

2002 No. 1150

POLICE

The Police and Criminal Evidence Act 1984 (Codes of Practice) (Modifications to Code C and Code D) (Certain Police Areas) Order 2002

Made - - - - - *23rd April 2002*

Laid before Parliament *29th April 2002*

Coming into force - - *20th May 2002*

In exercise of the powers conferred on him by section 67(7A) of the Police and Criminal Evidence Act 1984(a), the Secretary of State hereby makes the following Order:

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Codes of Practice) (Modifications to Code C and Code D) (Certain Police Areas) Order 2002 and shall come into force on 20th May 2002.

2. Subject to article 3 below:

(a) the code of practice about the detention, treatment and questioning of persons by police officers (Code C), and

(b) the code of practice about the identification of persons by police officers (Code D),

for the time being in force(b) are to be treated as having effect with the modifications set out in the Schedule to this Order.

3. The modifications to Code C and Code D made by article 2 shall have effect only in the following police areas(c):

(a) Bedfordshire;

(b) Devon and Cornwall;

(c) Lancashire;

(d) Merseyside;

(e) the metropolitan police district;

(f) Nottinghamshire;

(g) South Yorkshire;

(h) Staffordshire; and

(i) North Wales.

(a) 1984 c. 60; section 67(7A) was inserted by section 77 of the Criminal Justice and Police Act 2001 (c. 16).

(b) The codes were brought into operation by S.I. 1995/450 and have previously been subject to modification by virtue of S.I. 2001/2254 (which this Order revokes) and by S.I. 2002/615 which is not relevant to the subject matter of this Order.

(c) The term "police area" has the meaning ascribed to it in section 101 of the Police Act 1996 (c. 16) by virtue of Schedule 1 to the Interpretation Act 1978 (c. 30).

4. The Police and Criminal Evidence Act 1984 (Codes of Practice) (Modification) Order 2001(a) is hereby revoked.

Home Office
23rd April 2002

Bob Ainsworth
Parliamentary Under-Secretary of State

SCHEDULE

Article 2

MODIFICATIONS TO CODES OF PRACTICE

1. In Code C,

(1) after paragraph 1.5, insert the following:

“1.5A If anyone appears to be under the age of 18 then he shall be exempt from drug testing under section 17 of this code in the absence of clear evidence to show that he is older.”; and

(2) after section 16, insert the following:

“17. Testing persons for the presence of specified Class A drugs

(a) Action

17.1 A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he has any specified Class A drug in his body if:

- (a) that person has been charged with a trigger offence, or
- (b) he has been charged with any offence and a police officer of inspector rank or above, who has reasonable grounds for suspecting that the misuse by that person of any specified Class A drug caused or contributed to the offence, has authorised the sample to be taken.

17.2 The person from whom the sample is taken must have attained the age of 18.

17.3 A police officer must have requested the person concerned to give the sample.

17.4 Before requesting a sample from the person concerned, an officer must:

- (a) inform him that the purpose of taking the sample is for drug testing under the Police and Criminal Evidence Act 1984. This is to ascertain whether he has a specified Class A drug present in his body;
- (b) warn him that if, when requested, he fails without good cause to provide a sample he may be liable to prosecution;
- (c) where the taking of the sample has been authorised by an inspector or above under paragraph 17.1(b) of this code, inform him that the authorisation has been given and the grounds for giving it;
- (d) remind him of the following rights, which may be exercised at any stage during the period in custody:
 - (i) the right to have someone informed of his arrest [see section 5];
 - (ii) the right to consult privately with a solicitor and the fact that independent legal advice is available free of charge [see section 6]; and
 - (iii) the right to consult these codes of practice [see Note 3E].

17.5 Authorisation by an officer of the rank of inspector or above may be given orally or in writing, but if it is given orally it must be confirmed in writing as soon as practicable.

17.6 Custody officers may authorise continued detention for up to six hours from the time of charge to enable a sample to be taken.

(b) Documentation

17.7 If a sample is taken following authorisation by an officer of the rank of inspector or above, the authorisation and the grounds for suspicion must be recorded in the custody record.

17.8 The giving of a warning on the consequences of failure to provide a specimen must be recorded in the custody record.

17.9 The time of charge and the time at which the sample was given must be recorded in the custody record.

(c) General

17.10 A sample may only be taken by a prescribed person.

17.11 Force may not be used to take any sample for the purpose of drug testing.

17.12 The terms “Class A drug” and “misuse” have the same meanings as in the Misuse of Drugs Act 1971. “Specified” (in relation to a Class A drug) and “trigger offence” have the same meanings as in Part III of the Criminal Justice and Court Services Act 2000.

17.13 Any sample taken:

(a) S.I. 2001/2254.

- (a) may not be used for any purpose other than to ascertain whether the person concerned has a specified Class A drug present in his body; and
- (b) must be retained until the person concerned has made his first appearance before the court.

Notes for Guidance

17A When warning a person who is asked to provide a urine or non-intimate sample in accordance with paragraph 17.1, the following form of words may be used:

“You do not have to provide a sample, but I must warn you that if you fail or refuse without good cause to do so, you will commit an offence for which you may be imprisoned, or fined, or both”.

17B A sample has to be sufficient and suitable. A sufficient sample is sufficient in quantity and quality to enable drug testing analysis to take place. A suitable sample is one, which by its nature, is suitable for a particular form of drug analysis.

17C A prescribed person in paragraph 17.10 is one who is prescribed in regulations made by the Secretary of State under section 63B(6) of the Police and Criminal Evidence Act 1984.

17D The retention of the sample in paragraph 17.13 allows for the sample to be sent to the Forensic Science Service laboratory for confirmatory testing and analysis if the detainee disputes the test. But such samples, and the information derived from them, may not be subsequently used in the investigation of any offence or in evidence against the persons from whom they were taken.

17E The trigger offences are: from the Theft Act 1968 — theft, robbery, burglary, aggravated burglary, taking a motor vehicle (or other conveyance) without authority, aggravated vehicle-taking, obtaining property by deception, going equipped for stealing etc.; and from the Misuse of Drugs Act 1971 (but only if committed in respect of a specified Class A drug) — producing and supplying a controlled drug, possessing a controlled drug, possessing a controlled drug with intent to supply.”.

2. In Code D, after paragraph 5F of the Notes for Guidance, insert the following:

“5G Samples of urine and non-intimate samples taken in accordance with sections 63B and 63C of the Police and Criminal Evidence Act 1984 may not be used for identification purposes in accordance with this code.”.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 63B of the Police and Criminal Evidence Act 1984 gives police officers a new power to undertake tests for the presence of specified Class A drugs in relation to certain persons in police detention. Section 66(2) of the 1984 Act provides that codes in connection with these powers must be in place before the powers are exercised. This Order puts in place modifications to the Police and Criminal Evidence Act 1984 codes of practice to provide for drug testing within police detention. The modifications extend only to named police areas where the drug testing provisions are to be piloted. The provisions have already been piloted in the metropolitan police district, Nottinghamshire and Staffordshire by virtue of S.I. 2001/2254. They will continue to be used in those areas under this Order, which revokes S.I. 2001/2254, but will now also be introduced in Bedfordshire, Devon and Cornwall, Lancashire, Merseyside, South Yorkshire and North Wales.

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