These notes refer to the Crime and Security Act 2010 (c.17) which received Royal Assent on 8 April 2010

CRIME AND SECURITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Taking of fingerprints and samples: England and Wales

Section 2: Powers to take material in relation to offences

29. *Subsections (1)* and *(5)* amend sections 61 and 63 of PACE to enable biometric data (fingerprints and non-intimate samples respectively) to be taken from people who have been arrested for a recordable offence, either if they have been released on bail before their biometric data have been taken or if their biometric data have been taken and subsequently have proved inadequate for analysis and/or loading onto the national fingerprint or DNA database. For the purposes of section 2, it does not matter when the arrest took place, so the police may take biometric data from a person who was arrested before the section comes into force.

30. "Recordable offence" is defined in sections 118 and 27 of PACE. In practice, all offences which are punishable with imprisonment are recordable offences, as are around 60 other more minor offences which are specified in regulations made under section 27.

31. *Subsection (2)* amends section 61 of PACE to enable fingerprints to be taken from people who are not detained at a police station but who have been charged with a recordable offence, where either their fingerprints have not been taken in the course of the investigation or their fingerprints have been taken and subsequently have proved inadequate for analysis and/or loading onto the national database. Currently, PACE allows the taking of the fingerprints of a person who has been charged, but only if the person is detained at a police station. Again, it does not matter whether the person was charged before the commencement of the section.

32. *Subsection (3)* re-enacts, with some modifications, the existing power in section 61 of PACE to take fingerprints from people who have been convicted, cautioned, warned or reprimanded for a recordable offence (before or after commencement). The re-enactment contains limitations on the exercise of the power. In future, fingerprints may only be taken under this power with the authorisation of an officer of at least the rank of inspector who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime. The person must not have had their fingerprints taken since the conviction, caution, warning or reprimand or, if they have, the fingerprints must have proved inadequate for analysis and/or loading onto the national database.

33. *Subsection (4)* secures that any power to take fingerprints without consent under section 61 of PACE may be exercised by any constable, whether the person is in police detention or not.

34. *Subsection (6)* extends the power in PACE to take non-intimate samples from persons who have been charged. The power is extended so as to enable the police to take a non-intimate sample from a person who has been charged with a recordable offence in circumstances where the person has had a sample taken previously, from which a DNA profile has been created, but the sample has since been destroyed and the person

now claims that the DNA profile did not come from his sample. As explained below, the provisions of the Act will oblige the police to destroy all DNA samples within six months of their being taken.

35. *Subsection (7)* re-enacts the existing power to take non-intimate samples after conviction. But it also now includes a power to take non-intimate samples following a caution, reprimand or warning (which is already possible in the case of fingerprints). This modified power is subject to the same limitations as are provided for in relation to the taking of fingerprints after conviction (see the discussion of *subsection (3)* above).

36. The power may be exercised in relation to convictions, cautions, reprimands and warnings occurring before commencement. However, this is subject to the existing restriction in subsection (9A) of section 63, by virtue of which a non-intimate sample may not be taken from a person convicted prior to 10 April 1995 unless the person is one to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies: that is, that the offence was one specified in Schedule 1 to the Criminal Evidence (Amendment) Act 1997 (primarily sexual and violent offences) and the person is in prison or detained under the Mental Health Act 1983 at the time the sample is to be taken. The Act also secures that a non-intimate sample may not be taken from a person *cautioned* before that date (see *subsection (8)*).

37. *Subsection (9)* amends section 1 of the Criminal Evidence (Amendment) Act 1997, which is referred to in section 63(9A) of PACE (described above). The amendment to the 1997 Act made by *subsection (9)* means that a sample may be taken from a person convicted before 10 April 1995 of an offence in Schedule 1 to that Act even if he is no longer in prison or detained.

38. *Subsection (10)* amends section 2 of the Criminal Evidence (Amendment) Act 1997. The effect of this amendment is that a non-intimate sample may be taken from a person who has at any time been detained following acquittal for an offence on grounds of grounds of insanity or was found unfit to plead. Currently, the person must be detained at the time the sample is to be taken.