



Criminal Justice Act 2003

2003 CHAPTER 44

PART 10

RETRIAL FOR SERIOUS OFFENCES

Investigations

85 Authorisation of investigations

- (1) This section applies to the investigation of the commission of a qualifying offence by a person—
 - (a) acquitted in proceedings within section 75(1) of the qualifying offence, or
 - (b) acquitted elsewhere than in the United Kingdom of an offence the commission of which as alleged would have amounted to or included the commission (in the United Kingdom or elsewhere) of the qualifying offence.
- (2) Subject to section 86, an officer may not do anything within subsection (3) for the purposes of such an investigation unless the Director of Public Prosecutions—
 - (a) has certified that in his opinion the acquittal would not be a bar to the trial of the acquitted person in England and Wales for the qualifying offence, or
 - (b) has given his written consent to the investigation (whether before or after the start of the investigation).
- (3) The officer may not, either with or without the consent of the acquitted person—
 - (a) arrest or question him,
 - (b) search him or premises owned or occupied by him,
 - (c) search a vehicle owned by him or anything in or on such a vehicle,
 - (d) seize anything in his possession, or
 - (e) take his fingerprints or take a sample from him.
- (4) The Director of Public Prosecutions may only give his consent on a written application, and such an application may be made only by an officer who—

Status: Point in time view as at 17/10/2016.

Changes to legislation: Criminal Justice Act 2003, Cross Heading: Investigations is up to date with all changes known to be in force on or before 31 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) if he is an officer of the metropolitan police force or the City of London police force, is of the rank of commander or above, or
 - (b) in any other case, is of the rank of assistant chief constable or above.
- (5) An officer may make an application under subsection (4) only if—
- (a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or
 - (b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (6) The Director of Public Prosecutions may not give his consent unless satisfied that—
- (a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation, and
 - (b) it is in the public interest for the investigation to proceed.
- (7) In giving his consent, the Director of Public Prosecutions may recommend that the investigation be conducted otherwise than by officers of a specified police force or specified team of customs and excise officers.

Commencement Information

- II** S. 85 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 5](#) (subject to [art. 2\(2\), Sch. 2](#))

86 Urgent investigative steps

- (1) Section 85 does not prevent an officer from taking any action for the purposes of an investigation if—
- (a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced,
 - (b) the requirements of subsection (2) are met, and
 - (c) either—
 - (i) the action is authorised under subsection (3), or
 - (ii) the requirements of subsection (5) are met.
- (2) The requirements of this subsection are met if—
- (a) there has been no undue delay in applying for consent under section 85(2),
 - (b) that consent has not been refused, and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.
- (3) An officer of the rank of superintendent or above may authorise the action if—
- (a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or
 - (b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (4) An authorisation under subsection (3) must—
- (a) if reasonably practicable, be given in writing;

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- (b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.
- (5) The requirements of this subsection are met if—
- (a) there has been no undue delay in applying for authorisation under subsection (3),
 - (b) that authorisation has not been refused, and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation before taking the action.
- (6) Where the requirements of subsection (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, an officer of the rank of superintendent or above certifies in writing that he is satisfied that, when the action was taken—
- (a) new evidence had been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or
 - (b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

Commencement Information

- I2** S. 86 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 5](#) (subject to [art. 2\(2\), Sch. 2](#))

[^{F1}86A Application of sections 85 and 86 to investigations by the Police Ombudsman

- (1) Sections 85 and 86 apply in relation to an investigation by an officer of the Police Ombudsman for Northern Ireland with the following modifications.
- (2) References in sections 85(2) and (3) and 86(1) to an officer shall be read as references to an officer of the Ombudsman.
- (3) Section 85(4) has effect as if for the words from “an officer who” to the end there were substituted the Ombudsman.
- (4) Section 85(5) has effect as if for “An officer” there were substituted The Ombudsman.
- (4) Section 85(7) does not apply.
- (6) Section 86(3) has effect as if for “An officer of the rank of superintendent or above” there were substituted A senior officer of the Ombudsman.
- (7) Section 86(6) has effect as if for “an officer of the rank of superintendent or above” there were substituted a senior officer of the Ombudsman.
- (8) References to a senior officer of the Ombudsman are to an officer of the rank of senior investigating officer or above.]

Textual Amendments

- F1** S. 86A inserted (N.I.) (21.4.2007) by [The Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), [art. 11\(1\)](#)

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