

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Powers to Gather and Share Information

Retention and use of fingerprints and samples

Sections 14 to 18 – Retention and use of fingerprints and samples

43. Sections 14 to 18 (retention and use of fingerprints and samples) seek to ensure that fingerprints, DNA and footwear impressions (“samples”) can be effectively used for counter-terrorist purposes including by the security services by:
- a) allowing the cross checking of security services material with ordinary crime (PACE) samples in England, Wales and Northern Ireland. (Scotland does not have PACE);
 - b) putting the retention and use of material not subject to existing restriction (mostly covertly acquired fingerprints and samples) on a statutory footing; and
 - c) standardising the purposes for which fingerprints and samples can be used as between the Terrorism Act 2000, PACE and material not subject to existing statutory restrictions (section 18 of this Act).
44. These sections amend the purposes for which samples obtained during criminal or terrorist investigations can be used. This includes adding that such samples can be used for the purposes of national security. National security is defined in section 1(2) of the Security Services Act 1989 and includes “*threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.*”
45. Section 64(1A) of PACE currently allows samples to be retained and used for the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution or for the identification of dead people (the same uses are provided for in PACE NI). In contrast, paragraph 14 of Schedule 8 to the 2000 Act provides that samples taken under the provisions of that Act can only be used for terrorist investigations or for the purposes related to the prevention or detection of crime, the investigation of an offence of the conduct of prosecution.
46. These sections will standardise the purposes for which the samples can be used between the 2000 Act, PACE and PACE Northern Ireland. When the uses for the samples are different they cannot be stored on inter-connected databases.

Section 14 – Material subject to the Police and Criminal Evidence Act 1984

47. Subsection (2) amends section 63A(1) of PACE to allow samples (fingerprints, impressions of footwear or DNA samples) taken under PACE to be checked against other samples held by or on behalf of the Security Service (MI5) or the Secret

Intelligence Service (MI6 or SIS). The section adds a similar power to check information derived from other samples against that information derived from material held by the Security Services or the Secret Intelligence Service. Samples may be taken from a person under PACE if the person is suspected of being involved with a recordable offence, has been charged with a recordable offence or informed that he will be reported for such an offence, or, following the amendments made by section 10, if he is subject to a control order.

48. *Subsection (3)* amends section 63A(1ZA) of PACE similarly to allow the cross checking against material held by the Security Service or the Secret Intelligence Service of material taken from a person under section 61(6A), which allows a constable to take a person's fingerprints etc. if the person's name cannot be ascertained or if the constable believes the person has given a false name.
49. *Subsection (5)* inserts a new *subsection (1AB)* into section 64 of PACE that sets out the purposes for which samples can be used. The section expands the uses to permit samples to be used in the interest of national security as well as for the purposes already listed in section 64, which are purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or for purposes relating to the identification of a deceased person or the person from whom the material came.

Section 15 – Material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989

50. **Section 15** amends PACE NI to make changes for Northern Ireland that have the same effect to those made above to PACE for England and Wales. These will permit samples and fingerprints to be checked against records held by or on behalf of the Security Service or the Secret Intelligence Service and for the use of such samples to be expanded to include when it is in the interests of national security.

Section 16 – Material subject to the Terrorism Act 2000: England, Wales and Northern Ireland

51. **Section 16** amends paragraph 14 of Schedule 8 to the 2000 Act. Schedule 8 to the 2000 Act governs the treatment of persons detained under that Act. Paragraph 14 applies to fingerprints and samples taken under Schedule 8. Paragraph 14 is amended so that the fingerprints or samples taken under Schedule 8 may be used in the interests of national security and in the identification of a deceased person or of the person from whom the material came, in addition to the uses already allowed for in paragraph 14 (in a terrorist investigation or in the prevention and detection of crime, the investigation of an offence or the conduct of a prosecution). This ensures that the purposes cover all those for which fingerprints and samples taken under PACE and PACE NI may be used following the amendments made by sections 14 and 15. It also provides that samples taken under the 2000 Act in England, Wales and Northern Ireland may be cross checked against material held under section 18. Paragraph 14 already allows cross checking against material referred to in section 63A PACE (and PACE NI). Therefore the amendments to section 63A PACE (and PACE NI) made by this Act will enable the fingerprints and samples taken under Schedule 8 to be cross-checked against any samples held by or on behalf of the Security Service or the Secret Intelligence Service

Section 17 – Material subject to the Terrorism Act 2000: Scotland

52. **Section 17** makes amendments to paragraph 20 of Schedule 8 to the 2000 Act (which applies in Scotland) the effect of which are similar to the amendments made by section 16 (which amends provisions applying in England and Wales). Paragraph 20 governs the use of fingerprints and samples of those detained under the 2000 Act in Scotland. *Subsection (2)* amends paragraph 20 so as to allow samples obtained in Scotland under the 2000 Act to be used for purposes of a terrorist investigation, in the

interest of national security, for the purposes related to the prevention and detection of crime or the investigation of an offence or the conduct of a prosecution.

53. *Subsection (3)* adds a new paragraph 21 to Schedule 8 that applies, with modifications, section 20 of the Criminal Procedure (Scotland) Act 1995. The effect is that the 2000 Act samples may be cross checked against samples taken under the 1995 Act, samples referred to in section 63A of PACE and against material held under section 18.

Section 18 – Material not subject to existing statutory restrictions

54. **Section 18** provides a statutory framework for the use and retention of DNA samples and fingerprints that are not held subject to other existing statutory restrictions.
55. *Subsection (2)* restricts the uses to which such samples and fingerprints held by a law enforcement authority in England, Wales or Northern Ireland may be put. They may only be used in the interest of national security, for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or for the purposes related to the identification of a deceased person or of the person from whom the material came.
56. *Subsection (3)* imposes a condition that must be met before the samples and fingerprints may be used for the purposes set out in *subsection (2)*. The condition is that the material must have been either: (i) obtained by the authority pursuant to an authorisation under the Police Act 1997 or the Regulation of Investigatory Powers Act 2000; (ii) supplied to the authority by another law enforcement body (domestic or foreign); or (iii) otherwise lawfully obtained by the authority for one of the purposes in *subsection (2)*.
57. *Subsection (4)* clarifies certain terms used in *subsection (2)*: use of material includes allowing a check to be made against it and disclosing to another person. This phrase is used principally to allow samples to be exchanged with the security agencies who are not included in the definition of “law enforcement authority” and “police force” in section 18(5). The reference in *subsection (2)* to crime includes actions which constitute a criminal offence under law of any part of the UK or a territory outside the UK or actions which would have been a criminal offence had they been conducted in the UK; and the references to investigations and prosecutions are also given a wide meaning, so as to apply equally to investigations and prosecutions which are conducted outside the UK.
58. *Subsection (5)* defines terms used in this section.
59. *Subsection (6)* sets out “the existing statutory restrictions” which are referred to in *subsection (1)*.