



Criminal Evidence (Amendment) Act 1997

CHAPTER 17

ARRANGEMENT OF SECTIONS

Extension of power to take non-intimate body samples without consent

Section

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Criminal Evidence (Amendment) Act 1997

1997 CHAPTER 17

An Act to make provision extending the categories of persons from whom non-intimate body samples may be taken without consent under Part V of the Police and Criminal Evidence Act 1984; and to add a further time limit to those operating for the purposes of section 63A(4)(a) of that Act. [19th March 1997]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extension of power to take non-intimate body samples without consent

1.—(1) This section has effect for removing, in relation to persons to whom this section applies, the restriction on the operation of section 63(3B) of the Police and Criminal Evidence Act 1984 (power to take non-intimate samples without the appropriate consent from persons convicted of recordable offences)—

- (a) which is imposed by the subsection (10) inserted in section 63 by section 55(6) of the Criminal Justice and Public Order Act 1994, and
- (b) by virtue of which section 63(3B) does not apply to persons convicted before 10th April 1995.

(2) Accordingly, in section 63 of the 1984 Act, for the subsection (10) referred to in subsection (1) above there shall be substituted—

“(9A) Subsection (3B) above shall not apply to any person convicted before 10th April 1995 unless he is a person to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies (persons imprisoned or detained by virtue of pre-existing conviction for sexual offence etc.).”

Persons imprisoned or detained by virtue of pre-existing conviction for sexual offence etc. 1984 c. 60. 1994 c. 33.

(3) This section applies to a person who was convicted of a recordable offence before 10th April 1995 if—

- (a) that offence was one of the offences listed in Schedule 1 to this Act (which lists certain sexual, violent and other offences), and
- (b) at the relevant time he is serving a sentence of imprisonment in respect of that offence.

(4) This section also applies to a person who was convicted of a recordable offence before 10th April 1995 if—

- (a) that offence was one of the offences listed in Schedule 1 to this Act, and
- (b) at the relevant time he is detained under Part III of the Mental Health Act 1983 in pursuance of—
 - (i) a hospital order or interim hospital order made following that conviction, or
 - (ii) a transfer direction given at a time when he was serving a sentence of imprisonment in respect of that offence.

Expressions used in this subsection and in the Mental Health Act 1983 have the same meaning as in that Act.

(5) Where a person convicted of a recordable offence before 10th April 1995 was, following his conviction for that and any other offence or offences, sentenced to two or more terms of imprisonment (whether taking effect consecutively or concurrently), he shall be treated for the purposes of this section as serving a sentence of imprisonment in respect of that offence at any time when serving any of those terms.

(6) For the purposes of this section, references to a person serving a sentence of imprisonment include references—

- (a) to his being detained in any institution to which the Prison Act 1952 applies in pursuance of any other sentence or order for detention imposed by a court in criminal proceedings, or
- (b) to his being detained (otherwise than in any such institution) in pursuance of directions of the Secretary of State under section 53 of the Children and Young Persons Act 1933;

and any reference to a term of imprisonment shall be construed accordingly.

Persons detained following acquittal on grounds of insanity or finding of unfitness to plead.

2.—(1) This section has effect for enabling non-intimate samples to be taken from persons under section 63 of the 1984 Act without the appropriate consent where they are persons to whom this section applies.

- (2) Accordingly, in section 63 of the 1984 Act—
 - (a) after subsection (3B) there shall be inserted—

“(3C) A non-intimate sample may also be taken from a person without the appropriate consent if he is a person to whom section 2 of the Criminal Evidence (Amendment) Act 1997 applies (persons detained following acquittal on grounds of insanity or finding of unfitness to plead).”; and

- (b) in subsection (8A) (giving of reason for taking sample without appropriate consent), for “or (3B)” there shall be substituted “, (3B) or (3C) above”.

- (3) This section applies to a person if—
- (a) at the relevant time he is detained under Part III of the Mental Health Act 1983 in pursuance of an order made under—
 - (i) section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14 of the Criminal Appeal Act 1968 (findings of insanity or unfitness to plead), or 1983 c. 20. 1964 c. 84. 1969 c. 19.
 - (ii) section 37(3) of the Mental Health Act 1983 (power of magistrates' court to make hospital order without convicting accused); and
 - (b) that order was made on or after the date of the passing of this Act in respect of a recordable offence.
- (4) This section also applies to a person if—
- (a) at the relevant time he is detained under Part III of the Mental Health Act 1983 in pursuance of an order made under—
 - (i) any of the provisions mentioned in subsection (3)(a), or
 - (ii) section 5(1) of the Criminal Procedure (Insanity) Act 1964 as originally enacted; and
 - (b) that order was made before the date of the passing of this Act in respect of any offence listed in Schedule 1 to this Act.
- (5) Subsection (4)(a)(i) does not apply to any order made under section 14(2) of the Criminal Appeal Act 1968 as originally enacted. 1968 c. 19.
- (6) For the purposes of this section an order falling within subsection (3) or (4) shall be treated as having been made in respect of an offence of a particular description—
- (a) if, where the order was made following—
 - (i) a finding of not guilty by reason of insanity, or
 - (ii) a finding that the person in question was under a disability and did the act or made the omission charged against him, or
 - (iii) a finding for the purposes of section 37(3) of the Mental Health Act 1983 that the person in question did the act or made the omission charged against him, or
 - (iv) (in the case of an order made under section 5(1) of the Criminal Procedure (Insanity) Act 1964 as originally enacted) a finding that he was under a disability, 1964 c. 84.that finding was recorded in respect of an offence of that description; or
 - (b) if, where the order was made following the Court of Appeal forming such opinion as is mentioned in section 6(1) or 14(1) of the Criminal Appeal Act 1968, that opinion was formed on an appeal brought in respect of an offence of that description.
- (7) In this section any reference to an Act “as originally enacted” is a reference to that Act as it had effect without any of the amendments made by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991. 1991 c. 25.

Taking of samples from detained persons at place where detained.

3. In section 63A of the 1984 Act (supplementary provisions about fingerprints and samples), after subsection (3) there shall be inserted—

“(3A) Where—

(a) the power to take a non-intimate sample under section 63(3B) above is exercisable in relation to any person who is detained under Part III of the Mental Health Act 1983 in pursuance of—

(i) a hospital order or interim hospital order made following his conviction for the recordable offence in question, or

(ii) a transfer direction given at a time when he was detained in pursuance of any sentence or order imposed following that conviction, or

(b) the power to take a non-intimate sample under section 63(3C) above is exercisable in relation to any person,

the sample may be taken in the hospital in which he is detained under that Part of that Act.

Expressions used in this subsection and in the Mental Health Act 1983 have the same meaning as in that Act.

(3B) Where the power to take a non-intimate sample under section 63(3B) above is exercisable in relation to a person detained in pursuance of directions of the Secretary of State under section 53 of the Children and Young Persons Act 1933 the sample may be taken at the place where he is so detained.”

1983 c. 20.

1933 c. 12.

Additional time limit for purposes of 1984 Act

Time allowed for requiring person to attend police station to have sample taken.

4. In section 63A of the 1984 Act, in subsection (5)(a) (time allowed, for the purposes of subsection (4)(a), for requiring person to attend police station to have sample taken) after “of the charge” there shall be inserted “or of his being informed as mentioned in that paragraph”.

Supplementary

Interpretation.

5. In this Act—

“the 1984 Act” means the Police and Criminal Evidence Act 1984;

“appropriate consent” has the meaning given by section 65 of the 1984 Act;

“non-intimate sample” has the meaning given by section 65 of the 1984 Act;

“recordable offence” means any offence to which regulations under section 27 of the 1984 Act (fingerprinting) apply;

“the relevant time” means, in relation to the exercise of any power to take a non-intimate sample from a person, the time when it is sought to take the sample.

1984 c. 60.

Short title, repeal and extent.

6.—(1) This Act may be cited as the Criminal Evidence (Amendment) Act 1997.

(2) For ease of reference sections 63 and 63A of the 1984 Act, as amended by sections 1 to 4 above, are set out in Schedule 2 to this Act.

(3) Section 55(6) of the Criminal Justice and Public Order Act 1994 is 1994 c. 33.
repealed.

(4) This Act extends to England and Wales only.

SCHEDULES

Section 1.

SCHEDULE 1

LIST OF OFFENCES

Sexual offences and offences of indecency

- 1956 c. 69. 1. Any offence under the Sexual Offences Act 1956, other than an offence under section 30, 31 or 33 to 36 of that Act.
- 1959 c. 72. 2. Any offence under section 128 of the Mental Health Act 1959 (intercourse with mentally handicapped person by hospital staff etc.).
- 1960 c. 33. 3. Any offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child).
- 1977 c. 45. 4. Any offence under section 54 of the Criminal Law Act 1977 (incitement by man of his grand-daughter, daughter or sister under the age of 16 to commit incest with him).
- 1978 c. 37. 5. Any offence under section 1 of the Protection of Children Act 1978.

Violent and other offences

6. Any of the following offences—
- (a) murder;
 - (b) manslaughter;
 - (c) false imprisonment; and
 - (d) kidnapping.
- 1861 c. 100. 7. Any offence under any of the following provisions of the Offences Against the Person Act 1861—
- (a) section 4 (conspiring or soliciting to commit murder);
 - (b) section 16 (threats to kill);
 - (c) section 18 (wounding with intent to cause grievous bodily harm);
 - (d) section 20 (causing grievous bodily harm);
 - (e) section 21 (attempting to choke etc. in order to commit or assist in the committing of any indictable offence);
 - (f) section 22 (using chloroform etc. to commit or assist in the committing of any indictable offence);
 - (g) section 23 (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm);
 - (h) section 24 (maliciously administering poison etc. with intent to injure etc.); and
 - (i) section 47 (assault occasioning actual bodily harm).
- 1883 c. 3. 8. Any offence under either of the following provisions of the Explosive Substances Act 1883—
- (a) section 2 (causing explosion likely to endanger life or property); and
 - (b) section 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).

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9. Any offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16). 1933 c. 12.

10. Any offence under section 4(1) of the Criminal Law Act 1967 (assisting offender) committed in relation to the offence of murder. 1967 c. 58.

11. Any offence under any of the following provisions of the Firearms Act 1968— 1968 c. 27.

- (a) section 16 (possession of firearm with intent to injure);
- (b) section 17 (use of firearm to resist arrest); and
- (c) section 18 (carrying firearm with criminal intent).

12. Any offence under either of the following provisions of the Theft Act 1968— 1968 c. 60.

- (a) section 9 (burglary); and
- (b) section 10 (aggravated burglary);

and any offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.

13. Any offence under section 1 of the Criminal Damage Act 1971 (destroying or damaging property) required to be charged as arson. 1971 c. 48.

14. Any offence under section 2 of the Child Abduction Act 1984 (abduction of child by person other than parent). 1984 c. 37.

Conspiracy, incitement and attempts

15. Any offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences mentioned in paragraphs 1 to 14. 1977 c. 45.

16. Any offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of those offences. 1981 c. 47.

17. Any offence of inciting another to commit any of those offences.

SCHEDULE 2

Section 6.

SECTIONS 63 AND 63A OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984, AS AMENDED

Section 63

63.—(1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent. Other samples.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he is in police detention or is being held in custody by the police on the authority of a court; and
- (b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.

(3A) A non-intimate sample may be taken from a person (whether or not he falls within subsection (3)(a) above) without the appropriate consent if—

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- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(3B) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable offence.

(3C) A non-intimate sample may also be taken from a person without the appropriate consent if he is a person to whom section 2 of the Criminal Evidence (Amendment) Act 1997 applies (persons detained following acquittal on grounds of insanity or finding of unfitness to plead).

(4) An officer may only give an authorisation under subsection (3) above if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under subsection (3) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(6) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(7) The duty imposed by subsection (6)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If a non-intimate sample is taken from a person by virtue of subsection (3) above—

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

(8A) In a case where by virtue of subsection (3A), (3B) or (3C) above a sample is taken from a person without the appropriate consent—

- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded as soon as practicable after the sample is taken.

(8B) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—

- (a) before the sample 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 practicable after the sample has been taken.

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(9) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (8) or (8A) or (8B) above shall be recorded in his custody record.

(9A) Subsection (3B) above shall not apply to any person convicted before 10th April 1995 unless he is a person to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies (persons imprisoned or detained by virtue of pre-existing conviction for sexual offence etc.).

(10) Nothing in this section, except as provided in section 15(13) and (14) of, and paragraph 7(6C) and (6D) of Schedule 5 to, the Prevention of Terrorism (Temporary Provisions) Act 1989, applies to a person arrested or detained under the terrorism provisions.

1989 c. 4.

Section 63A

63A.—(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 or samples or the information derived from samples taken under any power conferred by this Part of this Act from the person may be checked against—

Fingerprints and samples: supplementary provisions.

- (a) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of a police force (or police forces) falling within subsection (1A) below or 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 paragraph (a) above.

(1A) Each of the following police forces falls within this subsection—

- (a) a police force within the meaning given by section 62 of the Police Act 1964 (which relates to England and Wales);
- (b) a police force within the meaning given by section 50 of the Police (Scotland) Act 1967;
- (c) the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve;
- (d) the States of Jersey Police Force;
- (e) the salaried police force of the Island of Guernsey;
- (f) the Isle of Man Constabulary.

1964 c. 48.

1967 c. 77.

(2) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(3) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution to which the Prison Act 1952 applies.

1952 c. 52.

(3A) Where—

- (a) the power to take a non-intimate sample under section 63(3B) above is exercisable in relation to any person who is detained under Part III of the Mental Health Act 1983 in pursuance of—

1983 c. 20.

- (i) a hospital order or interim hospital order made following his conviction for the recordable offence in question, or

- (ii) a transfer direction given at a time when he was detained in pursuance of any sentence or order imposed following that conviction, or

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- (b) the power to take a non-intimate sample under section 63(3C) above is exercisable in relation to any person,

the sample may be taken in the hospital in which he is detained under that Part of that Act.

1983 c. 20.

Expressions used in this subsection and in the Mental Health Act 1983 have the same meaning as in that Act.

1933 c. 12.

(3B) Where the power to take a non-intimate sample under section 63(3B) above is exercisable in relation to a person detained in pursuance of directions of the Secretary of State under section 53 of the Children and Young Persons Act 1933 the sample may be taken at the place where he is so detained.

(4) Any constable may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where—

- (a) the person has been charged with a recordable offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or
- (b) the person has been convicted of a recordable offence and either he has not had a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) The period allowed for requiring a person to attend a police station for the purpose specified in subsection (4) above is—

- (a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge or of his being informed as mentioned in that paragraph or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;
- (b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(6) A requirement under subsection (4) above—

- (a) shall give the person at least 7 days within which he must so attend; and
- (b) may direct him to attend at a specified time of day or between specified times of day.

(7) Any constable may arrest without a warrant a person who has failed to comply with a requirement under subsection (4) above.

(8) In this section “the appropriate officer” is—

- (a) in the case of a person falling within subsection (4)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;

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(b) in the case of a person falling within subsection (4)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.

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