

CRIME AND SECURITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Taking of fingerprints and samples: England and Wales

Section 2: Powers to take material in relation to offences

29. *Subsections (1) and (5)* amend sections 61 and 63 of PACE to enable biometric data (fingerprints and non-intimate samples respectively) to be taken from people who have been arrested for a recordable offence, either if they have been released on bail before their biometric data have been taken or if their biometric data have been taken and subsequently have proved inadequate for analysis and/or loading onto the national fingerprint or DNA database. For the purposes of section 2, it does not matter when the arrest took place, so the police may take biometric data from a person who was arrested before the section comes into force.
30. “Recordable offence” is defined in sections 118 and 27 of PACE. In practice, all offences which are punishable with imprisonment are recordable offences, as are around 60 other more minor offences which are specified in regulations made under section 27.
31. *Subsection (2)* amends section 61 of PACE to enable fingerprints to be taken from people who are not detained at a police station but who have been charged with a recordable offence, where either their fingerprints have not been taken in the course of the investigation or their fingerprints have been taken and subsequently have proved inadequate for analysis and/or loading onto the national database. Currently, PACE allows the taking of the fingerprints of a person who has been charged, but only if the person is detained at a police station. Again, it does not matter whether the person was charged before the commencement of the section.
32. *Subsection (3)* re-enacts, with some modifications, the existing power in section 61 of PACE to take fingerprints from people who have been convicted, cautioned, warned or reprimanded for a recordable offence (before or after commencement). The re-enactment contains limitations on the exercise of the power. In future, fingerprints may only be taken under this power with the authorisation of an officer of at least the rank of inspector who must be satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime. The person must not have had their fingerprints taken since the conviction, caution, warning or reprimand or, if they have, the fingerprints must have proved inadequate for analysis and/or loading onto the national database.
33. *Subsection (4)* secures that any power to take fingerprints without consent under section 61 of PACE may be exercised by any constable, whether the person is in police detention or not.
34. *Subsection (6)* extends the power in PACE to take non-intimate samples from persons who have been charged. The power is extended so as to enable the police to take a non-intimate sample from a person who has been charged with a recordable offence in circumstances where the person has had a sample taken previously, from which a DNA profile has been created, but the sample has since been destroyed and the person

now claims that the DNA profile did not come from his sample. As explained below, the provisions of the Act will oblige the police to destroy all DNA samples within six months of their being taken.

35. *Subsection (7)* re-enacts the existing power to take non-intimate samples after conviction. But it also now includes a power to take non-intimate samples following a caution, reprimand or warning (which is already possible in the case of fingerprints). This modified power is subject to the same limitations as are provided for in relation to the taking of fingerprints after conviction (see the discussion of *subsection (3)* above).
36. The power may be exercised in relation to convictions, cautions, reprimands and warnings occurring before commencement. However, this is subject to the existing restriction in *subsection (9A)* of section 63, by virtue of which a non-intimate sample may not be taken from a person convicted prior to 10 April 1995 unless the person is one to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies: that is, that the offence was one specified in Schedule 1 to the Criminal Evidence (Amendment) Act 1997 (primarily sexual and violent offences) and the person is in prison or detained under the Mental Health Act 1983 at the time the sample is to be taken. The Act also secures that a non-intimate sample may not be taken from a person *cautioned* before that date (see *subsection (8)*).
37. *Subsection (9)* amends section 1 of the Criminal Evidence (Amendment) Act 1997, which is referred to in section 63(9A) of PACE (described above). The amendment to the 1997 Act made by *subsection (9)* means that a sample may be taken from a person convicted before 10 April 1995 of an offence in Schedule 1 to that Act even if he is no longer in prison or detained.
38. *Subsection (10)* amends section 2 of the Criminal Evidence (Amendment) Act 1997. The effect of this amendment is that a non-intimate sample may be taken from a person who has at any time been detained following acquittal for an offence on grounds of grounds of insanity or was found unfit to plead. Currently, the person must be detained at the time the sample is to be taken.

Section 3: Powers to take material in relation to offences outside England and Wales

39. *Subsections (1)* and *(4)* enable the police to take fingerprints and non-intimate samples from a person convicted of a qualifying offence (see section 7) outside England and Wales, whether the conviction occurred before or after the coming into force of these provisions. The person must not have had their fingerprints or sample (as the case may be) taken previously under the respective powers or, if such data have been taken previously, it must have proved inadequate for analysis and/or loading onto the national database. The taking of the fingerprints or non-intimate sample must be authorised by an officer of at least the rank of inspector who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.
40. *Subsection (2)* provides the police with the power to take an intimate sample from a person convicted of a qualifying offence outside England and Wales where two or more non-intimate samples have been taken under the powers provided in *subsection (4)* but have proved insufficient and that person consents. The taking of the sample must be authorised by an officer of at least the rank of inspector who must be satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

Section 4: Information to be given on taking of material

41. **Section 4** re-enacts the provisions in PACE relating to the information given to those from whom biometric data are taken without consent, with modifications, and applies these provisions to the new powers to take biometric data. In relation to fingerprints and non-intimate samples, the result is that a person must be informed of the reason for taking the biometric data, the power being used, and the fact that authorisation has

been given (where authorisation is necessary). A police officer (or designated detention officer) must also inform the person that his data will be subject to a speculative search (in other words that the reference samples will be compared with those already on the existing databases). Those matters must then be recorded as soon as practicable after the data has been taken. Similar information and recording requirements apply in relation to the taking of intimate samples as well as a requirement to record the fact that the person gave their consent to the intimate sample being taken. In relation to the taking of intimate and non-intimate samples prior to conviction, the existing requirement to specify the nature of the offence in which it is suspected that the person has been involved is preserved.

Section 5: Speculative searches

42. **Section 5** adds to the existing provisions in PACE that permit the speculative searching of biometric data so that such searches can be carried out in relation to samples and fingerprints taken using the new powers in this Act.

Section 6: Power to require attendance at police station

43. **Section 6** inserts a new Schedule 2A into PACE which sets out the powers to require attendance at a police station in respect of both the existing and new powers to take biometric data. For each power in PACE to take biometric data from those no longer in police detention (whether existing or which is being inserted by these provisions), there is a power to require a person to attend a police station for the purpose of taking those data, and for a constable to arrest a person who does not comply with a requirement to attend.
44. The Schedule puts some time limits on the power to require attendance. In cases where fingerprints or samples of a person arrested or charged are being taken because the previous ones were inadequate in some way, the power must be exercised within six months of the day on which the relevant police officer learnt of the inadequacy. There are also time limits where the fingerprints or samples are to be taken under new section 61(5B) (fingerprints from person charged), section 61(6) (fingerprints from person convicted), new section 63(3A) (non-intimate sample from person charged) and new section 63(3B) (non-intimate sample from person convicted) of PACE. But the time limits do not apply in cases where a person has been convicted of a qualifying offence or, in the case of non-intimate samples, where the person is convicted of an offence prior to 10 April 1995 and he is a person to whom section 1 of the Criminal Evidence (Amendment) Act 1997 applies (see above). In these cases the power to compel attendance may be exercised at any time.
45. Paragraph 6 of new Schedule 2A to be inserted into PACE provides that where a person's fingerprints have been taken under section 61 of PACE on two occasions in relation to any offence, he may not be required to attend a police station to have his fingerprints taken again under that section in relation to that offence without the authorisation of an officer of at least the rank of inspector. Paragraph 14 imposes the same requirement for non-intimate samples taken under section 63 of PACE.
46. Paragraph 15 of new Schedule 2A stipulates that where authorisation is required for the taking of fingerprints or a sample this must be obtained before a person is required to attend the police station.
47. Paragraph 16 of new Schedule 2A makes provision regarding the time a person shall be given to attend a police station and the ability of a person to vary the date or time of attendance.

Section 7: Qualifying offence

48. **Section 7** defines the "qualifying offences" referred to in other provisions dealing with biometric material. These offences are serious violent, sexual or terrorist offences, and

*These notes refer to the Crime and Security Act 2010
(c.17) which received Royal Assent on 8 April 2010*

also include the offences of aiding, abetting, conspiring etc the commission of such offences. The list of qualifying offences may be amended by order, using the affirmative resolution procedure (see *subsections (3) and (4)*).