

# **SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 3: Police powers etc.**

#### *Section 119: Intimate samples*

267. Section 65 of PACE contains definitions of both an intimate and non-intimate sample. The distinction is important in that an intimate sample can only be taken with consent; a non-intimate sample may be taken without consent. Section 65 defines an intimate sample as:
- a sample of blood, semen, or any other tissue fluid, urine or pubic hair;
  - a dental impression;
  - a swab taken from a person's body orifice other than the mouth.
268. In a suspected case of sexual assault, the police may want to take swabs of the coronal sulcus, shaft or glans of the penis from a male suspect and also perineum or vulval swabs and swabs from matted pubic hair from a victim or female suspect. These types of swab fall outside the current definition of an intimate sample. This section amends the definitions of both non-intimate and intimate samples to make it clear that such swabs are intimate samples with the result that such a swab can only be taken with consent. It will consequently avoid any possible allegation of assault against the police if they decide they need such a swab to be taken in the course of an investigation and it gives added protection to the rights of the suspect.
269. Under section 62(10) of PACE, if the appropriate consent to the taking of an intimate sample from a person is refused without good cause, in any proceedings against that person the court may draw such inferences from the refusal as appear proper.