



# Criminal Justice and Police Act 2001

## 2001 CHAPTER 16

### PART 3

#### POLICE AND CRIMINAL EVIDENCE AND THE TERRORISM ACT

##### *Fingerprints and samples*

VALID FROM 01/01/2003

#### **78 Taking fingerprints**

(1) In section 27 of the 1984 Act (requirement to attend police station for fingerprinting), after subsection (1) there shall be inserted—

“(1A) Where a person convicted of a recordable offence has already had his fingerprints taken as mentioned in paragraph (c) of subsection (1) above, that fact (together with any time when he has been in police detention for the offence) shall be disregarded for the purposes of that subsection if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(1B) Subsections (1) and (1A) above apply—

- (a) where a person has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted, or
- (b) where a person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 (c. 37) for a recordable offence, as they apply where a person has been convicted of an offence, and references in this section to a conviction shall be construed accordingly.”

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- (2) In section 61(3)(a) of the 1984 Act (compulsory fingerprinting under the authorisation of a police officer of at least the rank of superintendent), for “superintendent” there shall be substituted “inspector”.
- (3) After section 61(3) of the 1984 Act there shall be inserted—
- “(3A) Where a person charged with a recordable offence or informed that he will be reported for such an offence has already had his fingerprints taken as mentioned in paragraph (b)(ii) of subsection (3) above, that fact shall be disregarded for the purposes of that subsection if—
- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).”
- (4) After section 61(4) of the 1984 Act there shall be inserted—
- “(4A) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or station if—
- (a) the court, or
- (b) an officer of at least the rank of inspector,
- authorises them to be taken.
- (4B) A court or officer may only give an authorisation under subsection (4A) if—
- (a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he is not the same person; or
- (b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.”
- (5) In section 61(5) of the 1984 Act (authorisation to be in writing or oral but to be confirmed in writing), after “(3)(a)” there shall be inserted “or (4A)”.
- (6) In section 61(6) of the 1984 Act (compulsory fingerprinting of persons convicted of recordable offences), for “he has been convicted of a recordable offence” there shall be substituted—
- “(a) he has been convicted of a recordable offence;
- (b) he has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted; or
- (c) he has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 (c. 37) for a recordable offence.”
- (7) After section 61(8) of the 1984 Act there shall be inserted—
- “(8A) Where a person’s fingerprints are taken electronically, they must be taken only in such manner, and using such devices, as the Secretary of State has approved for the purposes of electronic fingerprinting.”
- (8) In section 65(1) of the 1984 Act (supplementary provisions of Part 5), for the definition of “fingerprints” there shall be substituted—

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““fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of—

- (a) any of that person’s fingers; or
- (b) either of his palms;”.

(9) Section 39 of the Criminal Justice Act 1948 (c. 58) (proof of previous convictions by fingerprints) shall cease to have effect.

#### Commencement Information

- II** S. 78 partly in force; s. 78 not in force at Royal Assent, see s. 138; s. 78(1)(3)-(6)(8)(9) in force at 1.1.2003 by S.I. 2002/3032, art. 2; s. 78(2) wholly in force at 1.4.2003 by S.I. 2003/708, art. 2(f)

VALID FROM 01/04/2003

#### 79 Authority for intimate searches

In subsections (1) and (5) of section 55 of the 1984 Act (authorisation by a constable of at least the rank of superintendent of an intimate search or the use for such a search of a person without the specified qualification), for “superintendent”, in each place where it occurs, there shall be substituted “ inspector ”.

VALID FROM 01/01/2003

#### 80 Samples

(1) In sections 62(1)(a) and (1A)(a) and 63(3)(b) of the 1984 Act (authorisation of a police officer of or above the rank of superintendent required for the taking of an intimate or non-intimate sample), for the word “superintendent”, in each place where it occurs, there shall be substituted “ inspector ”.

(2) In section 62(9) of the 1984 Act (intimate samples may only be taken by a registered medical practitioner), after “practitioner” there shall be inserted “ or a registered nurse ”.

(3) After section 63(5) of the 1984 Act there shall be inserted—

“(5A) An officer shall not give an authorisation under subsection (3) above for the taking from any person of a non-intimate sample consisting of a skin impression if—

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.”

(4) After section 63(9) of the 1984 Act (non-intimate samples) there shall be inserted—

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“(9A) Where a non-intimate sample consisting of a skin impression is taken electronically from a person, it must be taken only in such manner, and using such devices, as the Secretary of State has approved for the purpose of the electronic taking of such an impression.”

(5) Section 65 of the 1984 Act (supplementary provisions of Part 5) shall become subsection (1) of that section and—

(a) after “this Act—” there shall be inserted—

““analysis”, in relation to a skin impression, includes comparison and matching;”

(b) in the definition of “non-intimate sample”, for paragraph (e) (footprints etc.) there shall be substituted—

“(e) a skin impression;”

(c) after the definition of “registered dentist” there shall be inserted—

““skin impression”, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;”

and

(d) in the definition of “sufficient” and “insufficient”, after “means” there shall be inserted “ (subject to subsection (2) below) ”.

(6) After subsection (1) of section 65 of the 1984 Act there shall be inserted—

“(2) References in this Part of this Act to a sample’s proving insufficient include references to where, as a consequence of—

(a) the loss, destruction or contamination of the whole or any part of the sample,

(b) any damage to the whole or a part of the sample, or

(c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.”

#### **Commencement Information**

**I2** S. 80 partly in force; s. 80 not in force at Royal Assent, see s. 138; s. 80(3)(5)(6) in force at 1.1.2003 by S.I. 2002/3032, art. 2; s. 80(1) wholly in force at 1.4.2003 by S.I. 2003/708, art. 2(h)

## **81 Speculative searches**

(1) In subsection (1)(a) of section 63A of the 1984 Act (speculative searches against records held by or on behalf of specified police forces), for “a police force (or police forces) falling within subsection (1A) below or” there shall be substituted “ any one or more relevant law-enforcement authorities or which ”.

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(2) For subsection (1A) of that section (specified police forces) there shall be substituted—

“(1A) In subsection (1) above “relevant law-enforcement authority” means—

- (a) a police force;
- (b) the National Criminal Intelligence Service;
- (c) the National Crime Squad;
- (d) a public authority (not falling within paragraphs (a) to (c)) with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders;
- (e) any person with functions in any country or territory outside the United Kingdom which—
  - (i) correspond to those of a police force; or
  - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;
- (f) any person with functions under any international agreement which consist of or include the investigation of conduct which is—
  - (i) unlawful under the law of one or more places,
  - (ii) prohibited by such an agreement, or
  - (iii) contrary to international law,or the apprehension of persons guilty of such conduct.

(1B) The reference in subsection (1A) above to a police force is a reference to any of the following—

- (a) any police force maintained under section 2 of the Police Act 1996 (c. 16) (police forces in England and Wales outside London);
- (b) the metropolitan police force;
- (c) the City of London police force;
- (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967 (c. 77);
- (e) the Police Service of Northern Ireland;
- (f) the Police Service of Northern Ireland Reserve;
- (g) the Ministry of Defence Police;
- (h) the Royal Navy Regulating Branch;
- (i) the Royal Military Police;
- (j) the Royal Air Force Police;
- (k) the Royal Marines Police;
- (l) the British Transport Police;
- (m) the States of Jersey Police Force;
- (n) the salaried police force of the Island of Guernsey;
- (o) the Isle of Man Constabulary.

(1C) Where—

- (a) fingerprints or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) above applies, and

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- (b) that person has given his consent in writing to the use in a speculative search of the fingerprints or of the samples and of information derived from them,

the fingerprints or, as the case may be, those samples and that information may be checked against any of the fingerprints, samples or information mentioned in paragraph (a) or (b) of that subsection.

- (1D) A consent given for the purposes of subsection (1C) above shall not be capable of being withdrawn.”

## 82 Restriction on use and destruction of fingerprints and samples

- (1) Section 64 of the 1984 Act (destruction of fingerprints and samples) shall be amended as follows.

- (2) For subsections (1) and (2) (obligation to destroy fingerprints and samples of persons who are not prosecuted or who are cleared) there shall be substituted—

“(1A) Where—

- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence, and  
 (b) subsection (3) below does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(1B) In subsection (1A) above—

- (a) the reference to using a fingerprint includes a reference to allowing any check to be made against it under section 63A(1) or (1C) above and to disclosing it to any person;  
 (b) the reference to using a sample includes a reference to allowing any check to be made under section 63A(1) or (1C) above against it or against information derived from it and to disclosing it or any such information to any person;  
 (c) the reference to crime includes a reference to any conduct which—  
     (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or  
     (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

- (d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.”

- (3) In subsection (3), for “subsection (3A) below” there shall be substituted “ the following provisions of this section ”.

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- (4) For subsections (3A) and (3B) (power to retain samples for elimination purposes and restriction on use) there shall be substituted—
- “(3AA) Samples and fingerprints are not required to be destroyed under subsection (3) above if—
- (a) they were taken for the purposes of the investigation of an offence of which a person has been convicted; and
  - (b) a sample or, as the case may be, fingerprint was also taken from the convicted person for the purposes of that investigation.
- (3AB) Subject to subsection (3AC) below, where a person is entitled under subsection (3) above to the destruction of any fingerprint or sample taken from him (or would be but for subsection (3AA) above), neither the fingerprint nor the sample, nor any information derived from the sample, shall be used—
- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or
  - (b) for the purposes of the investigation of any offence;
- and subsection (1B) above applies for the purposes of this subsection as it applies for the purposes of subsection (1A) above.
- (3AC) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention—
- (a) that sample need not be destroyed under subsection (3) above;
  - (b) subsection (3AB) above shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it; and
  - (c) that consent shall be treated as comprising a consent for the purposes of section 63A(1C) above;
- and a consent given for the purpose of this subsection shall not be capable of being withdrawn.
- (3AD) For the purposes of subsection (3AC) above it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.”
- (5) In subsection (7)(a) (saving for power conferred by Immigration Act 1971 (c. 77)), after “1971” there shall be inserted “ or section 20 of the Immigration and Asylum Act 1999 (c. 33) (disclosure of police information to the Secretary of State for use for immigration purposes); ”.
- (6) The fingerprints, samples and information the retention and use of which, in accordance with the amended provisions of section 64 of the 1984 Act, is authorised by this section include—
- (a) fingerprints and samples the destruction of which should have taken place before the commencement of this section, but did not; and
  - (b) information deriving from any such samples or from samples the destruction of which did take place, in accordance with that section, before the commencement of this section.

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

(1) Article 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (destruction of fingerprints and samples) shall be amended as follows.

(2) For paragraphs (1) and (2) (obligation to destroy fingerprints and samples of persons who are not prosecuted or who are cleared) there shall be substituted—

“(1A) Where—

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) paragraph (3) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(1B) In paragraph (1A)—

(a) the reference to using a fingerprint includes a reference to allowing any check to be made against it under Article 63A(1) and to disclosing it to any person;

(b) the reference to using a sample includes a reference to allowing any check to be made under Article 63A(1) against it or against information derived from it and to disclosing it or any such information to any person;

(c) the reference to crime includes a reference to any conduct which—  
 (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or  
 (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

(d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.”

(3) In paragraph (3), for “paragraph (3A)” there shall be substituted “ the following provisions of this Article ”.

(4) For paragraphs (3A) and (3B) (power to retain samples for elimination purposes and restriction on use) there shall be substituted—

“(3AA) Samples and fingerprints are not required to be destroyed under paragraph (3) if—

(a) they were taken for the purposes of the investigation of an offence of which a person has been convicted; and

(b) a sample or, as the case may be, fingerprint was also taken from the convicted person for the purposes of that investigation.



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(3AB) Subject to paragraph (3AC), where a person is entitled under paragraph (3) to the destruction of any fingerprint or sample taken from him (or would be but for paragraph (3AA)), neither the fingerprint nor the sample, nor any information derived from the sample, shall be used—

- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or
- (b) for the purposes of the investigation of any offence;

and paragraph (1B) applies for the purposes of this paragraph as it applies for the purposes of paragraph (1A).

(3AC) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention—

- (a) that sample need not be destroyed under paragraph (3); and
- (b) paragraph (3AB) shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it;

and a consent given for the purposes of this paragraph shall not be capable of being withdrawn.

(3AD) For the purposes of paragraph (3AC) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.”

(5) In paragraph (8)(a) (saving for power conferred by Immigration Act 1971 (c. 77)), after “1971” there shall be inserted “ or section 20 of the Immigration and Asylum Act 1999 (c. 33) (disclosure of police information to the Secretary of State for use for immigration purposes); ”.

(6) The fingerprints, samples and information the retention and use of which, in accordance with the amended provisions of Article 64 of the Order of 1989, is authorised by this section include—

- (a) fingerprints and samples the destruction of which should have taken place before the commencement of this section, but did not; and
- (b) information deriving from any such samples or from samples the destruction of which did take place, in accordance with that Article, before the commencement of this section.

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

(1) Paragraph 14 of Schedule 8 to the Terrorism Act 2000 (c. 11) (use of fingerprints and samples) shall be amended as follows.

(2) For sub-paragraph (2) (restriction on use for the purposes of a terrorist investigation) there shall be substituted—

“(2) The fingerprints and samples may be retained but shall not be used by any person except for the purposes of a terrorist investigation or for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.”

(3) In sub-paragraph (3) (exclusion of checks against the fingerprints or samples under section 63A or its Northern Ireland equivalent except for the purposes of a terrorism investigation), after “investigation” there shall be inserted “ or for purposes related to

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the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.”

(4) After sub-paragraph (4) there shall be inserted—

“(4A) In this paragraph—

- (a) a reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.”

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