



# Criminal Justice and Police Act 2001

## 2001 CHAPTER 16

### PART 3

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

##### *Arrestable offences*

#### 71 Arrestable offences

F1 .....

##### Textual Amendments

F1 S. 71 repealed (1.10.2002) by [Police Reform Act 2002 \(c. 30\)](#), s. 107, [Sch. 8](#); S.I. 2002/2306, [art. 2\(g\)\(iii\)\(j\)](#)

#### 72 Importation of indecent or obscene material

In Part 1 of Schedule 5 to each of the 1984 Act and the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) (serious arrestable offences), after paragraph 8 there shall be inserted—

“9 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) of being knowingly concerned, in relation to any goods, in any fraudulent evasion or attempt at evasion of a prohibition in force with respect to the goods under section 42 of the Customs Consolidation Act 1876 (c. 36) (prohibition on importing indecent or obscene articles).”

*Status: Point in time view as at 01/10/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Police Act 2001, Part 3. (See end of Document for details)*

### *Detention and arrest*

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

- (1) The 1984 Act shall be amended as follows.
- (2) After section 40 there shall be inserted—

### **“40A Use of telephone for review under s. 40**

- (1) This section applies, notwithstanding anything in section 40 above, where in the case of a person who has been arrested but not charged—
  - (a) it is not reasonably practicable for an officer of at least the rank of inspector to be present in the police station where that person is held to carry out any review of that person’s detention that is required by subsection (1)(b) of that section; and
  - (b) the review is not one which regulations under section 45A below authorise to be carried out using video-conferencing facilities, or is one which it is not reasonably practicable, in the circumstances, to carry out using any such facilities.
- (2) The review may be carried out by an officer of at least the rank of inspector who has access to a means of communication by telephone to persons in the police station where the arrested person is held.
- (3) Where any review is carried out under this section by an officer who is not present at the station where the arrested person is held—
  - (a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;
  - (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and
  - (c) the requirements under section 40(12) and (13) above for—
    - (i) the arrested person, or
    - (ii) a solicitor representing him,
 to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by subsection (4) below.
- (4) Representations are made in a manner authorised by this subsection—
  - (a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either—
    - (i) orally by telephone to that officer; or
    - (ii) in writing to that officer by means of those facilities;
 and
  - (b) in any other case, if they are made orally by telephone to that officer.
- (5) In this section “video-conferencing facilities” has the same meaning as in section 45A below.”

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(3) After section 45 there shall be inserted—

**“45A Use of video-conferencing facilities for decisions about detention**

- (1) Subject to the following provisions of this section, the Secretary of State may by regulations provide that, in the case of an arrested person who is held in a police station, some or all of the functions mentioned in subsection (2) may be performed (notwithstanding anything in the preceding provisions of this Part) by an officer who—
  - (a) is not present in that police station; but
  - (b) has access to the use of video-conferencing facilities that enable him to communicate with persons in that station.
- (2) Those functions are—
  - (a) the functions in relation to an arrested person taken to a police station that is not a designated police station which, in the case of an arrested person taken to a station that is a designated police station, are functions of a custody officer under section 37, 38 or 40 above; and
  - (b) the function of carrying out a review under section 40(1)(b) above (review, by an officer of at least the rank of inspector, of the detention of person arrested but not charged).
- (3) Regulations under this section shall specify the use to be made in the performance of the functions mentioned in subsection (2) above of the facilities mentioned in subsection (1) above.
- (4) Regulations under this section shall not authorise the performance of any of the functions mentioned in subsection (2)(a) above by such an officer as is mentioned in subsection (1) above unless he is a custody officer for a designated police station.
- (5) Where any functions mentioned in subsection (2) above are performed in a manner authorised by regulations under this section—
  - (a) any obligation of the officer performing those functions to make a record in connection with the performance of those functions shall have effect as an obligation to cause another officer to make the record; and
  - (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer.
- (6) Where the functions mentioned in subsection (2)(b) are performed in a manner authorised by regulations under this section, the requirements under section 40(12) and (13) above for—
  - (a) the arrested person, or
  - (b) a solicitor representing him,to be given any opportunity to make representations (whether in writing or orally) to the person performing those functions shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by subsection (7) below.
- (7) Representations are made in a manner authorised by this subsection—

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- (a) in a case where facilities exist for the immediate transmission of written representations to the officer performing the functions, if they are made either—
    - (i) orally to that officer by means of the video-conferencing facilities used by him for performing those functions; or
    - (ii) in writing to that officer by means of the facilities available for the immediate transmission of the representations;
 and
  - (b) in any other case if they are made orally to that officer by means of the video-conferencing facilities used by him for performing the functions.
- (8) Regulations under this section may make different provision for different cases and may be made so as to have effect in relation only to the police stations specified or described in the regulations.
- (9) Regulations under this section shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Any reference in this section to video-conferencing facilities, in relation to any functions, is a reference to any facilities (whether a live television link or other facilities) by means of which the functions may be performed with the officer performing them, the person in relation to whom they are performed and any legal representative of that person all able to both see and to hear each other.”

#### **74 Authorisation for delay in notifying arrest**

In section 56(2)(b) of the 1984 Act (authorisation by a constable of at least the rank of superintendent for a delay in allowing an arrested person to notify someone of his arrest and detention), for “superintendent” there shall be substituted “inspector”.

#### **75 Use of video links for proceedings about Terrorism Act detention**

In paragraph 33 of Schedule 8 to the Terrorism Act 2000 (c. 11) (representation at a hearing for a warrant of further detention or for the extension or further extension of the period specified in such a warrant), after sub-paragraph (3) there shall be inserted—

“(4) A judicial authority may, after giving an opportunity for representations to be made by or on behalf of the applicant and the person to whom the application relates, direct—

- (a) that the hearing of the application must be conducted, and
- (b) that all representations by or on behalf of a person for the purposes of the hearing must be made,

by such means (whether a live television link or other means) falling within sub-paragraph (5) as may be specified in the direction and not in the presence (apart from by those means) of the applicant, of the person to whom the application relates or of any legal representative of that person.

- (5) A means of conducting the hearing and of making representations falls within this sub-paragraph if it allows the person to whom the application relates and any legal representative of his (without being present at the

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hearing and to the extent that they are not excluded from it under sub-paragraph (3)—

- (a) to see and hear the judicial authority and the making of representations to it by other persons; and
  - (b) to be seen and heard by the judicial authority.
- (6) If the person to whom the application relates wishes to make representations about whether a direction should be given under sub-paragraph (4), he must do so by using the facilities that will be used if the judicial authority decides to give a direction under that sub-paragraph.
- (7) Sub-paragraph (2) applies to the hearing of representations about whether a direction should be given under sub-paragraph (4) in the case of any application as it applies to a hearing of the application.
- (8) A judicial authority shall not give a direction under sub-paragraph (4) unless—
- (a) it has been notified by the Secretary of State that facilities are available at the place where the person to whom the application relates is held for the judicial authority to conduct a hearing by means falling within sub-paragraph (5); and
  - (b) that notification has not been withdrawn.
- (9) If in a case where it has power to do so a judicial authority decides not to give a direction under sub-paragraph (4), it shall state its reasons for not giving it.”

#### *Codes of practice*

### **76 Visual recording of interviews**

(1) After section 60 of the 1984 Act (tape recording of interviews) there shall be inserted—

#### **“60A Visual recording of interviews**

- (1) The Secretary of State shall have power—
  - (a) to issue a code of practice for the visual recording of interviews held by police officers at police stations; and
  - (b) to make an order requiring the visual recording of interviews so held, and requiring the visual recording to be in accordance with the code for the time being in force under this section.
- (2) A requirement imposed by an order under this section may be imposed in relation to such cases or police stations in such areas, or both, as may be specified or described in the order.
- (3) An order under subsection (1) above shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section—
  - (a) references to any interview are references to an interview of a person suspected of a criminal offence; and

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(b) references to a visual recording include references to a visual recording in which an audio recording is comprised.”

(2) In section 67(2) of the 1984 Act (procedure for codes of practice under section 60 or 66), after “60” there shall be inserted “ , 60A ”.

## 77 Codes of practice

In section 67 of the 1984 Act (procedure in relation to a code of practice under section 60, 60A or 66), after subsection (7) there shall be inserted—

“(7A) Subject to subsection (7B) below, the Secretary of State may by order provide that a code of practice for the time being in force is to be treated as having effect with such modifications as may be set out in the order.

(7B) The effect of the modifications made by an order under subsection (7A) above must be confined to one or more of the following—

- (a) the effect of the code in relation to such area of England and Wales as may be specified in the order;
- (b) the effect of the code during such period, not exceeding two years, as may be so specified;
- (c) the effect of the order in relation to such offences or descriptions of offender as may be so specified.

(7C) An order under subsection (7A) above shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

### *Fingerprints and samples*

## 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)

**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 ”.

**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) <sup>F2</sup>.....

(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—

“(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;”



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(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.”

#### Textual Amendments

**F2** S. 80(2) repealed (1.4.2003) by [Police Reform Act 2002 \(c. 30\)](#), ss. 107, 108(2)-(5), [Sch. 8](#); S.I. 2003/808, [art. 2\(1\)\(iv\)](#)

#### 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 ”.

(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;

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- (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
  - (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.”

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## **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 ”.

(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.

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- (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.

### **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,

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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.

(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—

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- (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 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;

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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.”

*Persons authorised by the Secretary of State*

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

After section 114 of the 1984 Act (application of Act to Customs and Excise) there shall be inserted—

### **“114A Power to apply Act to officers of the Secretary of State etc.**

- (1) The Secretary of State may by order direct that—
- (a) the provisions of Schedule 1 to this Act so far as they relate to special procedure material, and
  - (b) the other provisions of this Act so far as they relate to the provisions falling within paragraph (a) above,
- shall apply, with such modifications as may be specified in the order, for the purposes of investigations falling within subsection (2) as they apply for the purposes of investigations of offences conducted by police officers.
- (2) An investigation falls within this subsection if—
- (a) it is conducted by an officer of the department of the Secretary of State for Trade and Industry or by another person acting on that Secretary of State’s behalf;
  - (b) it is conducted by that officer or other person in the discharge of a duty to investigate offences; and
  - (c) the investigation relates to a serious arrestable offence or to anything which there are reasonable grounds for suspecting has involved the commission of a serious arrestable offence.
- (3) The investigations for the purposes of which provisions of this Act may be applied with modifications by an order under this section include investigations of offences committed, or suspected of having been committed, before the coming into force of the order or of this section.
- (4) An order under this section shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

*Execution of process in other domestic jurisdictions*

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

- (1) In section 9 of the 1984 Act (which contains provision introducing the provisions of Schedule 1 to that Act for obtaining access to excluded and special procedure material), after subsection (2) there shall be inserted—

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“(2A) Section 4 of the Summary Jurisdiction (Process) Act 1881 (c. 24) (which includes provision for the execution of process of English courts in Scotland) and section 29 of the Petty Sessions (Ireland) Act 1851 (c. 93) (which makes equivalent provision for execution in Northern Ireland) shall each apply to any process issued by a circuit judge under Schedule 1 to this Act as it applies to process issued by a magistrates’ court under the Magistrates’ Courts Act 1980 (c. 43).”

(2) In section 120(5) of that Act (provisions extending to the United Kingdom), after the entry for section 6(3) of that Act there shall be inserted—

“section 9(2A);”.

(3) Section 27 of the Petty Sessions (Ireland) Act 1851 (which includes provision for the execution of process of Northern Ireland courts in other places) shall apply to any process issued by a county court judge under Schedule 1 to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 1341 (N.I. 12)) as it applies to a warrant mentioned in that section.



**Status:**

Point in time view as at 01/10/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice and Police Act 2001, Part 3.