

EXPLANATORY MEMORANDUM TO
THE NATIONAL POLICE RECORDS (RECORDABLE OFFENCES)
(AMENDMENT) REGULATIONS 2016

2016 No. 1006

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument adds the offence of racially or religiously aggravated harassment to the list of recordable offences, thus allowing DNA and fingerprints to be taken on arrest for this offence, and retained on conviction.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department has decided to apply the free issue procedure in relation to this instrument, for recipients of the National Police Records (Recordable Offences) Regulations (S.I. 2000/1139), as it corrects an omission in that instrument.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Sections 61, 62 and 63 of the Police and Criminal Evidence Act 1984 (PACE) provide that fingerprints, intimate samples and non-intimate samples (in practice, a sample from which a DNA profile may be derived) may be taken from persons dealt with by the police for a recordable offence. Section 63I of PACE provides that DNA profiles and fingerprints may be retained indefinitely from persons convicted of a recordable offence (except that, as provided by section 63K, various time limits on retention are applied in the case of persons convicted under the age of 18 for a first minor offence).
- 4.2 The offence of harassment contrary to section 5(1) of the Public Order Act 1986, is listed on the National Police Records (Recordable Offences) Regulations 2000 ('the Regulations') and therefore recordable. However, the offence of racially or religiously aggravated harassment, contrary to section 31(1)(c) of the Crime and Disorder Act 1998, is not listed on the Regulations or punishable with imprisonment and is therefore not recordable.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The purpose of the instrument is to allow DNA and fingerprints to be taken on arrest for the offence of racially or religiously aggravated harassment, and retained on conviction for the offence. It is anomalous that these powers exist in relation to the simple offence of harassment but not in relation to the aggravated offence. This situation appears to have resulted from an administrative oversight and is corrected by the instrument.

Consolidation

7.2 Not applicable.

8. Consultation outcome

8.1 No public consultation has been considered necessary.

9. Guidance

9.1 Police forces will be made aware of this change through existing mechanisms used to communicate with them on their powers to take and retain DNA and fingerprints: a letter from the National Police Chiefs' Council lead officer on DNA to Chief Officers and other relevant postholders such as force forensic managers; and email and phone enquiry lines for forces operated by the national DNA and fingerprint databases.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that police will have a power to take DNA and fingerprints from persons dealt with for racially or religiously aggravated harassment, and retain such DNA and fingerprints if persons are convicted of that offence. This will assist the detection of crime by allowing the use of DNA and fingerprints to link such persons to unsolved past crimes, or crimes they might commit in the future.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 There are no plans to monitor or review the instrument as its rationale is to remove an anomaly in existing legislation.

13. Contact

13.1 Carl Jennings at the Home Office, Telephone: 020 7035 1320 or email: Carl.Jennings4@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.