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Policy paper

Police powers: Police, Crime, Sentencing and Courts Act 2022 factsheet

Updated 20 August 2022

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1. What are we going to do?

We are going to ensure the police have the necessary powers in place to:

- make it easier for police forces to recall people to take fingerprints and DNA samples, where this was not done on initial arrest, and introduces a new equivalent power to take photographs
- enable the swifter receipt of electronic data, crucial to criminal investigations and prosecutions, by making some practical changes in the operating process of the Crime (Overseas Production Orders) Act 2019 and the Overseas Production Orders mechanism
- access information relating to the location of human remains outside of criminal proceedings

2. How are we going to do it?

The Act amends the Police and Criminal Evidence Act 1984 (PACE) to allow the police to stipulate a specific date and time to require people to attend the relevant police station for taking of fingerprints, DNA samples and photographs.

The Act amends the Crime (Overseas Production Orders) Act 2019 ('COPO Act') to:

- allow law enforcement officers and prosecutors to obtain, through an Overseas Production Order, the necessary associated or connected communications data (for example information on who an email was sent to and from, when it was sent) together with the content data sought (such as pictures and text content of emails). In practice, this will streamline the process and enable swifter turnaround in obtaining vital evidence from service providers, located outside the UK, to support domestic investigations and prosecutions
- allow the service of an Overseas Production Order under section 9 of the COPO Act to be delegated to an appropriate body. This will provide this process with necessary operational agility and allow for future proofing to meet the demands of any future international agreements.

The Act also allows officers to apply for a search warrant or production order from a court in relation to the location of a person's remains without the need for an indictable offence to have been committed or the need for the search to envisage locating evidence for future criminal proceedings.

3. Background

3.1 Attendance at a police station for taking of fingerprints, non-intimate samples and photographs

Currently, people who are arrested and taken to a custody suite can have fingerprints, DNA samples and a photograph taken straight away. If this is not done, there is a recall power to require those who have been arrested, charged or convicted to attend a police station so that their fingerprints and DNA sample can be taken, but there is no equivalent power for photographs.

When recalled, the person can be required to attend a police station at a particular time but not a particular day, only any day within a seven-day period. Forces find this makes the power difficult to use, as they cannot deploy an officer or staff member to take the biometrics at a specific time.

In practice, this results in opportunities to take fingerprints, DNA or photographs being missed. This means that matches to crimes the person may have committed in the past or may commit in the future are not made.

3.2 Amendments to the Crime (Overseas Production Orders) Act 2019

Increasingly, terrorists and criminals are using global communications services to facilitate their criminal activities. Data generated by those applications is a vital source of evidence for the prosecution of criminal offences, including terrorism and child sexual exploitation. Law enforcement agencies and prosecution authorities need to obtain the evidence they require for their investigations and prosecutions effectively and swiftly. Most of this relevant electronic data is held or controlled by service providers based outside the UK.

Current UK legislation which allows law enforcement agencies and prosecuting authorities to access stored electronic data is not explicitly extra territorial and so only effective when the company holding or controlling the information is located in the UK. To obtain this type of data from service providers based outside the UK Mutual Legal Assistance (MLA) channels are used. MLA is a form of judicial cooperation between State authorities that allows law enforcement officers and prosecutors to obtain data for evidence purposes from the other's jurisdiction. However, the MLA process often takes a long time. It may result in delayed or abandoned investigations or prosecutions or may delay people from being eliminated from a criminal investigation.

The COPO Act 2019 enables law enforcement officers and prosecutors to access and obtain stored electronic content data direct from persons (broadly service providers), located or operating outside the UK, to support criminal investigations and prosecutions. An application for an Overseas Production Order is made to a UK court by an appropriate officer, as defined in the COPO Act. A judge approves

an Overseas Production Order, subject to the required conditions and tests set out in the COPO Act, being met. If approved, the order is served on the relevant service provider.

Overseas Production Orders can only be used to request electronic data from service providers located in a country where a relevant designated international cooperation arrangement is in place. The first of these agreements expected to enter into force is the UK US Data Access Agreement.

During the implementation process some practical issues were highlighted that require amendments to the COPO Act. These will ensure a more streamlined and more effective operational process under the COPO Act to allow law enforcement officers and prosecutors to receive vital evidence from service providers located outside the UK.

3.3 Apply for a search warrant or production order for material relating to the location of human remains

Section 8 of the Police and Criminal Evidence Act 1984 gives the police powers to enter and search specified premises, and seize evidence, subject to application to a judge for a warrant.

Under the existing provisions, in order for a warrant to be granted, the judge must be satisfied that there are reasonable grounds to believe that an indictable offence has been committed, and that there is material on the premises that is likely to be both relevant evidence and of substantial value to the investigation of that offence. They must be also satisfied that it is not practicable to communicate with individuals able to grant entry to the premises/access to the evidence, that entry will not be granted without a warrant or that the purpose of the search might be frustrated or prejudiced without immediate entry to the premises.

The case of Keith Bennett identified a gap in the existing search warrant legislation. 12 year old Keith Bennett was abducted and killed by 'Moors Murderers' Ian Brady and Myra Hindley in the 1960s. His family have been looking for his body for over fifty years.

When police sought to access material which they considered may contain information relating to the location of his remains, their application was unsuccessful due to a gap in the law, primarily due to the fact that it was no longer possible to bring about any prosecution for criminal offences relating to Keith's death.

The issue was raised with the Home Office in 2019. On investigation, it was concluded that there were no further avenues available to Greater Manchester Police and the Home Office made the decision to resolve the issue through a change in the law.

5. Frequently asked questions

5.1 Attendance at a police station for taking of fingerprints, non-intimate samples and photographs

Why do we need this change now?

More people are now interviewed voluntarily and then arrested, charged or convicted later without having gone through a custody suite, so the 'recall' power has become more important.

Does this change mean that police powers to retain fingerprints and DNA are being widened?

No. As now, fingerprints and DNA profiles taken from people who are arrested or charged can be retained while an investigation is ongoing, but they can only be retained indefinitely if the person is convicted, and retention must be subject to periodic review.

Does this measure affect retention of photographs?

No. As now, people who are not convicted will have the right to request deletion of their photographs, and there is a strong presumption that this request will be agreed.

5.2 Amendments to the Crime (Overseas Production Orders) Act 2019

Why do we need these amendments?

During the implementation process, some practical issues were highlighted that require amendments to the COPO Act 2019. These practical changes to the operating process provided for by the Act and to the Overseas Production Orders mechanism will enable law enforcement officers and prosecutors to receive electronic data crucial to their criminal investigations and prosecutions more swiftly, from service providers located outside the UK.

What do the amendments intend to do?

Currently all communications data sought from a telecommunications operator (a type of service provider) is excluded from the scope of the COPO Act 2019 – so as to not interfere with the current regime provided by the Investigatory Powers Act 2016. However, this means that communications data (information on who an email was sent to and from, and when an email was sent) associated or connected to the content data sought cannot be sought using an Overseas Production Order. Content data will be limited in evidential value if the associated communications data is not provided e.g. to understand who sent a message, to whom and when. An amendment is required to allow an Overseas Production Order to be sought to obtain both the content of a communication and any connected or associated

communications data. The ability to seek communications data for any other purpose is still not permitted by the COPO Act and is subject to the process set out in the Investigatory Powers Act 2016.

An amendment is also required to allow an appropriate body to be delegated for the service of Overseas Production Orders. This is necessary to ensure operational agility and future proofing, including for any future international agreements that might be agreed, especially for example when there might be a need to use secure systems to transmit requests and receive data.

Does the proposed amendment to enable law enforcement officers and prosecutors to obtain associated or connected communications data mean they will be receiving even more information?

No. Under the current Mutual Legal Assistance mechanism used by law enforcement officers and prosecutors electronic content data, associated and connected communications data is provided.

Until such time as the COPO Act 2019 is amended law enforcement officers and prosecutors (when the Act is in operational use) will need to make a dual application; one for the content data under the COPO Act 2019 and a further application for the associated or connected communications data under the Investigatory Powers Act 2016. This amendment will streamline the process for law enforcement officers and prosecutors improving their ability to obtain or access the required electronic data through an Overseas Production Order to support criminal investigations and prosecutions more swiftly. This is in line with the domestic regime under the Police and Criminal Evidence Act 1984, on which the COPO Act was based.

5.3 Obtaining a search warrant or production order for material relating to the location of human remains

Why did the law not allow the police to do this anyway?

Search warrants, issued under PACE, require a criminal offence to have been committed and for the material sought to assist the investigation of that offence or be relevant evidence. However, there is a gap in the law where either a criminal offence has not necessarily been committed (i.e. a missing person case) or where there is no longer the prospect of further criminal proceedings, for example because the suspect is deceased or has already been prosecuted for the offence.

The police need this additional power to bridge the gap and widen the circumstances in which a search warrant or production order can be applied for in relation to material relating to the location of human remains. This will help families get the closure they deserve. By changing the law, we can make sure the police have the powers they need to help families in these terrible situations.

How will this work in practice/ when will these powers be used?

Police will only be able to apply for a search warrant or production order which will only be issued if a number of specified conditions have been met, including that there are reasonable grounds for believing that there is material on the premises which relates to the location of human remains and that entry to the premises will not otherwise be granted.

This power is only intended to be used as a last resort, but it is there to make sure that the Government has done everything in its power to reunite families with the remains of their loved ones.

Search warrants are intrusive powers – how can you ensure this won't be overused? How will its use be monitored?

Use of the power is subject to the approval of a judge and similar safeguards to existing search warrant powers, and warrants sought under these powers are subject to a range of conditions which must be fulfilled before they can be granted.

This power is only intended to be used as a last resort, but it is there to make sure that the Government has done everything in its power to reunite families with the remains of their loved ones.

The Home Office will work with the police to monitor the use of the new power.

Does this mean innocent people can have their houses searched for crimes that have nothing to do with them?

Officers will always work with members of the public to find the best solution if they believe they need access to a property in relation to an investigation.

This measure will allow the police to seek a warrant for entry in the unlikely circumstance it is needed.

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