



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 4

#### POLICE POWERS

#### CHAPTER 1

#### PRE-CHARGE BAIL

#### *Release without bail or on bail*

#### **52 Arrest elsewhere than at a police station: release before charge**

- (1) Section 30A of the Police and Criminal Evidence Act 1984 (release of a person arrested elsewhere than at police station) is amended as follows.
- (2) In the heading for “Bail” substitute “ Release of a person arrested ”.
- (3) In subsection (1)—
  - (a) omit “on bail”, and
  - (b) at the end insert “—
    - (a) without bail unless subsection (1A) applies, or
    - (b) on bail if subsection (1A) applies.”
- (4) After subsection (1) insert—

“(1A) This subsection applies if—

  - (a) the constable is satisfied that releasing the person on bail is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which would be imposed), and
  - (b) a police officer of the rank of inspector or above authorises the release on bail (having considered any representations made by the person).”

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(5) In subsection (2) omit “on bail”.

#### Commencement Information

**II** S. 52 in force for specified purposes at Royal Assent, see s. 183

### 53 Section 52: consequential amendments

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 18(5)(a) (circumstances in which a search after arrest may be conducted) omit “on bail”.
- (3) In section 30 (arrest elsewhere than at police station)—
  - (a) in subsection (1B) for “on bail” substitute “ of a person arrested elsewhere than at police station ”,
  - (b) in subsection (7A) omit the words from “or releasing” to the end, and
  - (c) in subsections (10) and (11) for “on bail” substitute “ under section 30A ”.
- (4) Section 30B (section 30A: notices) is amended as follows.
- (5) In the heading omit “Bail under”.
- (6) In subsection (1) for “grants bail to” substitute “ releases ”.
- (7) In subsection (2)—
  - (a) omit the “and” before paragraph (b), and
  - (b) after paragraph (b) insert “and
  - (c) whether the person is being released without bail or on bail”.
- (8) In subsection (3) for “The notice” substitute “ A notice given to a person who is released on bail ”.
- (9) In section 30C (section 30A: supplemental)—
  - (a) in the heading omit “Bail under”, and
  - (b) in subsection (4) omit “on bail”.

#### Commencement Information

**II** S. 53 in force for specified purposes at Royal Assent, see s. 183

### 54 Release from detention at a police station

- (1) Section 34 of the Police and Criminal Evidence Act 1984 (limitations on police detention) is amended as follows.
- (2) In subsection (5) for the words from “without” to the end substitute “—
  - (a) without bail unless subsection (5A) applies, or
  - (b) on bail if subsection (5A) applies.”
- (3) After subsection (5) insert—

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- “(5A) This subsection applies if—
- (a) it appears to the custody officer—
    - (i) that there is need for further investigation of any matter in connection with which the person was detained at any time during the period of the person's detention, or
    - (ii) that, in respect of any such matter, proceedings may be taken against the person or the person may be given a youth caution under section 66ZA of the Crime and Disorder Act 1998, and
  - (b) the pre-conditions for bail are satisfied.”
- (4) Section 37 of the Police and Criminal Evidence Act 1984 (duties of custody officer before charge) is amended as follows.
- (5) In subsection (2) for the words from “either” to the end substitute “—
- (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied,
- (subject to subsection (3)) ”.
- (6) In subsection (3) for “so believing” substitute “ believing that the person's detention without being charged is necessary to secure or preserve evidence relating to an offence for which the person is under arrest or to obtain such evidence by questioning the person ”.
- (7) In subsection (7) for paragraphs (b) and (c) substitute—
- “(b) shall be released without charge and without bail unless the pre-conditions for bail are satisfied,
  - (c) shall be released without charge and on bail if those pre-conditions are satisfied but not for the purpose mentioned in paragraph (a), or”.
- (8) In subsection (8A)(b) for “(b)” substitute “ (c) ”.

#### Commencement Information

**I3** S. 54 in force for specified purposes at Royal Assent, see s. 183

## 55 Release following arrest for breach of bail etc

- (1) Section 37CA of the Police and Criminal Evidence Act 1984 (release following arrest for breach of bail) is amended as follows.
- (2) In the heading and subsection (1) for “section 37(7)(b)” substitute “ section 37(7)(c) ”.
- (3) In subsection (2)(b) for the words from “, either” to the end substitute “—
- (i) without bail unless the pre-conditions for bail are satisfied, or
  - (ii) on bail if those pre-conditions are satisfied.”
- (4) In subsection (4) at the end insert “ (and the reference in section 50A to any conditions of bail which would be imposed is to be read accordingly) ”.
- (5) In section 37D(4A) of the Police and Criminal Evidence Act 1984 (power to keep a person in police detention) for “section 37(7)(b)” substitute “ section 37(7)(c) ”.

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#### Commencement Information

**I4** S. 55 in force for specified purposes at Royal Assent, see s. 183

### 56 Release from further detention at police station

- (1) In section 41(7) of the Police and Criminal Evidence Act 1984 (limits on period of detention without charge) for the words from “either” to the end substitute “—
  - (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied.”
- (2) Section 42 of the Police and Criminal Evidence Act 1984 (authorisation of continued detention) is amended as follows.
- (3) In subsection (10)—
  - (a) omit “, either on bail or without bail”, and
  - (b) for the words from “, unless” to the end substitute “—
    - (a) without bail unless the pre-conditions for bail are satisfied, or
    - (b) on bail if those pre-conditions are satisfied,
 (subject to subsection (10A)) ”.
- (4) After subsection (10) insert—
 

“(10A) Subsection (10) does not apply if—

  - (a) the person has been charged with an offence, or
  - (b) the person's continued detention is authorised or otherwise permitted in accordance with section 43.”

#### Commencement Information

**I5** S. 56 in force for specified purposes at Royal Assent, see s. 183

### 57 Warrants of further detention: release

- (1) Section 43 of the Police and Criminal Evidence Act 1984 (warrants of further detention) is amended as follows.
- (2) In subsection (15) for the words from “, either” to the end substitute “—
  - (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied.”
- (3) In subsection (18) for the words from “be released” to the end substitute “, unless the person is charged, be released from police detention upon or before the expiry of the warrant—
  - (a) without bail unless the pre-conditions for bail are satisfied, or
  - (b) on bail if those pre-conditions are satisfied.”
- (4) In section 44(7) of the Police and Criminal Evidence Act 1984 (extension of warrants of further detention) for the words from “, either” to the end substitute “—
  - (a) without bail unless the pre-conditions for bail are satisfied, or

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(b) on bail if those pre-conditions are satisfied.”

#### Commencement Information

**I6** [S. 57](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### 58 Meaning of “pre-conditions for bail”

After section 50 of the Police and Criminal Evidence Act 1984 insert—

#### “50A Interpretation of references to pre-conditions for bail

For the purposes of this Part the following are the pre-conditions for bail in relation to the release of a person by a custody officer—

- (a) that the custody officer is satisfied that releasing the person on bail is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which would be imposed), and
- (b) that an officer of the rank of inspector or above authorises the release on bail (having considered any representations made by the person or the person's legal representative).”

#### Commencement Information

**I7** [S. 58](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### 59 Release without bail: fingerprinting and samples

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 61(5A) (fingerprinting of person arrested for a recordable offence) —
  - (a) in paragraph (a) omit “in the case of a person who is on bail,”, and
  - (b) in paragraph (b) omit “in any case,”.
- (3) In section 63(3ZA) (taking of non-intimate sample from person arrested for a recordable offence)—
  - (a) in paragraph (a) omit “in the case of a person who is on bail,”, and
  - (b) in paragraph (b) omit “in any case,”.

#### Commencement Information

**I8** [S. 59](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### 60 Release under section 24A of the Criminal Justice Act 2003

- (1) Section 24A of the Criminal Justice Act 2003 (arrest for failure to comply with conditions attached to conditional caution) is amended as follows.
- (2) In subsection (2) for paragraphs (b) and (c) substitute—

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- “(b) released without charge and without bail (with or without any variation in the conditions attached to the caution) unless paragraph (c)(i) and (ii) applies, or
- (c) released without charge and on bail if—
  - (i) the release is to enable a decision to be made as to whether the person should be charged with the offence, and
  - (ii) the pre-conditions for bail are satisfied.”
- (3) In subsections (3)(a) and (4) for “subsection (2)(b)” substitute “ subsection (2)(c) ”.
- (4) After subsection (8) insert—
  - “(8A) In subsection (2) the reference to the pre-conditions for bail is to be read in accordance with section 50A of the 1984 Act.”

#### Commencement Information

**I9** S. 60 in force for specified purposes at Royal Assent, see s. 183

### *Conditions of bail*

#### **61 Bail before charge: conditions of bail etc**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 46A(1A) (power of arrest for failure to answer police bail) for “section 37, 37C(2)(b) or 37CA(2)(b) above” substitute “ this Part ”.
- (3) Section 47 (bail after arrest) is amended as follows.
- (4) In subsection (1A) for the words from “section 37” to “cases” substitute “ this Part (except sections 37C(2)(b) and 37CA(2)(b)) ”.
- (5) In subsections (1B) and (1C) omit “37”.

#### Commencement Information

**I10** S. 61 in force for specified purposes at Royal Assent, see s. 183

### *Time limits on period of bail*

#### **62 Limit on period of bail under section 30A of PACE**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) Section 30B (section 30A: notices) is amended as follows.
- (3) For subsection (4) substitute—
  - “(4) The notice must also specify—
    - (a) the police station which the person is required to attend, and

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- (b) the time on the bail end date when the person is required to attend the police station.”
- (4) Omit subsection (4A)(c) and the “and” before it.
- (5) Omit subsection (5).
- (6) In subsection (6) for the words from “(5)” to the end substitute “ to attend at a different time or an additional time ”.
- (7) After subsection (6) insert—
  - “(6A) A person may not be required under subsection (6) to attend a police station at a time which is after the bail end date in relation to the person.”
- (8) After subsection (7) insert—
  - “(8) In this section “bail end date”, in relation to a person, means the last day of the period of 28 days beginning with the day after the day on which the person was arrested for the offence in relation to which bail is granted under section 30A.”
- (9) In section 30CA (bail under section 30A: variation of conditions by police) omit subsection (1)(b) and the “or” before it.
- (10) In section 30D(3) (meaning of “specified” in section 30D(1)) omit “or (5)”.

#### **Commencement Information**

**III** S. 62 in force for specified purposes at Royal Assent, see s. 183

### **63 Limits on period of bail without charge under Part 4 of PACE**

After section 47 of the Police and Criminal Evidence Act 1984 insert—

#### **“47ZA Limits on period of bail without charge**

- (1) This section applies in relation to the power conferred on a custody officer, when releasing a person on bail under this Part, to appoint a time for the person to attend at a police station in accordance with section 47(3)(c).
- (2) The power must be exercised so as to appoint a time on the day on which the applicable bail period in relation to the person ends, unless subsection (3) or (4) applies.
- (3) This subsection applies where—
  - (a) at the time of the exercise of the power the person is on bail under this Part in relation to one or more offences other than the relevant offence, and
  - (b) the custody officer believes that it is appropriate to align the person's attendance in relation to the relevant offence with the person's attendance in relation to the one or more other offences.
- (4) This subsection applies where the custody officer believes that a decision as to whether to charge the person with the relevant offence would be made before the end of the applicable bail period in relation to the person.

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- (5) Where subsection (3) or (4) applies, the power may be exercised so as to appoint a time on a day falling before the end of the applicable bail period in relation to the person.
- (6) This section is subject to section 47ZL.
- (7) In this section references to attendance are to attendance at a police station in accordance with section 47(3)(c).
- (8) In this Part the “relevant offence”, in relation to a person, means the offence in respect of which the power mentioned in subsection (1) is exercised in relation to the person.

#### **47ZB Applicable bail period: initial limit**

- (1) In this Part the “applicable bail period”, in relation to a person, means—
  - (a) in an SFO case, the period of 3 months beginning with the person's bail start date, or
  - (b) in an FCA case or any other case, the period of 28 days beginning with the person's bail start date.
- (2) The applicable bail period in relation to a person may be extended under sections 47ZD to 47ZG or treated as extended under section 47ZJ(3).
- (3) Subsection (1) and sections 47ZD to 47ZG are subject to sections 47ZL and 47ZM.
- (4) For the purposes of this Part—
  - (a) a person's bail start date is the day after the day on which the person was arrested for the relevant offence,
  - (b) an “FCA case” is a case in which—
    - (i) the relevant offence in relation to the person is being investigated by the Financial Conduct Authority, and
    - (ii) a senior officer confirms that sub-paragraph (i) applies,
  - (c) an “SFO case” is a case in which—
    - (i) the relevant offence in relation to the person is being investigated by the Director of the Serious Fraud Office, and
    - (ii) a senior officer confirms that sub-paragraph (i) applies, and
  - (d) “senior officer” means a police officer of the rank of superintendent or above.

#### **47ZC Applicable bail period: conditions A to D in sections 47ZD to 47ZG**

- (1) This section applies for the purposes of sections 47ZD to 47ZG.
- (2) Condition A is that the decision-maker has reasonable grounds for suspecting the person in question to be guilty of the relevant offence.
- (3) Condition B is that the decision-maker has reasonable grounds for believing—
  - (a) in a case where the person in question is or is to be released on bail under section 37(7)(c) or 37CA(2)(b), that further time is needed for making a decision as to whether to charge the person with the relevant offence, or



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- (b) otherwise, that further investigation is needed of any matter in connection with the relevant offence.
- (4) Condition C is that the decision-maker has reasonable grounds for believing—
- (a) in a case where the person in question is or is to be released on bail under section 37(7)(c) or 37CA(2)(b), that the decision as to whether to charge the person with the relevant offence is being made diligently and expeditiously, or
  - (b) otherwise, that the investigation is being conducted diligently and expeditiously.
- (5) Condition D is that the decision-maker has reasonable grounds for believing that the release on bail of the person in question is necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which are, or are to be, imposed).
- (6) In this section “decision-maker” means—
- (a) in relation to a condition which falls to be considered by virtue of section 47ZD, the senior officer in question;
  - (b) in relation to a condition which falls to be considered by virtue of section 47ZE, the appropriate decision-maker in question;
  - (c) in relation to a condition which falls to be considered by virtue of section 47ZF or 47ZG, the court in question.

#### **47ZD Applicable bail period: extension of initial limit in standard cases**

- (1) This section applies in relation to a person if—
- (a) the applicable bail period in relation to the person is the period mentioned in section 47ZB(1)(b),
  - (b) that period has not ended, and
  - (c) a senior officer is satisfied that conditions A to D are met in relation to the person.
- (2) The senior officer may authorise the applicable bail period in relation to the person to be extended so that it ends at the end of the period of 3 months beginning with the person's bail start date.
- (3) Before determining whether to give an authorisation under subsection (2) in relation to a person, the senior officer must arrange for the person or the person's legal representative to be informed that a determination is to be made.
- (4) In determining whether to give an authorisation under subsection (2) in relation to a person, the senior officer must consider any representations made by the person or the person's legal representative.
- (5) The senior officer must arrange for the person or the person's legal representative to be informed whether an authorisation under subsection (2) has been given in relation to the person.

#### **47ZE Applicable bail period: extension of limit in designated cases**

- (1) This section applies in relation to a person if—
- (a) the person's case is an SFO case, or

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- (b) a senior officer has authorised an extension of the applicable bail period in relation to the person under section 47ZD.
- (2) A qualifying prosecutor may designate the person's case as being an exceptionally complex case (a “designated case”).
  - (3) If an appropriate decision-maker is satisfied that conditions A to D are met in relation to the person in a designated case, the decision-maker may authorise the applicable bail period in relation to the person to be extended so that it ends at the end of the period of 6 months beginning with the person's bail start date.
  - (4) An appropriate decision-maker is—
    - (a) a member of staff of the Financial Conduct Authority who is of the description designated for the purposes of this paragraph by the Chief Executive of the Authority (in an FCA case),
    - (b) a member of the Serious Fraud Office who is of the Senior Civil Service (in an SFO case), or
    - (c) a qualifying police officer (in any other case).
  - (5) Before determining whether to give an authorisation under subsection (3) in relation to a person—
    - (a) the appropriate decision-maker must arrange for the person or the person's legal representative to be informed that a determination is to be made, and
    - (b) if the appropriate decision-maker is a qualifying police officer, the officer must consult a qualifying prosecutor.
  - (6) In determining whether to give an authorisation under subsection (3) in relation to a person, the appropriate decision-maker must consider any representations made by the person or the person's legal representative.
  - (7) The appropriate decision-maker must arrange for the person or the person's legal representative to be informed whether an authorisation under subsection (3) has been given in relation to the person.
  - (8) Any designation under subsection (2) must be made, and any authorisation under subsection (3) must be given, before the applicable bail period in relation to the person has ended.
  - (9) In this section—
    - “qualifying police officer” means a police officer of the rank of commander or assistant chief constable or above, and
    - “qualifying prosecutor” means a prosecutor of the description designated for the purposes of this section by the Chief Executive of the Financial Conduct Authority, the Director of the Serious Fraud Office or the Director of Public Prosecutions.

#### **47ZF Applicable bail period: first extension of limit by court**

- (1) This section applies in relation to a person if—
  - (a) the person's case is an SFO case,
  - (b) a senior officer has authorised an extension of the applicable bail period in relation to the person under section 47ZD, or

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- (c) an appropriate decision-maker has authorised an extension of the applicable bail period in relation to the person under section 47ZE.
- (2) Before the applicable bail period in relation to the person ends a qualifying applicant may apply to a magistrates' court for it to authorise an extension of the applicable bail period in relation to the person under this section.
- (3) If the court is satisfied that—
  - (a) conditions B to D are met in relation to the person, and
  - (b) the case does not fall within subsection (7),it may authorise the applicable bail period to be extended as specified in subsection (4).
- (4) The applicable bail period is to end—
  - (a) in a case falling within subsection (1)(a) or (b), at the end of the period of 6 months beginning with the person's bail start date;
  - (b) in a case falling within subsection (1)(c), at the end of the period of 9 months beginning with the person's bail start date.
- (5) If the court is satisfied that—
  - (a) conditions B to D are met in relation to the person, and
  - (b) the case falls within subsection (7),it may authorise the applicable bail period to be extended as specified in subsection (6).
- (6) The applicable bail period is to end—
  - (a) in a case falling within subsection (1)(a) or (b), at the end of the period of 9 months beginning with the person's bail start date;
  - (b) in a case falling within subsection (1)(c), at the end of the period of 12 months beginning with the person's bail start date.
- (7) A case falls within this subsection if the nature of the decision or further investigations mentioned in condition B means that that decision is unlikely to be made or those investigations completed if the applicable bail period in relation to the person is not extended as specified in subsection (6).
- (8) In this section “qualifying applicant” means—
  - (a) a constable,
  - (b) a member of staff of the Financial Conduct Authority who is of the description designated for the purposes of this subsection by the Chief Executive of the Authority,
  - (c) a member of the Serious Fraud Office, or
  - (d) a Crown Prosecutor.

#### **47ZG Applicable bail period: subsequent extensions of limit by court**

- (1) Subsections (2) to (6) apply where a court has authorised an extension of the applicable bail period in relation to a person under section 47ZF.
- (2) Before the applicable bail period in relation to the person ends a qualifying applicant may apply to a magistrates' court for it to authorise an extension of the applicable bail period in relation to the person under this section.

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- (3) If the court is satisfied that—
- (a) conditions B to D are met in relation to the person, and
  - (b) the case does not fall within subsection (8),
- it may authorise the applicable bail period to be extended as specified in subsection (4).
- (4) The applicable bail period is to end at the end of the period of 3 months beginning with the end of the current applicable bail period in relation to the person.
- (5) If the court is satisfied that—
- (a) conditions B to D are met in relation to the person, and
  - (b) the case falls within subsection (8),
- it may authorise the applicable bail period to be extended as specified in subsection (6).
- (6) The applicable bail period is to end at the end of the period of 6 months beginning with the end of the current applicable bail period in relation to the person.
- (7) Where a court has authorised an extension of the applicable bail period in relation to a person under subsection (3) or (5), a qualifying applicant may make further applications under subsection (2) (and subsections (3) to (6) apply accordingly).
- (8) A case falls within this subsection if the nature of the decision or further investigations mentioned in condition B means that that decision is unlikely to be made or those investigations completed if the current applicable bail period in relation to the person is not extended as specified in subsection (6).
- (9) For the purposes of this section—
- (a) references to the current applicable bail period in relation to a person are to the applicable bail period applying to the person when the application under this section is made (subject to section 47ZJ(3)), and
  - (b) “qualifying applicant” has the same meaning as in section 47ZF.

#### **47ZH Sections 47ZF and 47ZG: withholding sensitive information**

- (1) This section applies where a qualifying applicant makes an application to a magistrates' court under section 47ZF or 47ZG in relation to a person.
- (2) The qualifying applicant may apply to the court for it to authorise the specified information to be withheld from the person and any legal representative of the person.
- (3) The court may grant an application under subsection (2) only if satisfied that there are reasonable grounds for believing that the specified information is sensitive information.
- (4) For the purposes of this section information is sensitive information if its disclosure would have one or more of the following results—
- (a) evidence connected with an indictable offence would be interfered with or harmed;

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- (b) a person would be interfered with or physically injured;
  - (c) a person suspected of having committed an indictable offence but not yet arrested for the offence would be alerted;
  - (d) the recovery of property obtained as a result of an indictable offence would be hindered.
- (5) In this section “specified information” means the information specified in the application under subsection (2).

#### **47ZI Sections 47ZF to 47ZH: proceedings in magistrates' court**

- (1) An application made to a magistrates' court under section 47ZF or 47ZG in relation to a person is to be determined by a single justice of the peace on written evidence unless subsection (2) or (3) applies.
- (2) This subsection applies if—
- (a) the effect of the application would be to extend the applicable bail period in relation to the person so that it ends at or before the end of the period of 12 months beginning with the person's bail start date, and
  - (b) a single justice of the peace considers that the interests of justice require an oral hearing.
- (3) This subsection applies if—
- (a) the effect of the application would be to extend the applicable bail period in relation to the person so that it ends after the end of the period of 12 months beginning with the person's bail start date, and
  - (b) the person, or the person who made the application, requests an oral hearing.
- (4) If subsection (2) or (3) applies, the application is to be determined by two or more justices of the peace sitting otherwise than in open court.
- (5) Where an application under section 47ZF or 47ZG in relation to a person is to be determined as mentioned in subsection (4), the justices may direct that the person and any legal representative of the person be excluded from any part of the hearing.
- (6) The justices may give a direction under subsection (5) only if satisfied that there are reasonable grounds for believing that sensitive information would be disclosed at the part of the hearing in question.
- (7) An application under section 47ZH is to be determined by a single justice of the peace on written evidence unless the justice determines that the interests of justice require an oral hearing.
- (8) If the justice makes a determination under subsection (7)—
- (a) the application is to be determined by two or more justices of the peace sitting otherwise than in open court, and
  - (b) the justices hearing the application must direct that the person to whom the application relates and any legal representative of the person be excluded from the hearing.
- (9) In this section “sensitive information” has the meaning given in section 47ZH(4).

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### **47ZJ Sections 47ZF and 47ZG: late applications to magistrates' court**

- (1) This section applies where—
  - (a) an application under section 47ZF or 47ZG is made to a magistrates' court before the end of the applicable bail period in relation to a person, but
  - (b) it is not practicable for the court to determine the application before the end of that period.
- (2) The court must determine the application as soon as is practicable.
- (3) The applicable bail period in relation to the person is to be treated as extended until the application is determined.
- (4) If it appears to the court that it would have been reasonable for the application to have been made in time for it to have been determined by the court before the end of the applicable bail period in relation to the person, it may refuse the application.

### **47ZK Rules**

Criminal Procedure Rules may make provision in connection with applications under sections 47ZF, 47ZG and 47ZH and the proceedings for determining such applications.

### **47ZL Applicable bail period and bail return date: special case of release on bail under section 37(7)(a) or 37C(2)(b)**

- (1) This section applies where a person is released on bail under section 37(7)(a) or 37C(2)(b).
- (2) The running of the applicable bail period in relation to the person—
  - (a) does not begin (in the case of a first release on bail), or
  - (b) is suspended (in any other case),
 (subject to subsection (6)).
- (3) Accordingly section 47ZA does not apply to the exercise of the power mentioned in section 47ZA(1) when releasing the person on bail.
- (4) Subsections (5) and (6) apply if a DPP request is made in relation to the person.
- (5) A custody officer must exercise the power mentioned in section 47(4A) to appoint a different time for the person to attend at the police station (and section 47(4B) to (4D) applies accordingly).
- (6) The applicable bail period in relation to the person—
  - (a) begins to run on the day on which the DPP request is made (in the case of a first release on bail), or
  - (b) resumes running on that day (in any other case).
- (7) Subsection (8) applies where—
  - (a) a DPP request has been made in relation to the person, and

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- (b) the applicable bail period in relation to the person would end before the end of the period of 7 days beginning with the day on which the DPP request was made.
- (8) The running of the applicable bail period in relation to the person is suspended for the number of days necessary to secure that the applicable bail period ends at the end of the period of 7 days beginning with the day on which the DPP request was made.
- (9) Subsections (10) and (11) apply if the DPP request made in relation to the person is met.
- (10) The running of the applicable bail period in relation to the person is suspended.
- (11) Accordingly section 47(4D) does not apply to any exercise of the power under section 47(4A).
- (12) For the purposes of this section—
  - (a) a “DPP request”, in relation to a person, means a request by the Director of Public Prosecutions for the further information specified in the request to be provided before the Director decides under section 37B(2) whether there is sufficient evidence to charge the person with the relevant offence,
  - (b) a DPP request is met when the further information specified in the request is provided, and
  - (c) references to the case of a first release on bail are to a case where the person has not been released on bail in relation to the relevant offence under any other provision of this Part or under section 30A.

#### **47ZM Applicable bail period: special cases of release on bail under section 30A and periods in hospital**

- (1) Subsections (2) and (3) apply where a person was released on bail under section 30A.
- (2) The period of 28 days mentioned in section 30B(8) in relation to the person is to be treated as being the period of 28 days mentioned in section 47ZB(1)(b) in relation to the person.
- (3) Any reference to the relevant offence, in relation to the person, is to be read as a reference to the offence in respect of which the power in section 30A(1) was exercised.
- (4) Subsection (5) applies if, at any time on the day on which the applicable bail period in relation to a person would end, the person is in hospital as an in-patient.
- (5) The running of the applicable bail period in relation to the person is to be treated as having been suspended for any day on which the patient was in hospital as an in-patient.”

#### **Commencement Information**

**I12** S. 63 in force for specified purposes at Royal Assent, see s. 183

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## 64 Section 63: consequential amendments

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) Section 37D (release on bail under section 37) is amended as follows.
- (3) Omit subsections (1) to (3).
- (4) In subsections (4) to (5) for “subsection (1) above” substitute “ section 47(4A) ”.
- (5) Section 47 (bail after arrest) is amended as follows.
- (6) In subsection (3)(c) at the end insert “ (subject to section 47ZA) ”.
- (7) After subsection (4) insert—
  - “(4A) Where a person has been granted bail under this Part subject to a duty to attend at a police station, a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.
  - (4B) The custody officer must give the person notice in writing of the exercise of the power under subsection (4A).
  - (4C) The exercise of the power under subsection (4A) does not affect the conditions of bail (if any).
  - (4D) A custody officer may not appoint a time for a person's attendance under subsection (4A) which is after the end of the applicable bail period in relation to the person.
  - (4E) Subsection (4D) is subject to section 47ZL.”
- (8) In the Criminal Justice Act 2003—
  - (a) in section 24A(5)(b) (purposes for which person may be kept in police detention) for “section 37D(1)” substitute “ section 47(4A) ”, and
  - (b) in section 24B(5) (application of provisions of the Police and Criminal Evidence Act 1984)—
    - (i) omit paragraph (a), and
    - (ii) in paragraph (c) at the end insert “ except subsections (4D) and (4E) ”.

### Commencement Information

**I13** S. 64 in force for specified purposes at Royal Assent, see s. 183

### *Re-arrest of person released under provisions of PACE*

## 65 Release under provisions of PACE: re-arrest

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 30C(4) (re-arrest without warrant of person released under section 30A) for the words from “new” to the end substitute “ , since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release ”.



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- (3) In section 41(9) (re-arrest without warrant of person released under section 41(7)) for the words from “new” to “since” substitute “, since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before”.
- (4) In section 42(11) (re-arrest without warrant of person released under section 42(10)) for the words from “new” to “since” substitute “, since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before”.
- (5) In section 43(19) (re-arrest without warrant of person released under section 43(18)) for the words from “new” to “since” substitute “, since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before”.
- (6) In section 47(2) (re-arrest without warrant of person released on bail subject to a duty to attend at a police station) for the words from “new” to the end substitute “, since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release”.

#### **Commencement Information**

**I14** S. 65 in force for specified purposes at Royal Assent, see s. 183

#### *Notification of decision not to prosecute*

### **66 Duty to notify person released under section 34, 37 or 37CA of PACE that not to be prosecuted**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 34 (limitations on police detention) after subsection (5A) (inserted by section 54 of this Act) insert—
  - “(5B) Subsection (5C) applies where—
    - (a) a person is released under subsection (5), and
    - (b) the custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (5C) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (5D) Subsection (5C) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.
- (5E) In this Part “caution” includes—

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- (a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;
  - (b) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;
  - (c) a youth caution under section 66ZA of that Act.”
- (3) Section 37 (duties of custody officer before charge) is amended as follows.
- (4) After subsection (6) insert—
- “(6A) Subsection (6B) applies where—
- (a) a person is released under subsection (2), and
  - (b) the custody officer determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (6B) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (6C) Subsection (6B) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (5) After subsection (8) insert—
- “(8ZA) Where—
- (a) a person is released under subsection (7)(b) or (c), and
  - (b) the custody officer makes a determination as mentioned in subsection (6A)(b),
- subsections (6B) and (6C) apply.”
- (6) Section 37B (consultation with Director of Public Prosecutions) is amended as follows.
- (7) After subsection (5) insert—
- “(5A) Subsection (5) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (8) Omit subsection (9).
- (9) In section 37CA (release following arrest for breach of bail) after subsection (4) insert—
- “(5) Subsection (6) applies where—
- (a) a person is released under subsection (2), and
  - (b) a custody officer determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.

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- (6) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (7) Subsection (6) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (10) In section 24B(2) of the Criminal Justice Act 2003 (application of provisions of Police and Criminal Evidence Act 1984)—
  - (a) in paragraph (d) for “(5)” substitute “ (5E) ”, and
  - (b) in paragraph (f) for “(6)” substitute “ (6C) ”.

#### Commencement Information

**I15** S. 66 in force for specified purposes at Royal Assent, see s. 183

### **67 Duty to notify person released under any of sections 41 to 44 of PACE that not to be prosecuted**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 41 (limits on period of detention without charge) after subsection (9) insert—
  - “(10) Subsection (11) applies where—
    - (a) a person is released under subsection (7), and
    - (b) a custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
  - (11) The custody officer must give the person notice in writing that the person is not to be prosecuted.
  - (12) Subsection (11) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (3) In section 42 (authorisation of continued detention) after subsection (11) insert—
  - “(12) Subsection (13) applies where—
    - (a) a person is released under subsection (10), and
    - (b) a custody officer determines that—
      - (i) there is not sufficient evidence to charge the person with an offence, or
      - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
  - (13) The custody officer must give the person notice in writing that the person is not to be prosecuted.

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- (14) Subsection (13) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (4) In section 43 (warrants of further detention) after subsection (19) insert—
- “(20) Subsection (21) applies where—
- (a) a person is released under subsection (15) or (18), and
  - (b) a custody officer determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (21) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (22) Subsection (21) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”
- (5) In section 44 (extension of warrants of further detention) after subsection (8) insert—
- “(9) Subsection (10) applies where—
- (a) a person is released under subsection (7), and
  - (b) a custody officer determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (10) The custody officer must give the person notice in writing that the person is not to be prosecuted.
- (11) Subsection (10) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.”

#### **Commencement Information**

**I16** S. 67 in force for specified purposes at Royal Assent, see s. 183

### *Breach of pre-charge bail conditions relating to travel*

## **68 Offence of breach of pre-charge bail conditions relating to travel**

- (1) This section applies where—
- (a) a person is arrested under section 24 of the Police and Criminal Evidence Act 1984, or under Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), in respect of an offence mentioned in section 41(1) or (2) of the Counter-Terrorism Act 2008,
  - (b) the person is released without charge and on bail under Part 4 of the 1984 Act or (as the case may be) Part 5 of the 1989 Order, and

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- (c) the release on bail is subject to a travel restriction condition.
- (2) Each of the following is a travel restriction condition—
- (a) a condition that the person must not leave the United Kingdom,
  - (b) a condition that the person must not enter any port, or one or more particular ports, in the United Kingdom,
  - (c) a condition that the person must not go to a place in Northern Ireland that is within one mile of the border between Northern Ireland and the Republic of Ireland,
  - (d) a condition that the person must surrender all of his or her travel documents or all of his or her travel documents that are of a particular kind,
  - (e) a condition that the person must not have any travel documents, or travel documents of a particular kind, in his or her possession (whether the documents relate to that person or to another person),
  - (f) a condition that the person must not obtain, or seek to obtain, any travel documents (whether relating to that person or to another person) or travel documents of a particular kind.
- (3) The person commits an offence if—
- (a) the person's release on bail is subject to the travel restriction condition mentioned in subsection (2)(a) and he or she fails to comply with the condition, or
  - (b) the person's release on bail is subject to a travel restriction condition mentioned in subsection (2)(b) to (f) and he or she fails, without reasonable excuse, to comply with the condition.
- (4) A person guilty of an offence under subsection (3) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months (or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months) or to a fine, or to both;
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine, or to both.
- (5) Where an offence under this section is committed by a person released without charge and on bail under Part 4 of the Police and Criminal Evidence Act 1984, the offence is to be treated as having been committed in England and Wales (whether or not the conduct constituting the offence took place there).
- (6) Where an offence under this section is committed by a person released without charge and on bail under Part 5 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), the offence is to be treated as having been committed in Northern Ireland (whether or not the conduct constituting the offence took place there).
- (7) Section 69 defines words used in subsection (2).

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**Commencement Information**

**I17** S. 68 in force for specified purposes at Royal Assent, see s. 183

**69 Offence of breach of pre-charge bail conditions relating to travel: interpretation**

- (1) This section defines words used in section 68(2).
- (2) “Travel document” means anything that is or appears to be—
  - (a) a passport, or
  - (b) a ticket or other document that permits a person to make a journey by any means from a place within the United Kingdom to a place outside the United Kingdom.
- (3) “Passport” means—
  - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
  - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
  - (c) a document that can be used (in some or all circumstances) instead of a passport.
- (4) “Port” means—
  - (a) an airport,
  - (b) a sea port,
  - (c) a hoverport,
  - (d) a heliport,
  - (e) a railway station where passenger trains depart for places outside the United Kingdom, or
  - (f) any other place at which a person is able, or attempting, to get on or off any craft, vessel or vehicle in connection with leaving the United Kingdom.

**Commencement Information**

**I18** S. 69 in force for specified purposes at Royal Assent, see s. 183

**CHAPTER 2**

RETENTION OF BIOMETRIC MATERIAL

**70 Retention of fingerprints and DNA profiles: PACE**

- (1) Part 5 of the Police and Criminal Evidence Act 1984 (questioning and treatment of persons by police) is amended as follows.
- (2) In section 63F (retention of section 63D material: persons arrested for or charged with a qualifying offence), after subsection (2) insert—

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“(2A) In subsection (2), references to a recordable offence include an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (and, in the application of subsection (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

(3) In that section, after subsection (11) insert—

“(12) For the purposes of the definition of “excluded offence” in subsection (11)—

- (a) references to a recordable offence or a qualifying offence include an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence or (as the case may be) a qualifying offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted), and
- (b) in the application of paragraph (b) of that definition in relation to an offence under the law of a country or territory outside England and Wales, the reference to a relevant custodial sentence of 5 years or more is to be read as a reference to a sentence of imprisonment or other form of detention of 5 years or more.”

(4) In section 63H (retention of section 63D material: persons arrested for or charged with a minor offence), after subsection (2) insert—

“(2A) In subsection (2), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

(5) In that section, in subsection (3), after “section 63F(11)” insert “ (read with section 63F(12)) ”.

(6) After section 63I insert—

**“63IA Retention of material: persons convicted of an offence outside England and Wales after taking of section 63D material**

(1) This section applies where—

- (a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,
- (b) at any time before the material is required to be destroyed by virtue of this Part of this Act, the person is convicted of an offence under the law of a country or territory outside England and Wales, and
- (c) the act constituting the offence mentioned in paragraph (b) would constitute a recordable offence if done in England and Wales.

(2) The material may be retained indefinitely.

(3) This section does not apply where section 63KA applies.”

(7) In the heading of section 63J, at the end insert “ : other cases ”.

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(8) In section 63K (retention of section 63D material: exception for persons under 18 convicted of minor offence), after subsection (1) insert—

“(1A) In subsection (1)(a)(ii), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

(9) In that section, after subsection (5) insert—

“(5A) In subsection (5), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.”

(10) After section 63K insert—

**“63KA Retention of section 63D material under section 63IA: exception for persons under 18 convicted of first minor offence outside England and Wales**

- (1) This section applies where—
- (a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,
  - (b) at any time before the material is required to be destroyed by virtue of this Part of this Act, the person is convicted of an offence under the law of a country or territory outside England and Wales,
  - (c) the act constituting the offence mentioned in paragraph (b) would constitute a recordable offence if done in England and Wales but would not constitute a qualifying offence,
  - (d) the person is aged under 18 at the time of the offence mentioned in paragraph (b), and
  - (e) the person has not previously been convicted of a recordable offence.
- (2) In subsection (1)(e), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).
- (3) Where the person is sentenced to imprisonment or another form of detention for less than 5 years in respect of the offence mentioned in subsection (1)(b), the section 63D material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
- (4) Where the person is sentenced to imprisonment or another form of detention for 5 years or more in respect of the offence mentioned in subsection (1)(b), the material may be retained indefinitely.
- (5) Where the person is given a sentence other than a sentence of imprisonment or other form of detention in respect of the offence mentioned in subsection (1)(b), the material may be retained until the end of the period of 5 years



*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

beginning with the date on which the person was arrested for the offence (or, if the person was not arrested for the offence, the date on which the person was charged with it).

- (6) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of a recordable offence, the material may be retained indefinitely.
  - (7) In subsection (6), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.”
- (11) In section 63N (retention of section 63D material given voluntarily), after subsection (4) insert—
- “(5) The reference to a recordable offence in subsection (3)(a) includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.
  - (6) The reference to a recordable offence in subsections (3)(b) and (4), and the reference to a qualifying offence in subsection (4), includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence or (as the case may be) a qualifying offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

#### **Commencement Information**

**119** S. 70 in force for specified purposes at Royal Assent, see s. 183

## **71 Retention of fingerprints and DNA profiles: Terrorism Act 2000**

- (1) Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.
- (2) In paragraph 20B (retention of paragraph 20A material: persons detained under section 41), after sub-paragraph (2) insert—
  - “(2A) In sub-paragraph (2) —
    - (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—
      - (i) a recordable offence under the law of England and Wales if done there, or
      - (ii) a recordable offence under the law of Northern Ireland if done there,
    - (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);
    - (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the

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offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

- (3) In paragraph 20C (retention of paragraph 20A material: persons detained under Schedule 7), after sub-paragraph (2) insert—

“(2A) In sub-paragraph (2) —

- (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—

- (i) a recordable offence under the law of England and Wales if done there, or  
 (ii) a recordable offence under the law of Northern Ireland if done there,

(and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);

- (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

- (4) In paragraph 20D (interpretation), after sub-paragraph (5) insert—

“(5A) For the purposes of sub-paragraph (4)—

- (a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if—

- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and  
 (ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);

- (b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—

- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and  
 (ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);

- (c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—

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- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
  - (ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if done there (whether or not it constituted such an offence when the person was convicted);
- (d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).
- (5B) For the purposes of paragraphs 20B and 20C and this paragraph—
- (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
  - (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
    - (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
    - (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.”

#### Commencement Information

**I20** S. 71 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 3

### POWERS UNDER PACE: MISCELLANEOUS

#### 72 PACE: entry and search of premises for the purpose of arrest

In section 17 of the Police and Criminal Evidence Act 1984 (entry for the purpose of arrest) after subsection (1)(caa) insert—

- “(cab) of arresting a person under any of the following provisions—
- (i) section 30D(1) or (2A);
  - (ii) section 46A(1) or (1A);
  - (iii) section 5B(7) of the Bail Act 1976 (arrest where a person fails to surrender to custody in accordance with a court order);
  - (iv) section 7(3) of the Bail Act 1976 (arrest where a person is not likely to surrender to custody etc);

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (v) section 97(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (arrest where a child is suspected of breaking conditions of remand);”.

**Commencement Information**

**I21** S. 72 in force for specified purposes at Royal Assent, see s. 183

**73 PACE: treatment of those aged 17**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 30A (bail elsewhere than at police station), in subsection (3B)(d), for “under the age of 17” substitute “ under the age of 18 ”.
- (3) In section 63B (testing for presence of class A drugs)—
  - (a) in subsection (5A), for “has not attained the age of 17” substitute “ has not attained the age of 18 ”;
  - (b) in subsection (10), in the definition of “appropriate adult”, for “has not attained the age of 17” substitute “ has not attained the age of 18 ”.
- (4) In section 65 (which makes provision to supplement the provisions of Part 5 on the questioning and treatment of persons by the police), in subsection (1), in the definition of “appropriate consent”, in paragraph (a), for “has attained the age of 17 years” substitute “ has attained the age of 18 years ”.

**Commencement Information**

**I22** S. 73 in force for specified purposes at Royal Assent, see s. 183

**74 PACE: detention: use of live links**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) After section 45 insert—

*“Use of live links*

**45ZA Functions of extending detention: use of live links**

- (1) The functions of a police officer under section 42(1) or (2) may be performed, in relation to an arrested person who is held at a police station, by an officer who is not present at the police station but has access to the use of a live link if—
  - (a) a custody officer considers that the use of the live link is appropriate,
  - (b) the arrested person has had advice from a solicitor on the use of the live link, and
  - (c) the appropriate consent to the use of the live link has been given.
- (2) In subsection (1)(c), “the appropriate consent” means—

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*Status: Point in time view as at 31/01/2017.*

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- (a) in relation to a person who has attained the age of 18, the consent of that person;
  - (b) in relation to a person who has not attained that age but has attained the age of 14, the consent of that person and of his or her parent or guardian;
  - (c) in relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.
- (3) The consent of a person who has not attained the age of 18 (but has attained the age of 14), or who is a vulnerable adult, may only be given in the presence of an appropriate adult.
- (4) Section 42 applies with the modifications set out in subsections (5) to (7) below in any case where the functions of a police officer under that section are, by virtue of subsection (1), performed by an officer who is not at the police station where the arrested person is held.
- (5) Subsections (5)(b) and (9)(iii) and (iv) of that section are each to be read as if, instead of requiring the officer to make a record, they required the officer to cause another police officer to make a record.
- (6) Subsection (6) of that section is to be read as if it required the officer to give the persons mentioned in that subsection an opportunity to make representations—
- (a) if facilities exist for the immediate transmission of written representations to the officer, either in writing by means of those facilities or orally by means of the live link, or
  - (b) in any other case, orally by means of the live link.
- (7) Subsection (9) of that section is to be read as if the reference in paragraph (b) to the right conferred by section 58 were omitted.
- (8) In this section—
- “live link” means an arrangement by which an officer who is not present at the police station where an arrested person is held is able to see and hear, and to be seen and heard by, the arrested person and the arrested person's solicitor (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- “vulnerable adult” means a person aged 18 or over who may have difficulty understanding the purpose of an authorisation under section 42(1) or (2) or anything that occurs in connection with a decision whether to give such an authorisation (whether because of a mental disorder or for any other reason);
- “appropriate adult”, in relation to a person who has not attained the age of 18, means—
- (a) the person's parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
  - (b) a social worker of a local authority, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes;
- “appropriate adult”, in relation to a vulnerable adult, means—

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- (a) a relative, guardian or other person responsible for the vulnerable adult's care,
  - (b) a person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed for, or engaged on, police purposes, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.
- (9) In subsection (8), in both definitions of “appropriate adult”, “police purposes” has the meaning given by section 101(2) of the Police Act 1996.

#### **45ZB Warrants for further detention: use of live links**

- (1) A magistrates' court may give a live link direction for the purpose of the hearing of an application under section 43 for a warrant authorising further detention of a person, or the hearing of an application under section 44 for an extension of such a warrant, if—
- (a) a custody officer considers that the use of a live link for that purpose is appropriate,
  - (b) the person to whom the application relates has had legal advice on the use of the live link,
  - (c) the appropriate consent to the use of the live link has been given, and
  - (d) it is not contrary to the interests of justice to give the direction.
- (2) In subsection (1)(c), “the appropriate consent” means—
- (a) in relation to a person who has attained the age of 18, the consent of that person;
  - (b) in relation to a person who has not attained that age but has attained the age of 14, the consent of that person and of his or her parent or guardian;
  - (c) in relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.
- (3) Where a live link direction is given, the requirement under section 43(2)(b) for the person to whom the application relates to be brought before the court for the hearing does not apply.
- (4) In this section—
- “live link direction” means a direction that a live link be used for the purposes of the hearing;
  - “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);
  - “vulnerable adult” means a person aged 18 or over who may have difficulty understanding the purpose of the hearing or what occurs at it (whether because of a mental disorder or for any other reason);
  - “appropriate adult”, in relation to a person aged under 18, means—

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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) the person's parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
  - (b) a social worker of a local authority, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes;  
“appropriate adult”, in relation to a vulnerable adult, means—
    - (a) a relative, guardian or other person responsible for the appropriate adult's care,
    - (b) a person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed for, or engaged on, police purposes, or
    - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.
- (5) In subsection (4), in both definitions of “appropriate adult”, “police purposes” has the meaning given by section 101(2) of the Police Act 1996.”
- (3) In section 45 (detention before charge-supplementary), in subsection (1), for “sections 43 and 44” substitute “ sections 43, 44 and 45ZB ”.
- (4) In section 45A—
  - (a) for the heading substitute “ Use of live links for other decisions about detention ”;
  - (b) in subsection (1)(b), for the words from “video-conferencing facilities” to the end substitute “ a live link ”;
  - (c) in subsection (3), for “the facilities mentioned in subsection (1) above” substitute “ a live link ”;
  - (d) in subsection (7), in each of paragraphs (a)(i) and (b), for “the video-conferencing facilities” substitute “ the live link ”;
  - (e) for subsection (10) substitute—

“(10) In this section, “live link”, in relation to any functions, means an arrangement by which the functions may be performed by an officer who is not present at the police station where an arrested person is held but who is able (for the purpose of the functions) to see and hear, and to be seen and heard by, the arrested person and any legal representative of that person (and for this purpose any impairment of eyesight or hearing is to be disregarded).”
- (5) In consequence of the amendments made by subsection (4), in section 40A—
  - (a) in subsection (2)(a), for “video-conferencing facilities” substitute “ a live link ”;
  - (b) in subsection (5), for “video-conferencing facilities” substitute “ live link ”.

#### Commencement Information

**I23** S. 74 in force for specified purposes at Royal Assent, see s. 183

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

## 75 PACE: interviews: use of live links

- (1) Section 39 of the Police and Criminal Evidence Act 1984 (responsibilities in relation to persons detained) is amended as follows.
- (2) In subsection (2)(a), for “a police officer investigating an offence for which that person is in police detention” substitute “ another police officer at the police station where the person is in police detention, for the purpose of an interview that is part of the investigation of an offence for which the person is in police detention or otherwise in connection with the investigation of such an offence ”.
- (3) After subsection (3) insert—
  - “(3A) Subsections (3B) and (3C) apply if the custody officer, in accordance with any code of practice issued under this Act, transfers or permits the transfer of a person in police detention to an officer mentioned in subsection (2)(a) for the purpose of an interview that is to be conducted to any extent by means of a live link by another police officer who is investigating the offence but is not at the police station where the person in police detention is held at the time of the interview.
  - (3B) The officer who is not at the police station has the same duty as the officer mentioned in subsection (2)(a) to ensure that the person is treated in accordance with the provisions of this Act and of any such codes of practice as are mentioned in subsection (1).
  - (3C) If the person detained is subsequently returned to the custody of the custody officer, the officer who is not at the police station also has the same duty under subsection (3) as the officer mentioned in subsection (2)(a).
  - (3D) For the purpose of subsection (3C), subsection (3) applies as if the reference to “in his custody” were a reference to “being interviewed”.
  - (3E) In subsection (3A), “live link” means an arrangement by which the officer who is not at the police station is able to see and hear, and to be seen and heard by, the person in police detention, any legal representative of that person and the officer who has custody of that person at the police station (and for this purpose any impairment of eyesight or hearing is to be disregarded).”

### Commencement Information

**I24** S. 75 in force for specified purposes at Royal Assent, see s. 183

## 76 PACE: audio recording of interviews

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 60 (which currently makes provision about the tape-recording of interviews) —
  - (a) in subsection (1), in each of paragraphs (a) and (b), for “tape-recording” substitute “ audio recording ”;
  - (b) in the heading of the section, for “Tape-recording” substitute “ Audio recording ”.



*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (3) In section 113 (application of Act to armed forces), in subsection (4)(a), for “tape-recording” substitute “ audio recording ”.

**Commencement Information**

**I25** S. 76 in force for specified purposes at Royal Assent, otherwise 31.3.2017, see s. 183

**77 PACE: duty to notify person interviewed that not to be prosecuted**

After section 60A of the Police and Criminal Evidence Act 1984 insert—

**“60B Notification of decision not to prosecute person interviewed**

- (1) This section applies where—
- (a) a person suspected of the commission of a criminal offence is interviewed by a police officer but is not arrested for the offence, and
  - (b) the police officer in charge of investigating the offence determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (2) A police officer must give the person notice in writing that the person is not to be prosecuted.
- (3) Subsection (2) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.
- (4) In this section “caution” includes—
- (a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;
  - (b) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;
  - (c) a youth caution under section 66ZA of that Act.”

**Commencement Information**

**I26** S. 77 in force for specified purposes at Royal Assent, see s. 183

**78 PACE: consultation on codes of practice**

In section 67 of the Police and Criminal Evidence Act 1984 (codes of practice: supplementary), after subsection (4) insert—

- “(4A) The duty to consult under subsection (4) does not apply to a revision of a code where the Secretary of State considers that—
- (a) the revision is necessary in consequence of legislation, and
  - (b) the Secretary of State has no discretion as to the nature of the revision.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

(4B) Where, in consequence of subsection (4A), a revision of a code is issued without prior consultation with the persons mentioned in subsection (4), the Secretary of State must (at the same time as issuing the revision) publish a statement that, in his or her opinion, paragraphs (a) and (b) of subsection (4A) apply to the revision.

(4C) In subsection (4A), “legislation” means any provision of—

- (a) an Act,
- (b) subordinate legislation within the meaning of the Interpretation Act 1978.”

**Commencement Information**

**I27** S. 78 in force for specified purposes at Royal Assent, see s. 183

**79 Definition of “appropriate adult” in criminal justice legislation**

- (1) In section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs), in subsection (10), in paragraph (c), in the definition of “appropriate adult”, for “a person employed by the police” substitute “ a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996 ”.
- (2) In section 66ZA of the Crime and Disorder Act 1998 (youth cautions), in subsection (7) (which defines “appropriate adult”), in paragraph (d), for “a person employed by the police” substitute “ a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996 ”.
- (3) In section 161 of the Criminal Justice Act 2003 (pre-sentence drug testing), in subsection (8) (which defines “appropriate adult”), in paragraph (c), for “a person employed by the police” substitute “ a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996 ”.

**Commencement Information**

**I28** S. 79 in force for specified purposes at Royal Assent, see s. 183

**CHAPTER 4**

POWERS UNDER THE MENTAL HEALTH ACT 1983

**80 Extension of powers under sections 135 and 136 of the Mental Health Act 1983**

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), after subsection (1) insert—

*Status: Point in time view as at 31/01/2017.*

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- “(1A) If the premises specified in the warrant are a place of safety, the constable executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises for the purpose mentioned in subsection (1).”
- (3) In subsection (3) of that section—
- (a) for “under this section” substitute “under subsection (1)”;
  - (b) before “may” insert “, or kept at the premises specified in the warrant under subsection (1A),”.
- (4) In section 136 (mentally disordered persons found in public places), for subsection (1) substitute—
- “(1) If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons—
- (a) remove the person to a place of safety within the meaning of section 135, or
  - (b) if the person is already at a place of safety within the meaning of that section, keep the person at that place or remove the person to another place of safety.
- (1A) The power of a constable under subsection (1) may be exercised where the mentally disordered person is at any place, other than—
- (a) any house, flat or room where that person, or any other person, is living, or
  - (b) any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.
- (1B) For the purpose of exercising the power under subsection (1), a constable may enter any place where the power may be exercised, if need be by force.”
- (5) After subsection (1B) of that section (inserted by subsection (4) above) insert—
- “(1C) Before deciding to remove a person to, or to keep a person at, a place of safety under subsection (1), the constable must, if it is practicable to do so, consult—
- (a) a registered medical practitioner,
  - (b) a registered nurse,
  - (c) an approved mental health professional, or
  - (d) a person of a description specified in regulations made by the Secretary of State.”
- (6) In subsection (2) of that section, for “removed to” substitute “removed to, or kept at,”.
- (7) For the heading of that section substitute “Removal etc of mentally disordered persons without a warrant”.

#### **Commencement Information**

**I29** S. 80 in force for specified purposes at Royal Assent, see s. 183

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

## 81 Restrictions on places that may be used as places of safety

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), in subsection (6), omit the words “the occupier of which is willing temporarily to receive the patient”.
- (3) After subsection (6) of that section insert—
  - “(7) For the purpose of subsection (6)—
    - (a) a house, flat or room where a person is living may not be regarded as a suitable place unless—
      - (i) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;
      - (ii) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety;
      - (iii) if the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety;
    - (b) a place other than one mentioned in paragraph (a) may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.”
- (4) After subsection (7) of that section (inserted by subsection (3) above) insert—
  - “(8) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station under this section.”
- (5) In section 136, after subsection (4) insert—
  - “(5) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station, and the keeping of persons at a police station, under this section.”
- (6) After section 136 insert—

### **“136A Use of police stations as places of safety**

- (1) A child may not, in the exercise of a power to which this section applies, be removed to, kept at or taken to a place of safety that is a police station.
- (2) The Secretary of State may by regulations—
  - (a) provide that an adult may be removed to, kept at or taken to a place of safety that is a police station, in the exercise of a power to which this section applies, only in circumstances specified in the regulations;
  - (b) make provision about how adults removed to, kept at or taken to a police station, in the exercise of a power to which this section applies, are to be treated while at the police station, including provision for review of their detention.

*Status: Point in time view as at 31/01/2017.*

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- (3) Regulations under this section—
  - (a) may make different provision for different cases;
  - (b) may make provision that applies subject to specified exceptions;
  - (c) may include incidental, supplementary or consequential provision or transitional, transitory or saving provision.
- (4) The powers to which this section applies are—
  - (a) the power to remove a person to a place of safety under a warrant issued under section 135(1);
  - (b) the power to take a person to a place of safety under section 135(3A);
  - (c) the power to remove a person to, or to keep a person at, a place of safety under section 136(1);
  - (d) the power to take a person to a place of safety under section 136(3).
- (5) In this section—
  - (a) “child” means a person aged under 18;
  - (b) “adult” means a person aged 18 or over.”

#### Commencement Information

**I30** S. 81 in force for specified purposes at Royal Assent, see s. 183

## 82 Periods of detention in places of safety etc

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients)—
  - (a) in subsection (3), for “72 hours” substitute “ the permitted period of detention ”;
  - (b) after subsection (3) insert—

“(3ZA) In subsection (3), “the permitted period of detention” means—

    - (a) the period of 24 hours beginning with—
      - (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
      - (ii) in a case where the person is kept at the premises specified in the warrant, the time when the constable first entered the premises to execute the warrant; or
    - (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.”;
  - (c) in subsection (3A), for “the period of 72 hours” substitute “ the permitted period of detention ”;
  - (d) in subsection (3B), for “the period of 72 hours” substitute “ the permitted period of detention ”.
- (3) In section 136 (mentally disordered persons found in public places)—
  - (a) in subsection (2), for “72 hours” substitute “ the permitted period of detention ”;
  - (b) after subsection (2) insert—

*Status: Point in time view as at 31/01/2017.*

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“(2A) In subsection (2), “the permitted period of detention” means—

- (a) the period of 24 hours beginning with—
  - (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
  - (ii) in a case where the person is kept at a place of safety, the time when the constable decides to keep the person at that place; or
- (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.”;
- (c) in subsection (3), for “the period of 72 hours” substitute “ the permitted period of detention ”;
- (d) in subsection (4), for “the period of 72 hours” substitute “ the permitted period of detention ”.

(4) After section 136A (inserted by section 81) insert—

**“136B Extension of detention**

- (1) The registered medical practitioner who is responsible for the examination of a person detained under section 135 or 136 may, at any time before the expiry of the period of 24 hours mentioned in section 135(3ZA) or (as the case may be) 136(2A), authorise the detention of the person for a further period not exceeding 12 hours (beginning immediately at the end of the period of 24 hours).
  - (2) An authorisation under subsection (1) may be given only if the registered medical practitioner considers that the extension is necessary because the condition of the person detained is such that it would not be practicable for the assessment of the person for the purpose of section 135 or (as the case may be) section 136 to be carried out before the end of the period of 24 hours (or, if the assessment began within that period, for it to be completed before the end).
  - (3) If the person is detained at a police station, and the assessment would be carried out or completed at the station, the registered medical practitioner may give an authorisation under subsection (1) only if an officer of the rank of superintendent or above approves it.”
- (5) In section 138 (retaking of patients escaping from custody), in subsection (3), for the words from “after the expiration of the period” to the end of the subsection substitute “—
- (a) in a case where the person escapes while being removed to a place of safety in the execution of a warrant under section 135(1) or under section 136(1), after the end of the period of 24 hours beginning with the escape;
  - (b) in a case where the person escapes after the beginning of the period that is the permitted period of detention in relation to the person under section 135(3ZA) or 136(2A), after the end of that period (taking into account any authorisation under section 136B(1) that was given before the person escaped).”

*Status: Point in time view as at 31/01/2017.*

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#### Commencement Information

**I31** S. 82 in force for specified purposes at Royal Assent, see s. 183

### 83 **Protective searches: individuals removed etc under section 135 or 136 of the Mental Health Act 1983**

After section 136B of the Mental Health Act 1983 (inserted by section 82) insert—

#### “136C Protective searches

- (1) Where a warrant is issued under section 135(1) or (2), a constable may search the person to whom the warrant relates if the constable has reasonable grounds for believing that the person—
  - (a) may present a danger to himself or herself or to others, and
  - (b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.
- (2) The power to search conferred by subsection (1) may be exercised—
  - (a) in a case where a warrant is issued under section 135(1), at any time during the period beginning with the time when a constable enters the premises specified in the warrant and ending when the person ceases to be detained under section 135;
  - (b) in a case where a warrant is issued under section 135(2), at any time while the person is being removed under the authority of the warrant.
- (3) Where a person is detained under section 136(2) or (4), a constable may search the person, at any time while the person is so detained, if the constable has reasonable grounds for believing that the person—
  - (a) may present a danger to himself or herself or to others, and
  - (b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.
- (4) The power to search conferred by subsection (1) or (3) is only a power to search to the extent that is reasonably required for the purpose of discovering the item that the constable believes the person to be concealing.
- (5) The power to search conferred by subsection (1) or (3)—
  - (a) does not authorise a constable to require a person to remove any of his or her clothing other than an outer coat, jacket or gloves, but
  - (b) does authorise a search of a person's mouth.
- (6) A constable searching a person in the exercise of the power to search conferred by subsection (1) or (3) may seize and retain anything found, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to others.
- (7) The power to search a person conferred by subsection (1) or (3) does not affect any other power to search the person.”

*Status: Point in time view as at 31/01/2017.*

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#### Commencement Information

**I32** S. 83 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 5

### MARITIME ENFORCEMENT: ENGLISH AND WELSH OFFENCES

#### *Application of maritime enforcement powers: general*

#### **84 Application of maritime enforcement powers: general**

- (1) A law enforcement officer may, for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales, exercise any of the maritime enforcement powers in relation to—
  - (a) a United Kingdom ship in England and Wales waters, foreign waters or international waters,
  - (b) a ship without nationality in England and Wales waters or international waters,
  - (c) a foreign ship in England and Wales waters or international waters, or
  - (d) a ship, registered under the law of a relevant territory, in England and Wales waters or international waters.
- (2) In this Chapter, “the maritime enforcement powers” are the powers set out in—
  - (a) section 88 (power to stop, board, divert and detain);
  - (b) section 89 (power to search and obtain information);
  - (c) section 90 (power of arrest and seizure).
- (3) The following persons are “law enforcement officers” for the purpose of this Chapter—
  - (a) a constable who is a member of a police force in England and Wales,
  - (b) a special constable appointed under section 27 of the Police Act 1996,
  - (c) a constable who is a member of the British Transport Police Force,
  - (d) a port constable, within the meaning of section 7 of the Marine Navigation Act 2013, or a person appointed to act as a constable under provision made by virtue of section 16 of the Harbours Act 1964,
  - (e) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),
  - (f) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or
  - (g) a person of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(g) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3)(g) is subject to annulment in pursuance of a resolution of either House of Parliament.



*Status: Point in time view as at 31/01/2017.*

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- (6) This section is subject to section 85 (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section).

#### Commencement Information

**I33** S. 84 in force for specified purposes at Royal Assent, see s. 183

### 85 Restriction on exercise of maritime enforcement powers

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 84(1), in relation to a United Kingdom ship in foreign waters.
- (2) The Secretary of State may give authority under subsection (1) only if the State, or the relevant territory, in whose waters the powers would be exercised consents to the exercise of the powers.
- (3) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 84(1), in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to England and Wales or in international waters.
- (4) The Secretary of State may give authority under subsection (3) in relation to a foreign ship only if—
- the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales,
  - the home state has authorised the United Kingdom to act for that purpose, or
  - the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

#### Commencement Information

**I34** S. 85 in force for specified purposes at Royal Assent, see s. 183

#### *Ships in Scotland waters: hot pursuit*

### 86 Hot pursuit of ships in Scotland waters

- (1) A law enforcement officer may, for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales, exercise any of the maritime enforcement powers in relation to a ship in Scotland waters if—
- the ship is pursued there,
  - immediately before the pursuit of the ship, the ship was in England and Wales waters or international waters,
  - before the pursuit of the ship, a signal was given for it to stop,
  - the signal was given in such a way as to be audible or visible from the ship, and
  - the pursuit of the ship is not interrupted.

*Status: Point in time view as at 31/01/2017.*

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- (2) For the purposes of subsection (1)(e), pursuit is not interrupted by reason only of the fact that—
- (a) the method of carrying out the pursuit, or
  - (b) the identity of the ship or aircraft carrying out the pursuit,
- changes during the course of the pursuit.
- (3) This section is subject to section 87 (which requires the authority of the Secretary of State before the maritime enforcement powers are exercised in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland).

#### Commencement Information

**I35** S. 86 in force for specified purposes at Royal Assent, see s. 183

### 87 Restriction on exercise of maritime enforcement powers in hot pursuit

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 86, in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland.
- (2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—
- (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

#### Commencement Information

**I36** S. 87 in force for specified purposes at Royal Assent, see s. 183

### *The maritime enforcement powers*

### 88 Power to stop, board, divert and detain

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that—
- (a) an offence under the law of England and Wales is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 84 or 86, or
  - (b) a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.
- (2) The law enforcement officer may—
- (a) stop the ship;

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- (b) board the ship;
  - (c) require the ship to be taken to a port in England and Wales or elsewhere and detained there.
- (3) Except as provided by subsection (5), the authority of the Secretary of State is required before a law enforcement officer may exercise the power conferred by subsection (2)(c) to require the ship to be taken to a port outside the United Kingdom.
- (4) The Secretary of State may give authority for the purposes of subsection (3) only if the State, or the relevant territory, in which the port is located is willing to receive the ship.
- (5) If the law enforcement officer is acting under authority given for the purposes of section 85(3) or 87(1), the law enforcement officer may require the ship to be taken to—
- (a) a port in the home state or relevant territory in question, or
  - (b) if the home state or relevant territory requests, a port in any other State or relevant territory willing to receive the ship.
- (6) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).
- (7) A law enforcement officer must give notice in writing to the master of any ship detained under this section.
- (8) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer.

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**Commencement Information**

**I37** S. 88 in force for specified purposes at Royal Assent, see s. 183

## 89 Power to search and obtain information

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of England and Wales (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 84 or 86.
- (2) The law enforcement officer may search—
- (a) the ship;
  - (b) anyone found on the ship;
  - (c) anything found on the ship (including cargo).
- (3) The law enforcement officer may require a person found on the ship to give information about himself or herself or about anything found on the ship.
- (4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).
- (5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.

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- (6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—
- (a) open any containers;
  - (b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;
  - (c) make photographs or copies of anything the production of which the law enforcement officer has power to require.
- (7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere.

**Commencement Information**

**I38** [S. 89](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**90 Power of arrest and seizure**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of England and Wales has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 84 or 86.
- (2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.
- (3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere.

**Commencement Information**

**I39** [S. 90](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Supplementary provision*

**91 Maritime enforcement powers: supplementary: protective searches**

- (1) This section applies where a power conferred by section 88 is exercised in relation to a ship.
- (2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—

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- (a) cause physical injury,
  - (b) cause damage to property, or
  - (c) endanger the safety of any ship.
- (3) The power under subsection (2) may be exercised on board the ship or elsewhere.
- (4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.
- (5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.
- (6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves.

#### Commencement Information

**I40** [S. 91](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## 92 Maritime enforcement powers: other supplementary provision

- (1) A law enforcement officer may—
- (a) be accompanied by other persons, and
  - (b) take equipment or materials,
- to assist the officer in the exercise of powers under this Chapter.
- (2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.
- (3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.
- (4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.
- (5) A law enforcement officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Chapter if the court is satisfied that—
- (a) the act was done in good faith, and
  - (b) there were reasonable grounds for doing it.
- (6) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have.

#### Commencement Information

**I41** [S. 92](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Status: Point in time view as at 31/01/2017.*

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### 93 Maritime enforcement powers: offences

- (1) A person commits an offence if the person—
  - (a) intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or
  - (b) fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.
- (2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—
  - (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
  - (b) the person intentionally fails to disclose any material particular.
- (3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine.

#### Commencement Information

**142** S. 93 in force for specified purposes at Royal Assent, see s. 183

### 94 Maritime enforcement powers: code of practice

- (1) The Secretary of State must prepare and issue a code of practice in respect of the practice to be followed by law enforcement officers when arresting a person under the power conferred by section 90.
- (2) The code must, in particular, provide guidance as to the information to be given to the person at the time of arrest (whether about procedural rights or other matters).
- (3) A failure of a law enforcement officer to comply with any provision of the code does not of itself render the law enforcement officer liable to any criminal or civil proceedings.
- (4) The code—
  - (a) is admissible in evidence in criminal and civil proceedings, and
  - (b) may be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (5) The Secretary of State may at any time revise the whole or any part of the code.
- (6) The code, or any revision of the code, does not come into operation until the Secretary of State so provides by regulations.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under this section that bring the code into operation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (9) A statutory instrument containing regulations under this section that bring a revision of the code into operation must be laid before Parliament (if the regulations are made without a draft having been laid and approved as mentioned in subsection (8)).
- (10) Where a statutory instrument, or draft of a statutory instrument, is laid under this section, the code or revision of the code to which it relates must also be laid.

#### Commencement Information

I43 S. 94 in force for specified purposes at Royal Assent, see s. 183

## 95 Interpretation

- (1) In this Chapter—

“designated NCA officer” means a National Crime Agency officer who is either or both of the following—

- (a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable;
- (b) an officer designated under that section as having the powers of a general customs official;

“England and Wales waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales;

“foreign ship” means a ship which—

- (a) is registered in a State other than the United Kingdom, or
- (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;

“foreign waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant territory or State other than the United Kingdom;

“home state”, in relation to a foreign ship, means—

- (a) the State in which the ship is registered, or
- (b) the State whose flag the ship is otherwise entitled to fly;

“international waters” means waters beyond the territorial sea of the United Kingdom or of any other State or relevant territory;

“items subject to legal privilege” has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);

“law enforcement officer” has the meaning given by section 84(3);

“maritime enforcement powers” has the meaning given by section 84(2);

“relevant territory” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) a British overseas territory;

“Scotland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Scotland;

“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

*Status: Point in time view as at 31/01/2017.*

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- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
  - (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;
- “United Kingdom ship” means a ship which—
- (a) is registered under Part 2 of the Merchant Shipping Act 1995,
  - (b) is a Government ship within the meaning of that Act,
  - (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or
  - (d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.
- (2) For the purposes of paragraph (c) of the definition of “United Kingdom ship” in subsection (1), a person has a “United Kingdom connection” if the person is—
- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
  - (b) an individual who is habitually resident in the United Kingdom, or
  - (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.
- (3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

#### **Commencement Information**

**I44** S. 95 in force for specified purposes at Royal Assent, see s. 183

## **CHAPTER 6**

### MARITIME ENFORCEMENT: SCOTTISH OFFENCES

#### *Application of maritime enforcement powers: general*

#### **96 Application of maritime enforcement powers: general**

- (1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Scotland, exercise any of the maritime enforcement powers in relation to—
- (a) a United Kingdom ship in Scotland waters, foreign waters or international waters,
  - (b) a ship without nationality in Scotland waters or international waters,
  - (c) a foreign ship in Scotland waters or international waters, or
  - (d) a ship, registered under the law of a relevant territory, in Scotland waters or international waters.
- (2) In this Chapter, “the maritime enforcement powers” are the powers set out in—
- (a) section 100 (power to stop, board, divert and detain);



*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (b) section 101 (power to search and obtain information);
  - (c) section 102 (power of arrest and seizure).
- (3) The following persons are “law enforcement officers” for the purpose of this Chapter—
- (a) a constable within the meaning of section 99 of the Police and Fire Reform (Scotland) Act 2012 (2012 asp 8),
  - (b) a constable who is a member of the British Transport Police Force,
  - (c) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),
  - (d) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or
  - (e) a person of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(e) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3)(e) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations under subsection (3)(e) may not make devolved provision except with the consent of the Scottish Ministers.
- (7) For the purpose of subsection (6), regulations under subsection (3)(e) make devolved provision if and to the extent that the effect of the regulations is to confer functions under this Chapter on a person of a description specified in the regulations and it would be within the legislative competence of the Scottish Parliament to confer those functions on persons of that description in an Act of the Scottish Parliament.
- (8) This section is subject to section 97 (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section).

#### **Commencement Information**

**I45** [S. 96](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## **97 Restriction on exercise of maritime enforcement powers**

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 96(1), in relation to a United Kingdom ship in foreign waters.
- (2) The Secretary of State may give authority under subsection (1) only if the State, or the relevant territory, in whose waters the powers would be exercised consents to the exercise of the powers.
- (3) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 96(1), in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Scotland or in international waters.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (4) The Secretary of State may give authority under subsection (3) in relation to a foreign ship only if—
- (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Scotland,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

**Commencement Information**

**I46** S. 97 in force for specified purposes at Royal Assent, see s. 183

*Ships in England and Wales waters: hot pursuit*

**98 Hot pursuit of ships in England and Wales waters**

- (1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Scotland, exercise any of the maritime enforcement powers in relation to a ship in England and Wales waters if—
- (a) the ship is pursued there,
  - (b) immediately before the pursuit of the ship, the ship was in Scotland waters or international waters,
  - (c) before the pursuit of the ship, a signal was given for it to stop,
  - (d) the signal was given in such a way as to be audible or visible from the ship, and
  - (e) the pursuit of the ship is not interrupted.
- (2) For the purposes of subsection (1)(e), pursuit is not interrupted by reason only of the fact that—
- (a) the method of carrying out the pursuit, or
  - (b) the identity of the ship or aircraft carrying out the pursuit, changes during the course of the pursuit.
- (3) This section is subject to section 99 (which requires the authority of the Secretary of State before the maritime enforcement powers are exercised in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to England and Wales).

**Commencement Information**

**I47** S. 98 in force for specified purposes at Royal Assent, see s. 183

**99 Restriction on exercise of maritime enforcement powers in hot pursuit**

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 98 in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to England and Wales.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—
- (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Scotland,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

#### Commencement Information

**I48** S. 99 in force for specified purposes at Royal Assent, see s. 183

### *The maritime enforcement powers*

#### **100 Power to stop, board, divert and detain**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that—
- (a) an offence under the law of Scotland is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 96 or 98, or
  - (b) a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.
- (2) The law enforcement officer may—
- (a) stop the ship;
  - (b) board the ship;
  - (c) require the ship to be taken to a port in Scotland or elsewhere and detained there.
- (3) Except as provided by subsection (5), the authority of the Secretary of State is required before a law enforcement officer may exercise the power conferred by subsection (2) (c) to require the ship to be taken to a port outside the United Kingdom.
- (4) The Secretary of State may give authority for the purposes of subsection (3) only if the State, or the relevant territory, in which the port is located is willing to receive the ship.
- (5) If the law enforcement officer is acting under authority given for the purposes of section 97(3) or 99(1), the law enforcement officer may require the ship to be taken to—
- (a) a port in the home state or relevant territory in question, or
  - (b) if the home state or relevant territory requests, a port in any other State or relevant territory willing to receive the ship.
- (6) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).
- (7) A law enforcement officer must give notice in writing to the master of any ship detained under this section.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (8) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer.

**Commencement Information**

**I49** S. 100 in force for specified purposes at Royal Assent, see s. 183

**101 Power to search and obtain information**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of Scotland (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 96 or 98.
- (2) The law enforcement officer may search—
- (a) the ship;
  - (b) anyone found on the ship;
  - (c) anything found on the ship (including cargo).
- (3) The law enforcement officer may require a person found on the ship to give information about himself or herself.
- (4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).
- (5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.
- (6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—
- (a) open any containers;
  - (b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;
  - (c) make photographs or copies of anything the production of which the law enforcement officer has power to require.
- (7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere.

**Commencement Information**

**I50** S. 101 in force for specified purposes at Royal Assent, see s. 183

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

## 102 Power of arrest and seizure

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of Scotland has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 96 or 98.
- (2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.
- (3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere.

### Commencement Information

**I51** [S. 102](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### *Supplementary provision*

## 103 Maritime enforcement powers: supplementary: protective searches

- (1) This section applies where a power conferred by section 100 is exercised in relation to a ship.
- (2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—
  - (a) cause physical injury,
  - (b) cause damage to property, or
  - (c) endanger the safety of any ship.
- (3) The power under subsection (2) may be exercised on board the ship or elsewhere.
- (4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.
- (5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.
- (6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves.

### Commencement Information

**I52** [S. 103](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

## **104 Maritime enforcement powers: other supplementary provision**

- (1) A law enforcement officer may—
  - (a) be accompanied by other persons, and
  - (b) take equipment or materials,
 to assist the officer in the exercise of powers under this Chapter.
- (2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.
- (3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.
- (4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.
- (5) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have.

### **Commencement Information**

**I53** [S. 104](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## **105 Maritime enforcement powers: offences**

- (1) A person commits an offence if the person—
  - (a) intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or
  - (b) fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.
- (2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—
  - (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
  - (b) the person intentionally fails to disclose any material particular.
- (3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Commencement Information**

**I54** [S. 105](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## **106 Interpretation**

- (1) In this Chapter—

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*Status: Point in time view as at 31/01/2017.*

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“designated NCA officer” means a National Crime Agency officer who is either or both of the following—

- (a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable who is entitled to exercise the powers and privileges of a Scottish constable (see paragraph 11(3) to (5) of Schedule 5 to that Act);
- (b) an officer designated under that section as having the powers of a general customs official;

“England and Wales waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales;

“foreign ship” means a ship which—

- (a) is registered in a State other than the United Kingdom, or
- (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;

“foreign waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant territory or State other than the United Kingdom;

“home state”, in relation to a foreign ship, means—

- (a) the State in which the ship is registered, or
- (b) the State whose flag the ship is otherwise entitled to fly;

“international waters” means waters beyond the territorial sea of the United Kingdom or of any other State or relevant territory;

“items subject to legal privilege” has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act);

“law enforcement officer” has the meaning given by section 96(3);

“maritime enforcement powers” has the meaning given by section 96(2);

“relevant territory” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) a British overseas territory;

“Scotland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Scotland;

“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
- (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;

“United Kingdom ship” means a ship which—

- (a) is registered under Part 2 of the Merchant Shipping Act 1995,
- (b) is a Government ship within the meaning of that Act,
- (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or
- (d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (2) For the purposes of paragraph (c) of the definition of “United Kingdom ship” in subsection (1), a person has a “United Kingdom connection” if the person is—
- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
  - (b) an individual who is habitually resident in the United Kingdom, or
  - (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.
- (3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

**Commencement Information**

**I55** S. 106 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 7

### MARITIME ENFORCEMENT: NORTHERN IRISH OFFENCES

#### *Application of maritime enforcement powers: general*

#### **107 Application of maritime enforcement powers: general**

- (1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland, exercise any of the maritime enforcement powers in relation to—
- (a) a United Kingdom ship in Northern Ireland waters,
  - (b) a ship without nationality in Northern Ireland waters,
  - (c) a foreign ship in Northern Ireland waters, or
  - (d) a ship, registered under the law of a relevant territory, in Northern Ireland waters.
- (2) In this Chapter, “the maritime enforcement powers” are the powers set out in—
- (a) section 109 (power to stop, board, divert and detain);
  - (b) section 110 (power to search and obtain information);
  - (c) section 111 (power of arrest and seizure).
- (3) The following persons are “law enforcement officers” for the purpose of this Chapter—
- (a) a constable who is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,
  - (b) a person appointed as a special constable in Northern Ireland by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847,
  - (c) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),



*Status: Point in time view as at 31/01/2017.*

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- (d) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or
  - (e) a person of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(e) are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3)(e) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations under subsection (3)(e) may not make devolved provision except with the consent of the Department of Justice in Northern Ireland.
- (7) For the purposes of subsection (6), regulations under subsection (3)(e) make devolved provision if and to the extent that—
- (a) the effect of the regulations is to confer functions under this Chapter on a person of a description specified in the regulations,
  - (b) it would be within the legislative competence of the Northern Ireland Assembly to confer those functions on persons of that description in an Act of the Northern Ireland Assembly, and
  - (c) the consent of the Secretary of State would not be required under section 8 of the Northern Ireland Act 1998 in relation to a Bill conferring such functions.
- (8) This section is subject to section 108 (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section).

#### Commencement Information

**I56** [S. 107](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### 108 Restriction on exercise of maritime enforcement powers

- (1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section 107(1), in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Northern Ireland.
- (2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—
- (a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland,
  - (b) the home state has authorised the United Kingdom to act for that purpose, or
  - (c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship.

#### Commencement Information

**I57** [S. 108](#) in force for specified purposes at Royal Assent, see [s. 183](#)

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

### *The maritime enforcement powers*

#### **109 Power to stop, board, divert and detain**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that—
  - (a) an offence under the law of Northern Ireland is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 107, or
  - (b) a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.
- (2) The law enforcement officer may—
  - (a) stop the ship;
  - (b) board the ship;
  - (c) require the ship to be taken to a port in Northern Ireland.
- (3) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).
- (4) A law enforcement officer must give notice in writing to the master of any ship detained under this section.
- (5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer.

#### **Commencement Information**

**I58** S. 109 in force for specified purposes at Royal Assent, see s. 183

#### **110 Power to search and obtain information**

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of Northern Ireland (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 107.
- (2) The law enforcement officer may search—
  - (a) the ship;
  - (b) anyone found on the ship;
  - (c) anything found on the ship (including cargo).
- (3) The law enforcement officer may require a person found on the ship to give information about himself or herself.
- (4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).
- (5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—
- (a) open any containers;
  - (b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;
  - (c) make photographs or copies of anything the production of which the law enforcement officer has power to require.
- (7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere.

#### Commencement Information

**I59** [S. 110](#) in force for specified purposes at Royal Assent, see [s. 183](#)

## 111 Power of arrest and seizure

- (1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of Northern Ireland has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section 107.
- (2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.
- (3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere.

#### Commencement Information

**I60** [S. 111](#) in force for specified purposes at Royal Assent, see [s. 183](#)

### *Supplementary provision*

## 112 Maritime enforcement powers: supplementary: protective searches

- (1) This section applies where a power conferred by section 109 is exercised in relation to a ship.
- (2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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) cause physical injury,
  - (b) cause damage to property, or
  - (c) endanger the safety of any ship.
- (3) The power under subsection (2) may be exercised on board the ship or elsewhere.
- (4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.
- (5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.
- (6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves.

**Commencement Information**

**I61** [S. 112](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**113 Maritime enforcement powers: other supplementary provision**

- (1) A law enforcement officer may—
- (a) be accompanied by other persons, and
  - (b) take equipment or materials,
- to assist the officer in the exercise of powers under this Chapter.
- (2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.
- (3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.
- (4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.
- (5) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have.

**Commencement Information**

**I62** [S. 113](#) in force for specified purposes at Royal Assent, see [s. 183](#)

**114 Maritime enforcement powers: offences**

- (1) A person commits an offence if the person—
- (a) intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or

*Status: Point in time view as at 31/01/2017.*

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- (b) fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.
- (2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—
  - (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
  - (b) the person intentionally fails to disclose any material particular.
- (3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I63** S. 114 in force for specified purposes at Royal Assent, see s. 183

## 115 Interpretation

- (1) In this Chapter—
  - “designated NCA officer” means a National Crime Agency officer who is either or both of the following—
    - (a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable who is entitled to exercise the powers and privileges of a Northern Ireland constable (see paragraph 11(6) of Schedule 5 to that Act);
    - (b) an officer designated under that section as having the powers of a general customs official;
  - “foreign ship” means a ship which—
    - (a) is registered in a State other than the United Kingdom, or
    - (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;
  - “home state”, in relation to a foreign ship, means—
    - (a) the State in which the ship is registered, or
    - (b) the State whose flag the ship is otherwise entitled to fly;
  - “items subject to legal privilege” has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see article 12 of that Order);
  - “law enforcement officer” has the meaning given by section 107(3);
  - “maritime enforcement powers” has the meaning given by section 107(2);
  - “Northern Ireland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Northern Ireland;
  - “relevant territory” means—
    - (a) the Isle of Man;
    - (b) any of the Channel Islands;
    - (c) a British overseas territory;

*Status: Point in time view as at 31/01/2017.*

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“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
- (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;

“United Kingdom ship” means a ship which—

- (a) is registered under Part 2 of the Merchant Shipping Act 1995,
- (b) is a Government ship within the meaning of that Act,
- (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or
- (d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.

(2) For the purposes of paragraph (c) of the definition of “United Kingdom ship” in subsection (1), a person has a “United Kingdom connection” if the person is—

- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
- (b) an individual who is habitually resident in the United Kingdom, or
- (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.

(3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.

**Commencement Information**

**I64** S. 115 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 8

### CROSS-BORDER ENFORCEMENT

#### **116 Extension of cross-border powers of arrest: urgent cases**

(1) In Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement), after section 137 insert—

**“137A Additional cross-border powers of arrest etc: urgent cases**

- (1) A constable of a police force in England and Wales may arrest a person in England and Wales without a warrant if—
  - (a) the constable has reasonable grounds for suspecting that the person has committed a specified offence in Scotland or in Northern Ireland, and

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*Status: Point in time view as at 31/01/2017.*

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- (b) the constable also has reasonable grounds for believing that it is necessary to arrest the person—
    - (i) to allow the prompt and effective investigation of the offence, or
    - (ii) to prevent any prosecution for the offence from being hindered by the disappearance of the person.
- (2) A constable of a police force in Scotland may arrest a person in Scotland without a warrant if—
  - (a) the constable has reasonable grounds for suspecting that the person has committed a specified offence in England and Wales or in Northern Ireland, and
  - (b) the constable is satisfied that it would not be in the interests of justice to delay the arrest either to enable a warrant for the person's arrest to be obtained and then executed under section 136 or to enable a power of arrest under section 137 to be exercised.
- (3) Without prejudice to the generality of subsection (2)(b), it would not be in the interests of justice to delay an arrest for a purpose mentioned in that subsection if the constable reasonably believes that, unless the person is arrested without delay, the person will obstruct the course of justice in any way, including by seeking to avoid arrest or interfering with witnesses or evidence.
- (4) A constable of a police force in Northern Ireland may arrest a person in Northern Ireland without a warrant if—
  - (a) the constable has reasonable grounds for suspecting that the person has committed a specified offence in England and Wales or in Scotland, and
  - (b) the constable also has reasonable grounds for believing that it is necessary to arrest the person—
    - (i) to allow the prompt and effective investigation of the offence, or
    - (ii) to prevent any prosecution for the offence from being hindered by the disappearance of the person.
- (5) The power conferred by subsection (1) or (2) may be exercised by a constable appointed under section 24 of the Railways and Transport Safety Act 2003 in England and Wales or (as the case may be) in Scotland.
- (6) The following provisions apply in relation to an arrest under this section by a constable of a person suspected of having committed a specified offence in England and Wales or in Northern Ireland—
  - (a) where the arrest is in England and Wales under subsection (1) or in Northern Ireland under subsection (4), the constable has the powers of entry and search conferred by section 137E;
  - (b) where the arrest is in Scotland under subsection (2), the constable has the same powers of entry and search for the purpose of the arrest as a constable of a police force in Scotland would have if there were reasonable grounds for suspecting that the offence had been committed in Scotland;
  - (c) the constable has the powers conferred by section 139 in relation to the arrested person;

*Status: Point in time view as at 31/01/2017.*

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- (d) the constable may use reasonable force, if necessary, in arresting the person or in exercising the powers conferred by sections 137E and 139.
- (7) Where a constable is arresting under this section a person suspected of having committed a specified offence in Scotland, the constable has the same powers as a constable of a police force in Scotland would have if arresting the person for the offence in Scotland.
- (8) In this section—
  - “constable of a police force”, in relation to Northern Ireland, means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
  - “specified offence” has the meaning given by section 137B.

### **137B Meaning of “specified offence” for the purposes of section 137A**

- (1) In section 137A, “specified offence” has the meaning given by this section.
- (2) An offence committed in England and Wales is a specified offence if it is—
  - (a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,
  - (b) an offence specified in Part 1 of Schedule 7A,
  - (c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b), or
  - (d) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence mentioned in paragraph (a) or (b).
- (3) An offence committed in Scotland is a specified offence if it is—
  - (a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,
  - (b) an offence specified in Part 2 of Schedule 7A, or
  - (c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b).
- (4) An offence committed in Northern Ireland is a specified offence if it is—
  - (a) an offence (including an offence under the common law) that is punishable by virtue of any statutory provision with imprisonment or another form of detention for a term of 10 years or with a greater punishment,
  - (b) an offence specified in Part 3 of Schedule 7A,
  - (c) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence mentioned in paragraph (a) or (b), or
  - (d) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence mentioned in paragraph (a) or (b).



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- (5) The Secretary of State may by regulations made by statutory instrument amend Part 1, 2 or 3 of Schedule 7A so as to add an offence to, or remove an offence from, the offences for the time being specified in the Part.
- (6) Regulations under subsection (5) may add an offence to a Part of Schedule 7A only if—
  - (a) the offence is indictable, and
  - (b) the Secretary of State considers that it is necessary in the interests of justice to add the offence to the Part.
- (7) For the purpose of subsection (6)(a), an offence is indictable if—
  - (a) in the case of an offence under the law of England and Wales, it is an indictable offence in England and Wales;
  - (b) in the case of an offence under the law of Scotland, it may be tried on indictment in Scotland;
  - (c) in the case of an offence under the law of Northern Ireland, it is an indictable offence in Northern Ireland.
- (8) The Secretary of State may not make regulations under subsection (5) unless the Scottish Ministers and the Department of Justice in Northern Ireland consent to the making of the regulations.
- (9) A statutory instrument containing regulations under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section—
  - (a) a description of an offence in subsection (2)(a) or (b) or (4)(a) or (b) includes such an offence committed by aiding, abetting, counselling or procuring;
  - (b) a description of an offence in subsection (3)(a) or (b) includes such an offence committed by involvement art and part or by aiding, abetting, counselling or procuring;
  - (c) “statutory provision” means any provision of—
    - (i) an Act or subordinate legislation within the meaning of the Interpretation Act 1978;
    - (ii) an Act of the Scottish Parliament or an instrument made under such an Act;
    - (iii) a Measure or Act of the National Assembly for Wales or an instrument made under such a Measure or Act;
    - (iv) Northern Ireland legislation or an instrument made under Northern Ireland legislation.

### **137C Detention for the purpose of re-arrest**

- (1) A person arrested under section 137A in respect of a specified offence may be detained but only for the purpose of—
  - (a) enabling a warrant for the person's arrest in respect of the offence to be obtained and then executed under section 136, or
  - (b) enabling the person to be re-arrested under section 137.
- (2) The person may be detained for that purpose—

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- (a) for an initial period of 3 hours beginning with the time of the arrest;
  - (b) for a second period of no more than 21 hours beginning with the end of the initial period, but only if detention for that period is authorised by both an officer of at least the rank of inspector in the arresting force and an officer of at least the rank of inspector in the investigating force;
  - (c) for a third period of no more than 12 hours beginning with the end of the second period, but only if detention for that period is authorised by both an officer of a rank above that of inspector in the arresting force and an officer of a rank above that of inspector in the investigating force.
- (3) An officer of the arresting force may give an authorisation for the purpose of subsection (2)(b) or (c) only if satisfied that it is in the interests of justice to do so.
- (4) An officer of the investigating force may give an authorisation for the purpose of subsection (2)(b) only if satisfied that—
- (a) there are reasonable grounds to suspect that the person has committed the specified offence,
  - (b) a constable intends that the person be arrested as soon as is reasonably practicable (whether by the obtaining and execution of a warrant under section 136 or under section 137) and is acting expeditiously for that purpose, and
  - (c) it is in the interests of justice to give the authorisation.
- (5) An officer of the investigating force may give an authorisation for the purpose of subsection (2)(c) only if satisfied that—
- (a) there continue to be reasonable grounds to suspect that the person has committed the specified offence,
  - (b) a constable intends that the person be arrested as soon as is reasonably practicable (whether by the obtaining and execution of a warrant under section 136 or under section 137) and is acting expeditiously for that purpose, and
  - (c) it is in the interests of justice to give the authorisation.
- (6) If, at any time while the person is detained, an appropriate officer in the investigating force is satisfied that it is no longer in the interests of justice for the person to be detained—
- (a) the officer must notify the arresting force, and
  - (b) the person must be released immediately.
- (7) In subsection (6), “appropriate officer” means—
- (a) in relation to the person's detention for the initial period, any constable;
  - (b) in relation to the person's detention for the second period, an officer of at least the rank of inspector;
  - (c) in relation to the person's detention for the third period, an officer of a rank above that of inspector.
- (8) In this section—

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“arresting force” means the police force of which the constable who arrested the person under section 137A is a member;

“investigating force” means the police force that is investigating the specified offence which the person arrested under section 137A is suspected of having committed;

“specified offence” has the same meaning as in section 137A (see sections 137A(8) and 137B).

- (9) In subsection (8), in the definition of “investigating force”, the reference to a police force includes a reference to—
- (a) the National Crime Agency;
  - (b) any of the following (to the extent that their functions relate to the investigation of offences)—
    - (i) officers of Revenue and Customs;
    - (ii) immigration officers;
    - (iii) designated customs officials within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act).
- (10) In the application of this section in a case where the investigating force is a police force mentioned in subsection (9)(a) or (b)—
- (a) the reference to a constable in subsections (4)(b) and (5)(b), and the reference to a constable in the investigating force in subsection (7) (a), is to be read as a reference to a National Crime Agency officer designated under section 9 or 10 of the Crime and Courts Act 2013 (“a designated NCA officer”), an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be);
  - (b) any reference to an officer of at least, or above, the rank of inspector in the investigating force is to be read as a reference to a designated NCA officer, an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be) of at least, or above, the equivalent grade.

### **137D Rights of persons arrested under section 137A**

- (1) A person arrested under section 137A must be informed of the following matters as soon as is practicable after the arrest—
- (a) the purpose for which the person may be detained under section 137C;
  - (b) the provision made by that section about the periods for which the person may be detained.
- (2) The following provisions apply in relation to persons arrested under section 137A in respect of a specified offence committed in England and Wales (subject to the modifications made by Part 1 of Schedule 7B)—
- (a) section 28 of the Police and Criminal Evidence Act 1984 (information to be given on arrest);
  - (b) section 56 of that Act (right to have someone informed when arrested);
  - (c) section 58 of that Act (access to legal advice);

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- (d) section 31 of the Children and Young Persons Act 1933 (separation of children and young persons from adults in police stations, courts etc);
  - (e) section 34 of that Act (additional protection for children and young persons).
- (3) The following provisions apply in relation to persons arrested under section 137A in respect of a specified offence committed in Scotland (subject to the modifications made by Part 2 of Schedule 7B)—
- (a) section 3 of the Criminal Justice (Scotland) Act 2016 (asp 1) (information to be given on arrest);
  - (b) Chapter 5 of Part 1 of that Act (rights of suspects in police custody);
  - (c) section 51 of that Act (duty to consider child's well-being);
  - (d) section 52 of that Act (duties in relation to children in custody).
- (4) The following provisions apply in relation to persons arrested under section 137A in respect of a specified offence committed in Northern Ireland (subject to the modifications made by Part 3 of Schedule 7B)—
- (a) Article 30 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (information to be given on arrest);
  - (b) Article 57 of that Order (right to have someone informed when arrested);
  - (c) Article 59 of that Order (access to legal advice);
  - (d) Article 9 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I.9)) (separation of child in police detention from adults charged with offences);
  - (e) Article 10 of that Order (additional protection for children and young persons).
- (5) The Secretary of State may by regulations made by statutory instrument—
- (a) amend this section so as to add to the provisions that for the time being apply as mentioned in subsection (2), (3) or (4);
  - (b) amend this section so as to remove any of those provisions that were added by virtue of paragraph (a);
  - (c) amend Schedule 7B so as to alter the modifications for the time being made by that Schedule, including by adding a modification or removing one;
  - (d) amend Schedule 7B so as to provide that any of the provisions that for the time being apply as mentioned in subsection (2), (3) or (4) do not apply in cases or circumstances set out in the Schedule.
- (6) Regulations under subsection (5) may include consequential provision, including provision amending any statutory provision; and, for that purpose, statutory provision has the same meaning as in section 137B (see subsection (10)(c) of that section).
- (7) The Secretary of State may not make regulations under subsection (5) unless the Scottish Ministers and the Department of Justice in Northern Ireland consent to the making of the regulations.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (8) A statutory instrument containing regulations under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) In the application of Schedule 7B in a case where the investigating force is a police force mentioned in section 137C(9)(a) or (b), any reference to an officer of at least, or above, a particular rank in the investigating force is to be read as a reference to a designated NCA officer, an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be) of at least, or above, the equivalent grade.”
- (2) After Schedule 7 to that Act insert, as Schedule 7A to that Act, the Schedule set out in Schedule 15 to this Act.
- (3) After Schedule 7A to that Act (as inserted by subsection (2) above) insert, as Schedule 7B to that Act, the Schedule set out in Schedule 16 to this Act.

#### Commencement Information

**I65** S. 116 in force for specified purposes at Royal Assent, see s. 183

## 117 Cross-border enforcement: powers of entry to effect arrest

In Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement), after section 137D (as inserted by section 116) insert—

### “137E Entry and search for the purposes of arrest

- (1) A constable may enter and search any premises—
- (a) for the purpose of executing in England and Wales under section 136(2) (b) a warrant issued in Northern Ireland;
  - (b) for the purpose of executing in Northern Ireland under section 136(3) (a) a warrant issued in England and Wales;
  - (c) for the purpose of arresting a person in Northern Ireland under section 137(1) in respect of a relevant England and Wales offence;
  - (d) for the purpose of arresting a person in England and Wales under section 137(3) in respect of a relevant Northern Ireland offence;
  - (e) for the purpose of arresting a person in England and Wales under section 137A(1) in respect of a specified offence committed in Northern Ireland;
  - (f) for the purpose of arresting a person in Northern Ireland under section 137A(4) in respect of a specified offence committed in England and Wales.
- (2) In subsection (1)—
- (a) “relevant England and Wales offence” means—
    - (i) an offence that is an indictable offence in England and Wales;
    - (ii) an offence mentioned in section 17(1)(c) or (caa) of the Police and Criminal Evidence Act 1984;
  - (b) “relevant Northern Ireland offence” means—

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

- (i) an offence that is an indictable offence in Northern Ireland;
  - (ii) an offence mentioned in Article 19(1)(ba) to (c) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)).
- (3) The powers of entry and search conferred by subsection (1)—
- (a) are exercisable only if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises, and
  - (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
    - (i) any part of the premises which the occupier of any dwelling comprised in the premises uses in common with the occupier of any other such dwelling, and
    - (ii) any such dwelling in which the constable has reasonable grounds for believing that the person whom he is seeking may be.
- (4) The power of search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (5) In this section, “premises” includes any place and, in particular, includes—
- (a) any vehicle, vessel, aircraft or hovercraft,
  - (b) any offshore installation,
  - (c) any renewable energy installation, and
  - (d) any tent or movable structure.

“Offshore installation” has the meaning given to it by section 44 of the Petroleum Act 1998.

“Renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (see section 104 of that Act).”

#### **Commencement Information**

**I66** S. 117 in force for specified purposes at Royal Assent, see s. 183

## **118 Cross-border enforcement: officers of Revenue and Customs**

In section 87 of the Finance Act 2007 (cross-border exercise of powers: officers of Revenue and Customs), in subsection (4) for “only in the exercise of a function relating to tax (including duties and tax credits)” substitute “in the exercise of any function of the Commissioners for Her Majesty's Revenue and Customs or of officers of Revenue and Customs, within the meaning of the Commissioners for Revenue and Customs Act 2005 (see section 51(2) to (2B) of that Act) ”.

#### **Commencement Information**

**I67** S. 118 in force for specified purposes at Royal Assent, see s. 183

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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)*

## 119 Cross-border enforcement: minor and consequential amendments

Schedule 17—

- (a) makes minor amendments of Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement), and
- (b) makes amendments consequential on the other amendments of that Part made by this Chapter.

### Commencement Information

**I68** S. 119 in force for specified purposes at Royal Assent, see s. 183

## CHAPTER 9

### MISCELLANEOUS

## 120 Powers to require removal of disguises: oral authorisation

In section 60AA of the Criminal Justice and Public Order Act 1994 (powers to require removal of disguises), for subsection (6) substitute—

- “(6) Subject to subsection (6A), an authorisation under subsection (3)—
- (a) shall be in writing and signed by the officer giving it; and
  - (b) shall specify—
    - (i) the grounds on which it is given;
    - (ii) the locality in which the powers conferred by this section are exercisable; and
    - (iii) the period during which those powers are exercisable.
- (6A) An authorisation under subsection (3) need not be given in writing where it is not practicable to do so but any oral authorisation—
- (a) must state the matters which would otherwise have to be specified under subsection (6); and
  - (b) must be recorded in writing as soon as it is practicable to do so.
- (6B) A direction under subsection (4) shall be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.”

### Commencement Information

**I69** S. 120 in force for specified purposes at Royal Assent, see s. 183

**Status:**

Point in time view as at 31/01/2017.

**Changes to legislation:**

Policing and Crime Act 2017, Part 4 is up to date with all changes known to be in force on or before 26 January 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.