
DRAFT STATUTORY INSTRUMENTS

2007 No.

**The Police and Criminal Evidence
(Amendment) (Northern Ireland) Order 2007**

PART VI

QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Definitions

- 25.**—(1) Article 53 of PACE (interpretation of Part VI) is amended as follows.
- (2) In paragraph (1), in the definition of “appropriate consent”, in paragraph (a) for “17” substitute “18”.
- (3) In paragraph (1) at the appropriate place insert—
- ““analysis”, in relation to a skin impression, includes comparison and matching;”
- (4) In paragraph (1) for the definition of “fingerprints” substitute—
- ““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;”.
- (5) In paragraph (1) in the definition of “intimate sample”, for paragraph (c) substitute—
- “(c) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifice other than the mouth;”.
- (6) In paragraph (1) in the definition of “non-intimate sample”, for paragraph (c) substitute—
- “(c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;”.
- (7) In paragraph (1) in the definition of “non-intimate sample”, for paragraph (e) substitute—
- “(e) a skin impression;”.
- (8) In paragraph (1) after the definition of “registered health care professional” insert—
- ““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;”.
- (9) In paragraph (1) in the definition of “sufficient” and “insufficient”, after “means” insert “(subject to paragraph (3))”.
- (10) After paragraph (2) add—
- “(3) References in this Part 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.”.

Intimate searches

26.—(1) Article 56 of PACE (intimate searches) is amended as follows.

- (2) In paragraphs (1) and (5) for “superintendent” substitute “inspector”.

Right to have someone informed when arrested

27.—(1) Article 57 of PACE (right to have someone informed when arrested) is amended as follows.

- (2) In each of paragraphs (2)(a) and (5)(a), for “a serious arrestable offence” substitute “an indictable offence”.

- (3) In paragraph (2)(b) for “superintendent” substitute “inspector”.

- (4) In paragraph (5A)(a), for “the serious arrestable offence” substitute “the indictable offence”.

Access to legal advice

28.—(1) Article 59 of PACE (access to legal advice) is amended as follows.

- (2) In each of paragraphs (6)(a) and (8)(a), for “a serious arrestable offence” substitute “an indictable offence”.

- (3) In paragraph (8A)(a), for “the serious arrestable offence” substitute “the indictable offence”.

Visual recording of interviews

29.—(1) Article 60A of PACE (video-recording of interviews) is amended as follows.

- (2) For “video-recording” (wherever it occurs) substitute “visual recording”.

Fingerprinting

30.—(1) Article 61 of PACE (fingerprinting) is amended as follows.

- (2) After paragraph (4) insert—

“(4A) Where a person mentioned in sub-paragraph (a) of paragraph (3) or (4) has already has his fingerprints taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that paragraph 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).

(4AA) 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 paragraph (4AA) 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) An officer may give an authorisation under paragraph (4AA) orally or in writing, but if he gives it orally he shall confirm it in writing as soon as is practicable.”.
- (3) In paragraph (6) for “he has been convicted of a recordable offence” substitute—
 - “(a) he has been convicted of a recordable offence; or
 - (b) he has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted.”.
- (4) After paragraph (6) insert—
- (6A) A constable may take a person’s fingerprints without the appropriate consent if—
 - (a) 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
 - (b) either of the two conditions mentioned in paragraph (6B) is met.
- (6B) The conditions are that—
 - (a) the name of the person is unknown to, and cannot be readily ascertained by, the constable;
 - (b) the constable has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.
- (6C) The taking of fingerprints by virtue of paragraph (6A) does not count for any of the purposes of this Order as taking them in the course of the investigation of an offence by the police.”.
- (5) In paragraph (7), for “or (6)” substitute “, (6) or (6A)”.
- (6) In paragraph (7A)—
 - (a) after “police station,” insert “or by virtue of paragraph (6A) at a place other than a police station,”,
 - (b) in sub-paragraph (a), after “an officer” insert “(or, in a paragraph (6A) case, the constable)”.
- (7) After paragraph (8A) insert—
 - “(8B) 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.”.

Impressions of footwear

31. After Article 61 of PACE insert—

“Impressions of footwear

61A.—(1) Except as provided by this Article, no impression of a person’s footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person's footwear must be in writing if it is given at a time when he is at a police station.

(3) Where a person is detained at a police station, an impression of his footwear may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence, or has been charged with a recordable offence, or informed that he will be reported for a recordable offence; and
- (b) he has not had an impression taken of his footwear in the course of the investigation of the offence by the police.

(4) Where a person mentioned in sub-paragraph (a) of paragraph (3) has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that paragraph if the impression of his footwear taken previously is—

- (a) incomplete; or
- (b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at a police station, whether with or without the appropriate consent—

- (a) before it is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the impression has been taken, and if he is detained at a police station, the record shall be made on his custody record.

(6) In a case where, by virtue of paragraph (3), an impression of a person's footwear is taken without the appropriate consent—

- (a) he shall be told the reason before it is taken; and
- (b) the reason shall be recorded on his custody record as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person detained at a police station without the appropriate consent shall be exercisable by any constable.

(8) Nothing in this Article applies to any person—

- (a) arrested or detained under the terrorism provisions;
- (b) arrested under an extradition arrest power.”.

Intimate samples

32.—(1) Article 62 of PACE (intimate samples) is amended as follows.

(2) In paragraphs (1)(a) and (1A)(a) for “superintendent” substitute “inspector”.

Non-intimate samples

33.—(1) Article 63 of PACE (non-intimate samples) is amended as follows.

(2) In paragraph (3)(b) for “superintendent” substitute “inspector”.

(3) After paragraph (5) insert—

“(5A) An officer shall not give an authorisation under paragraph (3) 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 paragraph (10) insert—
- “(10A) 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.”.

Fingerprints and samples: supplementary

34.—(1) Article 63A of PACE (fingerprints and samples: supplementary provisions) is amended as follows.

- (2) For paragraphs (1) and (1A) substitute—

“(1) Where a person has been arrested on suspicion of being involved in a recordable offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Part from the person may be checked against—

- (a) other fingerprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in sub-paragraph (a).

(1ZA) Fingerprints taken by virtue of Article 61(6A) may be checked against other fingerprints to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence.”.

- (1A) In paragraphs (1) and (1ZA) “relevant law-enforcement authority” means—

- (a) a police force;
- (b) the Serious Organised Crime Agency;
- (c) a public authority (not falling within sub-paragraph (a) or (b)) with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders;
- (d) 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;
- (e) 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 paragraph (1A) to a police force is a reference to any of the following—
- (a) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
 - (b) any police force maintained under section 2 of the Police Act 1996 (c. 16);
 - (c) the metropolitan police force;
 - (d) the City of London police force;
 - (e) any police force maintained under section 1 of the Police (Scotland) Act 1967 (c. 77);
 - (f) the Ministry of Defence Police;
 - (g) the Royal Navy Regulating Branch;
 - (h) the Royal Military Police;
 - (i) the Royal Air Force Police;
 - (j) the Royal Marines Police;
 - (k) the British Transport Police;
 - (l) the States of Jersey Police Force
 - (m) the salaried police force of the Island of Guernsey;
 - (n) the Isle of Man Constabulary.

(1C) Where—

- (a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which paragraph (1) applies, and
- (b) that person has given his consent in writing to the use in a speculative search of the fingerprints, of the impressions of footwear or of the samples and of information derived from them,

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

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

Destruction of fingerprints and samples

35.—(1) Article 64 of PACE (destruction of fingerprints and samples) is amended as follows.

(2) In paragraph (1A)—

- (a) after “fingerprints” in both places where it occurs insert “, impressions of footwear”;
- (b) for “or the conduct of a prosecution” substitute “, the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came”.

(3) In paragraph (1B) after “fingerprint” insert “or an impression of footwear”.

(4) After paragraph (1B) insert—

“(1BA) Fingerprints taken from a person by virtue of Article 61(6A) must be destroyed as soon as they have fulfilled the purpose for which they were taken.”.

(5) In paragraph (3) after “fingerprints” insert “, impressions of footwear”.

(6) In paragraph (3AA)—

- (a) for “and fingerprints” substitute “, fingerprints and impressions of footwear”;

- (b) in sub-paragraph (b), for “or, as the case may be, fingerprint” substitute “, fingerprint or (as the case may be) an impression of footwear”.
- (7) In paragraph (3AB)—
 - (a) for “paragraph (3)” substitute “paragraph (1BA) or (3)”;
 - (b) after the first and third places “fingerprint” occurs insert “, impression of footwear”;
 - (c) after the second place “fingerprint” occurs insert “, nor the impression of footwear,”.
- (8) In paragraph (3AC)—
 - (a) after “fingerprint” in each place where it occurs insert “, impression of footwear”;
 - (b) in sub-paragraph (a), after “that” insert “fingerprint, impression of footwear or”;
 - (c) after sub-paragraph (b) insert—
 - “(c) that consent shall be treated as comprising a consent for the purposes of Article 63A(1C).”;
 - (d) at the end add the following new sentence—
 - “This paragraph does not apply to fingerprints taken from a person by virtue of Article 61(6A).”.
- (9) In paragraph (3AD), after “fingerprint” insert “, impression of footwear”.
- (10) In paragraph (5), after “fingerprints” in each place where it occurs insert “or impressions of footwear”.
- (11) In paragraph (6), after “fingerprints” insert “or impressions of footwear”.
- (12) In paragraph (7), after “fingerprints” insert “or impressions of footwear”.

Photographing of suspects. etc

- 36.**—(1) Article 64A of PACE (photographing of suspects, etc.) is amended as follows.
- (2) After paragraph (1) insert—
 - “(1A) A person falling within paragraph (1B) may, on the occasion of the relevant event referred to in paragraph (1B), be photographed elsewhere than at a police station—
 - (a) with the appropriate consent; or
 - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
 - (1B) A person falls within this paragraph if he has been—
 - (a) arrested by a constable for an offence;
 - (b) taken into custody by a constable after being arrested for an offence by a person other than a constable;
 - (c) given a fixed penalty notice by a constable in uniform under Article 60 of the Road Traffic Offenders (Northern Ireland) Order 1996.”.
 - (3) In paragraph (4)(a), after “prosecution” insert “or to the enforcement of a sentence”.
 - (4) In paragraph (5), after sub-paragraph (b) insert
 - “; and
 - (c) “sentence” includes any order made by a court in Northern Ireland when dealing with an offender in respect of his offence.”.
 - (5) After paragraph (6) insert—
 - “(6A) In this Article, a “photograph” includes a moving image, and corresponding expressions shall be construed accordingly.”.