

ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Police Powers

Identification

194. [Section 90](#) of the Act amends the Police and Criminal Evidence Act 1984 (PACE) to provide additional powers to carry out searches and examinations of those in police detention for identification purposes and to take fingerprints for identification purposes.
195. In respect of searches of detained persons for identification purposes, the police have existing powers of search for other reasons. In particular section 54 (6) of PACE allows a custody officer to authorise a detained person to be searched if this is necessary in order to ascertain and record everything the detained person has with him. The new provisions make it clear that searching can be specifically directed towards establishing identity. Currently, where identifying marks are clearly visible and outside those parts of the body normally covered by clothing, it is normally a straightforward matter for the police to record them for the purposes of identification. However, in circumstances where they are not clearly visible the only powers currently available to the police are to question the suspect as to whether such marks exist. The suspect may agree to submit to a voluntary examination, but if he refuses there is no authority whatsoever to compel him to do so. The new provisions rectify that.
196. Sections 27 and 61 of PACE as amended by section 78 of the Criminal Justice and Police Act 2001 provide powers to take fingerprints without consent where persons have been convicted or charged or cautioned for a recordable offence or where there are reasonable grounds to suspect their involvement in a criminal offence and that fingerprints would tend to confirm or disprove that; and on answering bail at a court or police station if there is a dispute about identity. Where fingerprints are authorised to be taken to confirm or disprove a person's involvement in a crime, the prints can only be taken if an officer of at least superintendent rank (to be amended to inspector rank on implementation of section 78 of the 2001 Act) authorises them to be so taken. Fingerprints cannot, however, be taken where the issue is merely one of identity. Where someone enters police custody and refuses to identify themselves or where the police have reason to doubt the information they provide about their identity, there is no legal entitlement for the police to take fingerprints which could be examined against existing databases in an attempt to resolve the identification issue.
197. The effect of section 90(2) is to provide an additional power in PACE to take fingerprints from an arrested person in an effort to establish or check their identity.
198. There were previously no provisions in PACE on the taking of photographs of suspects. PACE Code D sets out guidance on the taking of photographs of those in police custody. In short, photographs can be taken without consent on charge or conviction for a

recordable offence; where there are reasonable grounds to suspect involvement in an offence and identification evidence in relation to the offence is available; and where a number of people are arrested at once and it is necessary to photograph them to establish who was arrested and when and where. But there is no power to use force to take a photograph.

199. Consequently there was no explicit power for the police to require the removal of masks, face coverings or face paint of those in custody so that those wearing them could be reliably photographed. Section 92 provides both the power to require the removal of masks, coverings or face paint to identify and photograph a person and to use reasonable force to do so, if necessary.
200. **Section 94** strengthens police powers in relation to the removal of face coverings. It adds to the power in section 60 of the Criminal Justice and Police Act 1994 to require the removal of face coverings where an authorisation is given by a senior officer for a given locality. The test for an authorisation under section 60 is reasonable belief that incidents of serious violence may take place in the locality and that it is expedient to give an authorisation to prevent their occurrence. An authorisation under that section gives the police powers to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments. It also gives the police power to require the removal of face coverings. Section 94 provides that in relation to the power to require the removal of face coverings only, an authorisation may also be given where a senior officer reasonably believes activities may take place in the locality involving the commission of offences and that it is expedient to give such an authorisation to prevent or control those activities.

Section 89 Fingerprinting of terrorist suspects

201. **Section 89** amends the provisions in the Schedule 8 to the Terrorism Act 2000 by providing that in addition to the grounds already specified fingerprints can be taken from those detained under the Act in order to ascertain their identity. At present fingerprints may only be taken from a person detained under the Act to establish if he has been involved in certain offences under the Act or to establish if he has been concerned in the commission, preparation, or instigation of acts of terrorism.
202. **Subsection (2)** amends that part of Schedule 8 which covers the fingerprinting of persons detained under the Act in England Wales and Northern Ireland by inserting two new sub-paragraphs in paragraph 10 of Schedule 8. Sub-paragraph (6A) allows an officer of at least superintendent rank to authorise the taking of fingerprints of a person detained at a station without the person's consent if the officer is satisfied that the fingerprints will enable the identification of the person, and that the person has refused to identify himself or the officer reasonably believes that he has given a false identity. Sub-paragraph (6B) allows the powers to be used to show that a person is not a particular person. For example this would cover incidents where an officer believes that a suspect has claimed to be his brother or friend rather than himself.
203. **Subsection (3)** makes similar amendments to the provisions of Schedule 8 which apply to Scotland by adding two further subsections after section 18(2) of the Criminal Procedure (Scotland) Act 1995. The new subsections allow a constable to take or require fingerprints from a person if he is satisfied that they will help to identify the person and the person has refused to identify himself or the constable reasonably believes that the person has given a false identity including circumstances where the constable believes that the person has claimed to be another person such as a relative or friend.

Section 90 Searches, examinations and fingerprinting: England and Wales

204. **Subsection (1)** inserts after section 54 of the Police and Criminal Evidence Act 1984 (searches of detained persons) a new section 54 A. The new section provides that where an officer of at least inspector rank authorises it, a person who is detained in a police station may be searched or examined or both (a) for the purposes of ascertaining

*These notes refer to the Anti-terrorism, Crime and Security Act
2001 (c.24) which received Royal Assent on 14th December 2001*

whether he has any mark on him which would identify him as a person involved in the commission of an offence or (b) for the purpose of facilitating the ascertainment of his identity.

205. *Subsection (2)* of the new section 54A limits the grounds for authorising a search or examination under subsection (1)(a) to circumstances where the suspect withholds consent to an examination for a mark, or it is not practicable to obtain such consent, because for example the suspect is drunk and unable to give consent.
206. Under *Subsection (3)* in a case to which subsection (2) does not apply, the officer can only authorise a search to establish identity where the person has refused to identify himself or there are reasonable grounds for doubting whether he is the person who he says he is.
207. *Subsection (5)* provides that any identifying mark found during a search or examination may be photographed with appropriate consent or where consent is withheld or it is not practicable to obtain it, a photograph may be taken without the appropriate consent.
208. *Subsection (6)* provides that where a search or examination or the taking of a photograph are authorised, only constables and persons who are designated for the purposes of this section by the relevant chief officer of police, may carry out the search or examination or take the photograph. This subsection also applies section 117 of PACE, the use of reasonable force, to the exercise of the powers conferred by subsection (1) and (5) to designated non constables.
209. Under *Subsection (7)* a person may not carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex. Where a search involves the removal of more than outer clothing it falls within the definition of a strip search for the purposes of PACE Code C and is subject to the safeguards contained in the code in relation to the conduct of such a search.
210. *Subsection (8)* prohibits the carrying out of an intimate search under new Section 54 A. An intimate search is a search of body orifices other than the mouth.
211. *Subsection (9)* provides that a photograph of an identifying mark can be used by or disclosed to any person for the purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution and they can be subsequently retained, but then only used for a related purpose.
212. *Subsections (10) to (12)* set out definitions of references to crime, references to ascertaining a person's identity, references to taking a photograph and marks.
213. *Subsection (2)* of Section 90 amends section 61 (4) of PACE which sets out the grounds on which an officer of at least superintendent rank can authorise the taking of fingerprints of a person detained at a police station without the appropriate consent. Authorisation can currently only be given where the officer has reasonable grounds (a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and (b) for believing that his fingerprints will tend to confirm or disprove his involvement. *Subsection (2)* amends the grounds in s.61 (4)(b) so that an officer may authorise the taking of a person's fingerprints if the prints will facilitate the identification of the person.
214. By virtue of *subsection (2) (b)* the power only applies to a person who is detained at a police station and refuses to identify himself or there are reasonable grounds for doubting whether he is the person who he says he is.
215. The effect of the amendments to section 61 (4) of PACE as amended by section 82 of the Criminal Justice and Police Act 2001 is that fingerprints taken for identification purposes may be retained in the same way in which fingerprints taken in order to prove or disprove involvement in a crime are now retained. In other words, fingerprints may be retained regardless of whether the person is proceeded against or convicted, but can

be used only for the purposes of the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

Section 91 Searches, examinations and fingerprinting: Northern Ireland

216. This section makes provision for Northern Ireland which corresponds to that made by section 91 for England and Wales.

Section 92 Photographing of suspects etc.: England and Wales

217. **Section 92** inserts a new section 64A after section 64 of PACE.
218. *Subsection (1)* of the new section 64A provides a power to photograph a person who is detained at a police station with the appropriate consent or, where consent is withheld, without it.
219. *Subsection (2)* provides that a person may, in order to take a photograph of a person, require the removal of any item or substance, such as face paint, worn on or over the whole or any part of that person's face or head and if the person does not comply with this requirement, they may remove the item or substance themselves.
220. *Subsection (3)* limits who can take a photograph to constables and persons who are not constables but are designated for the purpose by the relevant chief officer of police. *Subsection (3)* also applies section 117 of PACE (power to use reasonable force) to persons other than constables in the exercise of the powers conferred under section 64A.
221. *Subsection (4)* provides that photographs can be used by or disclosed to any person for the purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution and that they can be subsequently retained, but then only used for a related purpose.
222. *Subsection (5)* sets out the definition of references to crime, investigation and prosecution.
223. *Subsection (6)* defines references to taking a photograph to include references to using any process to produce a visual image.

Section 93 Photographing of suspects etc.: Northern Ireland

224. This section makes provision for Northern Ireland which corresponds to that made by section 92 for England and Wales.

Section 94 Powers to require removal of disguises England and Wales

225. *Subsection (1)* of the section provides for the Criminal Justice and Public Order Act 1994 to be amended by the insertion of a new section (s 60AA)
226. *Subsection (1)* of new section 60 AA sets out the circumstances in which these powers may be used. These circumstances are where
- an authorisation under section 60 of the Criminal Justice and Public Order Act 1994 is in force; or
 - an authorisation under subsection (3) is in force.
227. Currently an authorisation under section 60 may be given where a senior officer reasonably believes incidents involving serious violence may take place in any locality. It gives the police powers to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments. It also gives power to require the removal of face coverings worn for the purpose of concealing identity and to seize any such items.
228. *Subsection (2)* of section 60AA confers power on any constable in uniform:

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- to require the removal of any item which he reasonably believes a person is wearing wholly or mainly for the purpose of concealing his identity;
 - to seize any item which he reasonably believes any person intends to wear wholly or mainly for that purpose.
229. *Subsection (3)* describes the circumstances which must exist before the authorisation, referred to in subsection (1)(b), in order for an authorisation to be given. The circumstances are that a police officer of or above the rank of inspector reasonably believes that:
- activities may take place in that area that are likely, if they take place, to involve the commission of offences; and
 - it is expedient in order to prevent or control the activities to give an authorisation.
230. The authorisation means that the powers mentioned in para 227 shall be exercisable at any place within that locality for a period of 24 hours.
231. *Subsection (4)* provides that an officer of or above the rank of superintendent may direct that the authorisation referred to in *subsection (3)* shall continue in force for a further 24 hours if it is expedient to do so, having regard to offences which have been committed in connection with the activities in respect of which the authorisation was given, or are reasonably suspected to have been so committed.
232. *Subsection (5)* states that if an authorisation under subsection (3) is given by an inspector, he must, as soon as it is practicable to do so, inform an officer of or above the rank of superintendent.
233. *Subsection (6)* specifies the contents of an authorisation. It must be in writing signed by the officer giving it and specify the grounds on which it is given; the locality in which the powers are exercisable; the period during which those powers are exercisable. A direction under *subsection (4)* shall also be given in writing or, where that is not practicable, be recorded in writing subsequently.
234. *Subsection (7)* creates an offence of failing to remove an item when required to do so by a constable in the exercise of his power under this section. The penalty for this offence is, on summary conviction, imprisonment for a term not exceeding one month or a fine not exceeding level 3 on the standard scale i.e. £1,000.
235. *Subsection (8)* defines the meaning of locality for the provisions of this section if the authorisation is given by a member of the British Transport Police.
236. *Subsection (9)* defines 'British Transport Police' and 'policed premises' for the purposes of this section.
237. *Subsection (10)* states that the powers conferred by this section are in addition to, and not in derogation, of any power otherwise conferred.
238. *Subsection (11)* states that this section does not extend to Scotland.
239. *Subsections (2)-(3)* of Section 94 make minor consequential amendments to the Criminal Justice and Public Order Act 1994 and the Police and Criminal Evidence Act 1984, making a power of arrest available for the offence in s.60AA(7).

Section 95 Powers to require removal of disguises: Northern Ireland

240. **Section 95** provides for the Public Order (Northern Ireland) Order 1987 to be amended by the insertion of a new Article 23A, which makes similar provision for Northern Ireland to that made for Great Britain by virtue of Section 94. Accordingly, where a senior police officer reasonably believes that incidents involving the commission of offences may take place within a locality, he may issue an authorisation which will

enable the police to exercise powers to require the removal of face coverings worn for the purpose of concealing identity, and to seize any such items. Under the Northern Ireland (Emergency Provisions) Act 1996, it was an offence to wear a mask or hood in a public place for the purpose of concealing identity. This provision was repealed when the Terrorism Act 2000 took effect.

241. A consequential amendment is also made to the Police and Criminal Evidence (Northern Ireland) Order 1989 to provide that failure to comply with the requirement to remove a disguise is an arrestable offence.

Powers of stop, search and seizure in Northern Ireland

Section 96 Power to Stop and Search in Anticipation of Violence

242. **Section 96** provides for the Public Order (Northern Ireland) Order 1987 to be amended by the insertion of a new Article, which makes similar provision for Northern Ireland to that made for Great Britain by virtue of Section 60 of the Criminal Justice and Public Order Act 1994 which does not extend to Northern Ireland. Where a senior police officer reasonably believes that incidents involving serious violence may take place in a locality, he may issue an authorisation which enables the police to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments and to seize any such instruments.

Section 97 Seized Articles

243. **Section 97** provides for the Public Order (Northern Ireland) Order 1987 to be amended by the insertion of a new Article 23C, which will enable the Secretary of State to make regulations to govern the retention and disposal of things seized under new Articles 23A and 23B.

MOD and transport police

Section 98 Jurisdiction of MOD police

244. The Ministry of Defence Police (“MDP”) is a civilian police force exercising full constabulary powers within its jurisdiction. This jurisdiction is defined in the Ministry of Defence Police Act 1987 (“the 1987 Act”), which is the principal legislation governing the force. The limitations on the jurisdiction of the force have been reviewed in the light of the threat of terrorism and of the changed deployment pattern of the MDP. The changes in deployment include the increased use of mobile patrols, involving movement between defence establishments and bringing MDP officers more into contact with the public than previously.
245. The jurisdiction of the MDP is governed by section 2 of the 1987 Act. The overall effect is to give the force jurisdiction in relation to defence land, property and personnel within the United Kingdom and its territorial waters. The MDP is also able to operate on land in the vicinity of defence land where a constable of a local force has asked for assistance.
246. The section extends the MDP’s jurisdiction, by amending section 2 of the 1987 Act.
247. *Subsection (2)* amends section 2(2) of the 1987 Act, which deals with the places where the MDP have jurisdiction. *It* repeals the existing power in relation to acting on land in the vicinity of defence land in response to specific requests from a member of a local force. The repealed power is superseded by a new power provided for by *subsection (4)*.
248. Section 2(3)(b) of the 1987 Act currently provides for the MDP to have an additional jurisdiction in relation to defence personnel. It applies anywhere in the United Kingdom in which the MDP do not have jurisdiction under section 2(2) of the 1987 Act. The jurisdiction is thought to be confined to the alleged commission of offences by defence

personnel. *Subsection (3)* extends the jurisdiction to offences against defence personnel; for example, an attempt to bribe defence personnel to disclose confidential information.

249. *Subsection (4)* confers powers on the MDP where a request is made by a member of a local police force, the Police Service of Northern Ireland, the British Transport Police or the United Kingdom Atomic Energy Authority Constabulary. The new powers supersede those repealed by *subsection (2)*. Unlike those repealed by *subsection (2)*, the new powers are restricted to the particular incident, investigation or operation in relation to which assistance is requested, but they are not restricted to the vicinity of defence land. They will be exercisable within the police area of a requesting local police force, within Northern Ireland (in the case of a request by the Police Service for Northern Ireland), within their railway jurisdiction (in the case of a request by the British Transport Police), or (in the case of a request by the United Kingdom Atomic Energy Authority Constabulary) where an officer of that force may act.
250. *Subsection (4)* also deals with occasions on which MDP officers face emergencies where their normal jurisdiction would not apply. It may not be possible for the MDP officer to obtain timely authority from the local police force to deal with the incident. *Subsection (4)* empowers an MDP officer in uniform (or having proof of being an MDP officer) to act without a request for assistance from an officer of a local police force or other police officer, in limited circumstances, if he reasonably believes that waiting for such a request would frustrate or jeopardise the purpose of his intended action. These circumstances are where the MDP officer has reasonable grounds for suspecting that an offence is about to be committed, is being committed or has been committed, or where he reasonably believes that action is necessary to save life or prevent or minimise personal injury.

Section 99 Provision of assistance by MoD police

251. This section inserts a new section (section 2A) in the 1987 Act. It deals with cases where another police force requires extra resources to meet a special burden. The new section allows such assistance to be given by the MDP, where requested by the chief police officers listed in subsection (4), to enable their force to meet any special demand on its resources. It provides that, where MDP officers serve with other forces as a part of such assistance, they come under the direction of the chief officer of the force with which they are serving for the time being and have full powers of a constable of that force, (i.e. without the jurisdictional limits applying to MDP officers).

Overview

250. **Sections 100, 101** and Schedule 7 allow the British Transport Police (“BTP”) to act outside their railways jurisdiction when asked to assist in relation to a specific incident by a constable from the local police force, the UKAEA constabulary or a Ministry of Defence Police (“MDP”) officer, and in an emergency. The changes also give BTP officers certain powers already available to local police officers, including powers under the Terrorism Act 2000 and the ability to enter into mutual aid agreements with other forces.

Section 100 Jurisdiction of transport police

251. This section permits British Transport Police (“BTP”) officers to act outside their normal railways jurisdiction. These measures are to improve the effectiveness of the BTP by enabling it to play a full role in protecting the public from terrorism and other crimes.
252. The BTP’s railways jurisdiction gives its officers the powers and privileges of a constable on, and in the vicinity of, the railways and elsewhere on railways matters. However they need to move between railway sites and often have a presence in city centres. BTP officers are frequently called upon to intervene outside their ‘railways’ jurisdiction and it is estimated that some such 8,000 incidents occur each year. In these

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circumstances BTP officers previously only had the powers of an ordinary citizen, despite being police officers fully trained to the standards of a local police force, and routinely dealing with the same range of incidents in the course of their railway activities.

253. *Subsection (1)* allows a BTP officer to assist a member of a local police force, the MDP or the UK Atomic Energy Authority Constabulary (“UKAEAC”) when assistance is requested by a constable of one of those forces. The BTP officer can only assist in relation to a specific incident, investigation or operation but will have the same powers and privileges as a constable of the requesting police force. This is to avoid confusion, so that there will be no difference in the powers available to the BTP officer on such an occasion and an officer from the other force whom he is assisting.
254. *Subsection (2)* allows a BTP officer to intervene if he reasonably believes that an offence has been, is being committed or is about to be committed; or to prevent injury or save life. In these circumstances the BTP officer will have the same powers and privileges as an officer of a local police force. A BTP officer can only act under *subsection (2)* if he satisfies the requirements of *subsection (3)*.
255. *Subsection (3)* sets out the circumstances in which a BTP officer can act under *subsection (2)*. He must be able to show evidence that he is a BTP officer, i.e. be in uniform or have documentary proof, such as his warrant card. In addition, he can only act if he reasonably believes that waiting for a request for assistance from the police force with primary jurisdiction (i.e. the local police force, MDP or UKAEAC) or waiting for a constable of one of those forces to act, would frustrate or seriously prejudice the purpose of his intended action.

Section 101 Further provisions about transport police and MoD police

256. This section gives effect to Schedule 7 which provides the BTP with additional police powers in certain circumstances. These powers were only previously available to local police force constables, and not BTP officers. Certain powers are also extended to the MDP. The BTP and MDP are under the same restrictions as local police forces regarding the application and use of these powers. Details of the amendments to the certain Acts of Parliament are contained in the note on Schedule 7.