

The Criminal Justice Act 2003

A summary of changes to Bail and PACE

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This article outlines the main provisions of the Act which received Royal Assent on the 20th November 2003. The CJA 2003 is divided into 14 parts, 339 sections and 38 schedules. It is an exceptionally complex statute introducing wide ranging reforms to court procedure. Many of the changes have been introduced by way of textual amendment to previous legislation. At the time of writing only a small number of its provisions are in force (see box below) and implementation will be gradual over the next few years and many implementation dates have not yet been fixed. .

Background and Aims of legislation

In its White Paper, the Government stated that “[the] process will be geared towards getting to the truth, convicting the offender as early as we possibly can, and minimizing opportunities for anyone to impeded efforts to achieve that”

As to how this is to be achieved the Government wrote “To convict more of the guilty we will:

- improve defence and prosecution disclosure by increasing incentives and sanctions to ensure compliance;
- allow the use of reported evidence (‘hearsay’) where there is a good reason, such as where a witness cannot appear personally;
- allow for trial by judge alone on serious and complex fraud trials, some other complex and lengthy trials or where the jury is at risk of intimidation; and
- extend the availability of preparatory hearings to ensure that serious cases such as drug trafficking as well as complex ones can be properly prepared.

At the trial we will;

- allow the court to be informed of a defendant’s previous convictions where appropriate;
- remove the double jeopardy rule for serious cases if compelling new evidence comes to light;
- give witnesses greater access to their original statements at trial;
- give the prosecution the right of appeal against rulings which terminate the prosecution case before the jury decides.” (Executive Summary)

Part 1 Changes to PACE 1984

Stop and Search

Police Officers can stop and search individuals where an officer reasonably suspects that articles intended for use in causing criminal damage (e.g. daubing graffiti) are being carried. The powers of stop and search are extended to include offences under section 1 of the *Criminal Damage Act 1971*. (Section 1 inserts a new paragraph (e) in section 1(8) PACE).

Search Warrants

Civilians will now be allowed to accompany Police Officers when executing a search warrant. An "authorised person" shall have the same powers as an Officer in respect of the execution of the warrant and the seizure of anything to which the warrant relates, provided he is in the company, and under the supervision, of a constable. (Section 2 inserts a new subsection (2A) in section 16 PACE)

Arrestable Offences

Possession of Cannabis (following reclassification to a Class C drug) now attracts a power of arrest.
(Section 3 adds to the list of specific arrestable offences in Schedule 1A of PACE.)

Bail from Scene of Arrest

A Constable can release a defendant on bail from the scene of arrest with a condition to attend a police station. Notice in writing must be given stating the offence and the ground on which he was arrested and details of the time and police station. If the notice does not give the latter details, a subsequent notice must be served which does give them. A suspect may be re-arrested without warrant if new evidence justifies this. Failure to attend as required gives rise to liability to arrest without warrant. (Section 4 amends s 30 PACE).

Drug Testing at Police Stations

The minimum age for drug testing is reduced from 18 to 14, but where a person is under 17 an appropriate adult must be present when the request is made, the warning under subsection (5) is given, and a sample is taken. (Section 5 amends sections 38 PACE)

Detention Up To 36 hours for Arrestable Offences

An Officer of at least the rank of Superintendent can authorise detention for a period of up to 36 hours if the offence for which he is arrested is an arrestable offence and the remaining conditions of s42(1) PACE are met. Previously the power applied to "serious arrestable offences." (section 7 amends s42(1) of PACE.)

Property of Detained Persons

The requirement to record a detainee's property will now be at the custody officer's discretion. (Section 8 amends s 54 PACE).

Taking Fingerprints Without Consent

The police have a wide power to take fingerprints from any suspect arrested for a recordable offence in police detention who withholds consent. This is conditional on him not having fingerprints taken already in the course of the investigation of the offence.

The new power is available whether or not the fingerprint is required for the investigation of an offence in which the person is suspect of being involved. The authority of an Inspector is not required. This will prevent suspects avoiding detection by giving false details if their prints are on the National Fingerprint database. The existing requirement to give a person from whom fingerprints are taken without

consent reasons for doing so and recording the reasons as soon as practicable applies. (Section 9 amends s61 PACE).

Taking Non- Intimate Samples Without Consent

The police have a wide power to take non-intimate samples from any suspect arrested for a recordable offence in police detention who withholds consent. This is conditional on him not having had a sample of the same type and from the same part of the body taken already in the course of the investigation of the offence or if one has that it proved insufficient for the purpose of analysis.

The new power is available whether or not the non-intimate sample is required for the investigation of an offence in which the person is suspect of being involved. The authority of an Inspector is not required. The existing requirement to give a person from whom a non-intimate sample is taken without consent reasons for doing so and recording the reasons as soon as practicable applies. (Section 10 amends s63 PACE).

Part 2 Bail

Offences Committed on Bail

If a defendant aged 18 or over is on bail the date the current offence is allegedly committed, he will be refused bail unless the court is satisfied that there is no significant risk of his committing an offence on bail. (Section 14 amends Part I of Schedule 1 by substituting a new paragraph 2A.)

If the defendant is under 18 and on bail for another alleged offence on the date the current offence was committed, the court can give "particular weight" to this fact when deciding whether there are substantial grounds for believing he would commit further offences if admitted to bail. (Section 14 amends Part I of Schedule 1 by substituting a new paragraph 9A.)

Absconding when released on Bail

If a defendant aged 18 or over without reasonable excuse fails to answer bail in current proceedings, he will be refused bail unless the court is satisfied that there is no significant risk that he will not abscond again. (Section 15 amends paragraph 6 of Part I of Schedule 1 by substituting a new paragraph 6)

If the defendant is under 18 and without reasonable excuse fails to surrender to custody (at the appointed place and time or as soon as reasonably practicable thereafter), the court can give "particular weight" to this fact when deciding whether there are substantial grounds for believing he would commit further offences if admitted to bail. (Section 15 amends Part I of Schedule 1 by substituting a new paragraph 9AB)

Appeal to the Crown Court

Defendants granted conditional bail in the Magistrates Court can appeal any bail condition set out in s16(3) (including surety, residence, curfew and tagging requirements) to the Crown Court.

Appeals to High Court

The jurisdiction of the High Court to entertain bail application is abolished in most circumstances. (Section 17 amends section 22 of the *Criminal Justice Act 1967*).

Prosecution Right of Appeal

The prosecution can appeal to the Crown Court where bail is granted for any offence punishable by imprisonment (removing the requirement that it be punishable by a term of five years or more.) (Section 18 amends section 1 of the *Bail (Amendment) Act 1993*.)

Restrictions on Bail for Drug Users

These provisions are only being **introduced in pilot areas**. A defendant who is over 18 years old and charged with an imprisonable offence will not be granted bail (unless the court is satisfied that there is no significant risk of his committing an offence while on bail), where the three conditions below exist:

- i) there is drug test evidence that he has a specified Class A drug in his body;
- ii) either the offence is a drugs offence associated with a specified Class A drug or the court is satisfied that there are substantial grounds for believing that the misuse of a specified Class A drug caused or contributed to the offence or provided its motivation; and
- iii) the defendant does not agree to undergo an assessment as to his dependency upon or propensity to misuse specified Class A drugs or, has undergone such an assessment but does not agree to participate in any relevant follow up.

The assessment will be carried out by a suitably qualified person, who has received training in the assessment of drug problems. If an assessment is proposed and agreed to by the defendant and he is bailed then he must be required to undergo the assessment and follow up as a condition of bail.