for England and Wales and the Registrar General for Northern Ireland to supply death registration information for the purposes of the prevention, detection, investigation or prosecution of offences to:
- (a) a police force in the United Kingdom,
  - (b) a special police force (as defined in *subsection (6)(a) to (d)*),
  - (c) the Serious Organised Crime Agency, or
  - (d) a person or body specified, or of a description specified, by order.
157. There is no restriction on who may be specified in such an order, except that the maker of the order would of course have to be satisfied that the disclosure to the person or body in question was capable of being made for the purposes outlined above.
158. *Subsection (2)* provides that the Registrar General for England and Wales, with the approval of the Chancellor of the Exchequer, may make an order under section 13(1)(d) in respect of England and Wales; and the Secretary of State, after consulting the Registrar General for Northern Ireland, may make an order under section 13(1)(d) in respect of Northern Ireland. The difference reflects the legal and historical position of the two Registrars General. The Registrar General for England and Wales has similar order-making powers in other Acts whereas the Registrar General for Northern Ireland has no such powers.
159. *Subsection (3)* provides that the Registrars General may charge a reasonable fee (which may vary depending on the amount of work involved) in respect of the cost of supplying the information.
160. *Subsection (4)* provides that the Registrars General may impose conditions in respect of the supply.
161. *Subsection (5)* preserves the existing legal arrangements for the supply of death registration information. Sometimes, the effect of legislation is to limit other legislation already in force. This subsection prevents that happening in this case.

***Section 14: Information gathering powers: extension to domestic flights and voyages***

162. *Section 14* provides for section 32 of the Immigration, Asylum and Nationality Act 2006 (“the IAN Act”) (police powers to gather information relating to flights and voyages to or from the United Kingdom) to be amended to include:
- ships or aircraft arriving, or expected to arrive, in the UK from elsewhere in the UK, and
  - ships or aircraft leaving or expected to leave, from any place in the UK for elsewhere in the UK.
163. This will enable a constable of at least the rank of superintendent to request passenger, crew or service information from the owner or agent of a ship or aircraft on air and sea journeys within the UK.
164. Section 32 of the IAN Act states that the passenger, crew and service information which may be collected under the section will be specified in secondary legislation. Secondary legislation may also specify the form and manner in which information is to be provided.
165. Section 32 of the IAN Act also requires passengers and crew members to provide the owner or agent of a ship or aircraft with any information that he requires for the purposes of complying with a requirement to provide information.
166. Requests have to be in writing, may apply generally or only to one or more specified ships or aircraft, in either case, throughout a specified period (not exceeding six months)

and must state the information required and the date or time by which the information must be provided.

167. *Subsection (3)* amends section 32(5) (interpretation of that section) and section 33(5) (police powers to gather information about freight entering or leaving the United Kingdom: interpretation of section) of the IAN Act by inserting a definition of a ship. A ship is defined as including every description of vessel used in navigation and hovercraft. *Subsections (4) and (5)* amend section 36 (duty to share travel and freight information) and section 38 (disclosure of travel and freight information for security purposes) of the IAN Act by inserting the above definition of a ship.

### ***Section 15: Accreditation of weights and measures inspectors***

168. *Subsection (1)* inserts a new section 41A into the Police Reform Act 2002. *Subsection (2)* inserts a new Schedule 5A into the 2002 Act, which is set out at Schedule 7 to the Act. The new section 41A provides for the accreditation of weights and measures inspectors, commonly known as Trading Standards Officers (TSOs), and provides for arrangements similar to those for community safety accreditation schemes as set out in section 41 of the Police Reform Act 2002. Accredited TSOs will be able to issue penalty notices for disorderly behaviour under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001. The offences for which penalty notices for disorder may be issued are listed in Annex B.
169. Subsection (1) of new section 41A enables chief officers of police to accredit TSOs. An accredited TSO will be able to exercise such powers as the chief officer specifies from the list of powers in new Schedule 5A to the Police Reform Act 2002.
170. Subsection (2) of new section 41A provides that the powers given by accreditation may only be exercised in the accrediting chief officer's police area.
171. Subsections (4) and (5) of the new section provide that chief officers may only accredit suitable and adequately trained TSOs, and that they may charge a fee for considering applications for accreditation and for the renewal of accreditation and for granting the accreditation itself. Under subsection (7), the accreditation may specify a period for which accreditation will apply.
172. Subsection (6) of new section 41A specifies that accreditation does not enable a TSO to exercise the powers granted by accreditation other than in the course of his duty as a TSO, and that the accrediting chief officer may specify other restrictions and conditions when accrediting TSOs. As accreditation only enables TSOs to exercise the powers in the course of their duties, it follows that accreditation will cease to have effect if the accredited person ceases to be a TSO, as provided for by subsection (8).
173. *Paragraph 40* of *Schedule 14* amends the Police Reform Act 2002 to provide that persons accredited under new section 41A of that Act may not be appointed as the Chairman or a member of the IPCC. This brings them into line with people accredited under community safety schemes under section 41 of the 2002 Act.

### ***Schedule 7: Powers exercisable by accredited inspectors***

174. *Schedule 7* inserts a new Schedule 5A in the Police Reform Act 2002 which sets out the powers that chief officers may confer on the TSOs they accredit under new section 41A of the 2002 Act.
175. Paragraph 1 of Schedule 5A permits an accredited TSO, whose accreditation applies that paragraph to him, to issue fixed penalty notices in respect of offences of disorder specified in his accreditation. Paragraph 2 gives an accredited TSO, whose accreditation applies that paragraph to him, the power to require persons suspected of having committed a fixed penalty offence specified in his accreditation to provide their name and address. (Refusal to provide a name and address when required to do so by a TSO is an offence under paragraph 2(2).) Paragraph 3 confers on an accredited TSO,

whose accreditation applies that paragraph to him, the power of a constable to take photographs, elsewhere than at a police station, of persons to whom he has issued penalty notices.

***Section 16: Power to apply accreditation provisions***

176. This section inserts a new section 41B into the Police Reform Act 2002. The new section provides a power for the Secretary of State to apply the provisions about accredited TSOs to persons of a descriptions specified by order. An order under new section 41B is subject to the affirmative resolution procedure.

***Section 17: Conditional cautions: types of cautions***

177. *Section 17* amends Part 3 of the Criminal Justice Act 2003, which provides for conditional cautions. These are cautions to which specified conditions are attached. A conditional caution may only be given if a prosecutor considers that there is sufficient evidence to prosecute the offender and if the offender admits the offence and agrees to a conditional caution being imposed. A conditional caution is an alternative to prosecution for low-level offending, but if the offender breaches the conditions he is liable to be prosecuted for the original offence.
178. The purpose of section 17 is to widen the scope of the conditions that can be attached to a conditional caution. Currently, section 22(3) of the 2003 Act provides that the conditions which can be attached to a conditional caution must have the object of facilitating the rehabilitation of the offender or ensuring the offender makes reparation for the offence. *Subsection (2)* substitutes an expanded section 22(3) that provides that, in addition, a conditional caution may contain conditions which have the object of punishing the offender.
179. *Subsection (3)* inserts new subsections (3A), (3B) and (3C) in section 22 of the 2003 Act. New subsection (3A) provides that the conditions that may be included in a conditional caution may include the imposition of a financial penalty and/or a requirement for attendance at a specified place at a specified time (which might include completion of a specified activity). The provision for a financial condition is subject to new section 23A.
180. New subsection (3B) provides that where a condition involves an attendance requirement, the maximum number of hours is restricted to no more than 20 hours in total. This 20 hour limit does not apply to an attendance requirement imposed for the purpose of facilitating the offender's rehabilitation. This is to permit rehabilitative conditions involving, for example, drug or alcohol treatment programmes that may take longer than 20 hours in total. By virtue of new subsection (3C) this figure of 20 hours may be amended by order (subject to the affirmative resolution procedure).
181. *Subsection (4)* inserts a new section 23A into the 2003 Act. This new section makes provision in relation to a condition that the offender pay a financial penalty, called a "financial penalty condition". Subsection (1) of new section 23A specifies that a financial penalty condition may not be attached to a conditional caution given in respect of an offence unless the offence in question is one prescribed, or of a description prescribed, in an order made by the Secretary of State. Section 23A(2) requires that an order under section 23A(1) must also specify the maximum amount of the financial penalty that may be specified for each offence or description of offence. Subsection (3) of new section 23A provides that the maximum financial penalty prescribed for an offence must not exceed 25% of the maximum fine available for the offence in question on summary conviction in a Magistrates' Court (in the case of a level 5 fine (£5000) this would amount to £1250) or £250, whichever is the lower. Subsection (4) of the new section 23A provides that these limits may be amended by order (subject to the affirmative resolution procedure save where the £250 limit is being updated only to account for inflation in which case the negative procedure applies). Subsections (5), (6), (7), (8) and (9) of the new section 23A also specify the method of payment of



any financial penalty condition imposed. The financial penalty condition is intended to be a requirement to pay money that is imposed for the purposes of punishing an offender. It does not alter the existing position in which an offender can be required to pay compensation to victims for the purpose of making reparation for the offence, or to pay a sum of money to a charity by way of indirect reparation to the community.

***Section 18: Arrest for failing to comply with conditional caution***

182. *Subsection (1)* inserts a new section 24A into Part 3 of the Criminal Justice Act 2003 to give a constable a power of arrest without warrant where an offender is suspected of having breached the conditions of a conditional caution without reasonable excuse, in order to enable a quicker, more effective means of facilitating prosecution for the original offence.
183. Where a person is arrested under new section 24A(1), it will be for a prosecutor to determine whether he has failed to comply with the conditions attached to his caution and, if so, whether there was a reasonable excuse for doing so. If the person has failed to comply without a reasonable excuse, he can then be charged with the original offence in respect of which the conditional caution was given (new section 24A(2)(a)). Where further investigations are necessary to establish the circumstances of the suspected non-compliance with conditions, the offender may be released without charge and on bail (new section 24A(2)(b)).
184. Alternatively, the offender can be released without charge and without bail and with or without any variations in the conditions attached to the caution (new section 24A(2)(c)). This course of action could result if the prosecutor determined that there was a reasonable excuse for the non-compliance or that there had been no actual non-compliance.
185. New section 24A(5)(a), read with new section 24A(6), provides that the offender may be kept in police detention in order to be dealt with under section 24A(2). For example, a person might be detained until a relevant prosecutor is available to make a charging decision, or where further investigations are necessary to establish if the person has failed to comply with the conditions attached to the caution.
186. By virtue of new section 24A(3) these procedures also apply where an offender returns to the police station having been bailed for investigation of suspected non-compliance with a condition and in certain other circumstances where the offender is detained by the police.
187. *Section 18* also inserts a new section 24B into Part 3 of the Criminal Justice Act 2003. This provides that certain provisions in PACE apply with the modifications identified to offenders arrested for suspected breach of a conditional caution as they do to offenders arrested in respect of an offence.