

## Reprint

as at 1 August 2008

# Criminal Investigations (Bodily Samples) Amendment Act 2003

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### Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Criminal Investigations (Bodily Samples) Amendment Act 2003.
- (2) In this Act, the Act that was previously called the Criminal Investigations (Blood Samples) Act 1995 is called "the principal Act".

**2 Commencement**

- (1) This Act, except sections 9 and 49, comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) Sections 9 and 49 come into force on the day after the date on which this Act receives the Royal assent.

**Part 1****Amendments to principal Act****3 Title amended**

The Title of the principal Act is amended by omitting the word “blood” in both places where it occurs, and substituting in each case the word “bodily”.

**4 Name of principal Act changed**

- (1) After the commencement of this section, the principal Act is called the Criminal Investigations (Bodily Samples) Act 1995.
- (2) Section 1(1) of the principal Act is consequentially amended by omitting the word “Blood”, and substituting the word “Bodily”.

**5 Interpretation**

- (1) Section 2(1) of the principal Act is amended by inserting, after the definition of **appeal period**, the following definition:  
“**approved agency** means an agency approved under section 4B(1)(a)”.
- (2) Section 2(1) of the principal Act is amended by repealing the definition of **blood sample or sample**, and substituting the following definitions:  
“**blood sample** means a fingerprick sample or a venous sample  
“**bodily sample or sample** means a blood sample or a buccal sample  
“**buccal sample** means a sample of epithelial cells from inside the mouth taken by a device, or provided by other means, approved for the purpose under section 4B(1)(b)  
“**child** means a person of or over the age of 10 years but under the age of 14 years”.

(3) Section 2(1) of the principal Act is amended by omitting from the definition of **compulsion order** the words “or a databank compulsion order”.

(4) Section 2(1) of the principal Act is amended by repealing the definition of **databank compulsion order**, and substituting the following definitions:

“**databank compulsion notice**—

“(a) means a notice issued under section 39; and

“(b) includes—

“(i) a databank compulsion notice that a Judge has varied, or included a condition on, under section 42, section 43, section 43A, or section 47; and

“(ii) a databank compulsion notice in relation to which a Part III order has been made

“**databank compulsion notice hearing** means a hearing requested under section 41”.

(5) Section 2(1) of the principal Act is amended by inserting, after the definition of **databank request**, the following definition:

“**detained under a sentence of imprisonment** has the meaning given to it by section 4A”.

(6) Section 2(1) of the principal Act is amended by inserting, after the definition of **forensic comparison**, the following definitions:

“**home detention** has the same meaning as in section 4(1) of the Sentencing Act 2002

“**independent adult**, in relation to a suspect under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself, means,—

“(a) if a parent or other person having the care of the suspect is present under section 50(1)(b), that parent or person; or

“(b) if a person referred to in paragraph (a) is not present but the suspect or, if section 50(3) applies, the suspect’s parent or other person having care of the suspect, has chosen to have a lawyer or other person present under section 50(1)(a), that lawyer or other person; or

- “(c) if none of the persons referred to in paragraphs (a) and (b) is present, any person of or over the age of 17 years, who must not be a sworn or non-sworn member of the police—
- “(i) chosen by the suspect; or
  - “(ii) if the suspect fails or refuses to choose, chosen by a member of the police”.
- (7) *[Repealed]*
- (8) Section 2(1) of the principal Act is amended by omitting from paragraph (c) of the definition of **parent** the word “blood”, and substituting the word “bodily”.
- (9) Section 2(1) of the principal Act is amended by inserting, after the definition of **parent**, the following definitions:
- “**Part 2A request** means a request made under section 24D
- “**Part III order** means an order made by a Judge requiring a bodily sample to be taken pursuant to a databank compulsion notice
- “**prison officer** means an officer as defined in section 2(1) of the Penal Institutions Act 1954”.
- (10) Section 2(1) of the principal Act is amended by repealing the definition of **relevant offence**, and substituting the following definition:
- “**relevant offence** means—
- “(a) an offence against any of the provisions listed in Part 1 of the Schedule; or
  - “(b) an offence against any of the provisions listed in Part 2 of the Schedule; or
  - “(c) an attempt to commit an offence against any of the provisions listed in Part 1 or Part 2 of the Schedule if the offence is not itself specified as an attempt; or
  - “(d) conspiring with any person to commit an offence against any of the provisions listed in Part 1 or Part 2 of the Schedule if the offence is not itself specified as a conspiracy; or
  - “(e) an offence punishable by a term of imprisonment of 7 years or more; or
  - “(f) an attempt to commit an offence of the kind referred to in paragraph (e); or
  - “(g) conspiring with any person to commit an offence of the kind referred to in paragraph (e)”.



(11) Section 2(1) of the principal Act is amended by inserting, after the definition of **specified date**, the following definition:

“**suitably qualified person** means, in relation to—

“(a) a blood sample,—

“(i) a medical practitioner; or

“(ii) a registered nurse; or

“(iii) a medical technologist with a degree in medical laboratory science; or

“(iv) a person trained in phlebotomy in accordance with the national standard for training phlebotomists adopted by the Association of Community Laboratories Incorporated:

“(b) a buccal sample,—

“(i) a medical practitioner; or

“(ii) any person specified in paragraph (a)(ii) to (iv) who has undergone training in taking and dealing with buccal samples in accordance with the training criteria determined by the approved agency”.

Section 5(7): repealed, on 1 August 2008, by section 349 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

## **6 Amendments to principal Act reflecting change in terminology and title**

The principal Act is amended in the manner indicated in Schedule 1 of this Act.

## **7 Application**

Section 4 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

“(2) Part III applies to—

“(a) convictions entered after the commencement of this Act; and

“(b) convictions entered before the commencement of this Act if, and only if, the person in relation to whom the conviction was entered is, on the date of commencement of section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2003, detained under a sentence of imprisonment in relation to that conviction.

- “(3) Despite subsection (2), nothing in Part III applies to any conviction entered before the commencement of section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 for any—
- “(a) offence against any of the provisions listed in Part 2 of the Schedule; or
  - “(b) attempt to commit an offence against any of the provisions listed in Part 1 or Part 2 of the Schedule unless the offence is itself specified as an attempt in Part 1 of the Schedule; or
  - “(c) conspiracy to commit an offence against any of the provisions listed in Part 1 or Part 2 of the Schedule; or
  - “(d) offence punishable by a term of imprisonment of 7 years or more unless it is an offence listed in Part 1 of the Schedule; or
  - “(e) attempt to commit an offence of the kind referred to in paragraph (d) unless the offence is itself specified as an attempt in Part 1 of the Schedule; or
  - “(f) conspiracy to commit an offence of the kind referred to in paragraph (d).”

## **8 New section 4A inserted**

The principal Act is amended by inserting, after section 4, the following section:

### **“4A Detained under sentence of imprisonment**

- “(1) For the purposes of section 4 and Part III, a person is detained under a sentence of imprisonment if he or she has been convicted of a relevant offence and in relation to that offence he or she is detained under a sentence of imprisonment—
- “(a) in a penal institution; or
  - “(b) in a residence administered by the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
  - “(c) in, or on leave from, a hospital under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or following an application under section 45(2) of that Act.

- “(2) To avoid doubt, a person is detained under a sentence of imprisonment under subsection (1) if he or she is detained in any manner described in that subsection,—
- “(a) under cumulative sentences of imprisonment (treated as 1 term under section 92(2) of the Criminal Justice Act 1985) or a notional single sentence (as that term is defined under section 4(1) of the Parole Act 2002), a sentence of imprisonment within which, or a component of which, is for a relevant offence, whether or not he or she has—
    - “(i) reached the start date of the sentence or component that relates to the relevant offence; or
    - “(ii) passed the release date of the sentence or component that relates to the relevant offence; or
  - “(b) under a concurrent sentence of imprisonment imposed on him or her before he or she was released from an earlier sentence of imprisonment imposed for a relevant offence.
- “(3) To avoid doubt, a person is not detained under a sentence of imprisonment under subsection (1) if he or she has been convicted of a relevant offence and in relation to that offence he or she is—
- “(a) serving a sentence of imprisonment by way of home detention; or
  - “(b) detained in a penal institution subject to an interim recall order.”

**9 New section 4B inserted**

The principal Act is amended by inserting, after section 4A (as inserted by section 8 of this Act), the following section:

**“4B Approval of agency to determine training criteria for dealing with, and device or other means for taking, buccal samples**

- “(1) The Minister of Justice may, by notice in the *Gazette*, approve the following:
- “(a) an agency to determine the training criteria for persons taking, supervising the taking of, or dealing with buccal samples:

“(b) a device for taking, or other means of providing, buccal samples.

“(2) A notice issued under this section is deemed to be a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.”

#### **10 Form and content of notice**

(1) Section 7(b)(ix) of the principal Act is amended by omitting the words “and 49”, and substituting the words “, 49, and 49A”.

(2) Section 7(b) of the principal Act is amended by repealing subparagraph (x), and substituting the following subparagraph:

“(x) a statement that the suspect may request that the sample be taken in the presence of a lawyer, or another person, of the suspect’s own choice.”

(3) Section 7(b)(xi) of the principal Act is amended by omitting the expression “56”, and substituting the expression “56, 56A”.

#### **11 Suspect requests to persons under 17**

(1) Section 8 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(1) Nothing in section 6—

“(a) applies in respect of a suspect who is a child or was a child at the time the offence in relation to which the request is made was committed; or

“(b) makes a person of the kind referred to in paragraph (a) capable of consenting to the taking of a bodily sample in response to a request made under that section.

“(1A) However, a suspect who is a child or was a child at the time an offence in relation to which he or she may not be lawfully prosecuted (being an indictable offence other than murder or manslaughter) was committed, may consent to the taking of a buccal sample as a result of a Part 2A request.”

(2) Section 8(2)(c) of the principal Act is amended—

(a) by omitting the word “; and” from subparagraph (iv), and substituting the expression “:” ; and

(b) by adding the following subparagraphs:

- “(v) a statement that a bodily sample may be taken in the presence of a parent:
- “(vi) a summary of section 52A relating to who must be present if the suspect takes a buccal sample himself or herself; and”.

**12 Consent to taking of blood sample**

Section 9(3)(b)(i) of the principal Act is amended by omitting the word “handing”, and substituting the word “giving”.

**13 Judge may authorise blood sample to be taken**

Section 16(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) material reasonably believed to be from, or genetically traceable to, the body of a person who committed the offence has been found or is available—
  - “(i) at the scene of the offence; or
  - “(ii) on the victim of the offence; or
  - “(iii) from within the body or from any thing coming from within the body of the victim of the offence that is reasonably believed to be associated with, or having resulted from, the commission of the offence; or
  - “(iv) on any thing reasonably believed to have been worn or carried by the victim when the offence was committed; or
  - “(v) on any person or thing reasonably believed to have been associated with the commission of the offence; and”.

**14 New section 17A inserted**

The principal Act is amended by inserting, after section 17, the following section:

**“17A Judge to specify method of taking sample if further suspect compulsion order made**

- “(1) If a Judge decides to make a further suspect compulsion order in respect of a person against whom a previous suspect compulsion order has been made for the same offence, the Judge must specify in the order the method by which a bodily sample is to be taken.
- “(2) In determining the method by which a bodily sample is to be taken, the Judge must have regard to—

- “(a) any view expressed by the commissioned officer of the police who is making the application regarding which of the 3 methods should be used; and
- “(b) any view expressed by the respondent regarding which of the 3 methods should be used.”

### **15 Application for order authorising taking of blood sample from person under 17**

- (1) Section 18(1)(b) of the principal Act is amended by inserting, after the words “prosecuted for that offence”, the words “(being an offence of murder or manslaughter in the case of a suspect who is a child or was a child at the time the offence was committed)”.
- (2) Section 18(1)(c) of the principal Act is amended by omitting the words “is of or over the age of 14 years”, and substituting the words “was of or over the age of 14 years at the time the offence in relation to which the application is made was committed”.

### **16 Judge may authorise blood sample to be taken**

- (1) Section 23(1)(b) of the principal Act is amended by inserting, after the words, “prosecuted for that offence”, the words “(being an offence of murder or manslaughter in the case of a suspect who is a child or was a child at the time the offence was committed)”.
- (2) Section 23(1)(c) of the principal Act is amended by omitting the words “is of or over the age of 14 years”, and substituting the words “was of or over the age of 14 years at the time the offence in relation to which the application is made was committed”.
- (3) Section 23(1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:
  - “(d) material reasonably believed to be from, or genetically traceable to, the body of a person who committed the offence has been found or is available—
    - “(i) at the scene of the offence; or
    - “(ii) on the victim of the offence; or
    - “(iii) from within the body or from any thing coming from within the body of the victim of the offence that is rea-

sonably believed to be associated with, or having resulted from, the commission of the offence; or

“(iv) on any thing reasonably believed to have been worn or carried by the victim when the offence was committed; or

“(v) on any person or thing reasonably believed to have been associated with the commission of the offence; and”.

### **17 Form and content of compulsion order**

(1) Section 24 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsection:

“(2) Every suspect compulsion order and every juvenile compulsion order is subject to—

“(a) conditions included in the order by the Judge under section 24A; and

“(b) special conditions (if any) included in the order by the Judge.”.

(2) Section 24(4) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) a summary of the provisions of sections 48, 49, and 49A relating to the procedure for the taking of the sample and a statement that in certain circumstances a Judge may specify the method by which a bodily sample is to be taken:”.

(3) Section 24(4) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs:

“(c) a statement that the suspect may request that the sample be taken in the presence of a lawyer, or another person, of the suspect’s own choice:

“(ca) in the case of a juvenile compulsion order as well as the other particulars referred to in this subsection, a statement that a bodily sample may be taken in the presence of a parent or other person having the care of the suspect:”.

(4) Section 24(4)(d) of the principal Act is amended by omitting the expression “56”, and substituting the expression “56, 56A,”.

(5) Section 24(4) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) conditions included by the Judge under subsection (2):”.

- (6) Section 24(4) of the principal Act is amended by omitting paragraph (f), and substituting the following paragraph:
- “(f) a statement that if the suspect refuses to allow a bodily sample to be taken, a sample may be taken by force under section 54(2) and, if applicable, section 54(3):”.

**18 New sections 24A and 24B inserted**

The principal Act is amended by inserting, after section 24, the following sections:

**“24A Conditions included in compulsion order**

- “(1) Without limiting the generality of section 24(2)(b), if a Judge is satisfied that it is necessary to do so on account of a respondent’s state of health, the Judge may include in a suspect compulsion order or juvenile compulsion order the condition that a bodily sample must not be taken unless—
- “(a) it is taken by a particular method specified in the order by the Judge; and
- “(b) an independent medical practitioner approved by the Judge has certified that the method will not cause serious harm to the health of the respondent.
- “(2) Every suspect compulsion order and every juvenile compulsion order is, unless subsection (3) or subsection (4) or subsection (5) applies, subject to the condition that the respondent may attend to give a bodily sample at a different place, on an earlier date, or at a different place and on an earlier date than that specified in the order if, and only if, the respondent and a member of the police agree to vary the place, date, or place and date specified in the order.
- “(3) If a Judge believes good reasons exist why the respondent must attend to give a bodily sample at the place, on the date, or at the place and on the date specified in the suspect compulsion order or juvenile compulsion order, the Judge may include the condition that the respondent must attend to give the sample at the place, on the date, or at the place and on the date specified in the order.
- “(4) If a respondent is serving a sentence by way of home detention, a suspect compulsion order or juvenile compulsion order must include the following conditions:



- “(a) that the respondent must give a bodily sample at the residence at which the respondent is detained; and
  - “(b) that the respondent and a member of the police may not agree to vary the place at which the person is to give the sample, but may agree to vary the date on which the person is to give the sample to a date earlier than the date specified in the order unless a Judge has included a condition in the order under subsection (3) requiring the person to attend to give the sample on the date specified in the order.
- “(5) Despite subsection (4)(a), a Judge may include a condition in a suspect compulsion order or juvenile compulsion order that a respondent serving a sentence by way of home detention give a sample at a place other than the residence at which the person is detained, if the Judge is of the view that it is necessary to do so on account of the respondent’s state of health.
- “(6) A condition included in a suspect compulsion order or juvenile compulsion order under any of subsections (2) to (5) is subject to any condition included in the order under subsection (1).

**“24B Parent or other person having care to be notified if police suggest variation of juvenile compulsion order**

- “(1) If a condition is included in a juvenile compulsion order under section 24A(2) and a member of the police suggests varying the place where, the date on which, or the place where and the date on which a respondent is to attend to give a bodily sample pursuant to that order, the member of the police must take all reasonable steps to notify a parent or other person having the care of the respondent of the suggested variation.
- “(2) If a condition is included in a juvenile compulsion order under section 24A(4)(b) and a member of the police suggests varying the date on which a respondent is to attend to give a bodily sample pursuant to that order, the member of the police must take all reasonable steps to notify a parent or other person having care of the respondent of the suggested variation.”

**19 New Part 2A inserted**

The principal Act is amended by inserting, after section 24B (as inserted by section 18 of this Act), the following Part:

**“Part 2A****“Obtaining buccal sample from suspect  
who is child or was child when offence  
for which suspect may not be lawfully  
prosecuted committed***“Authority to obtain buccal sample from suspect***“24C Authority to obtain buccal sample from suspect**

- “(1) Subject to section 72, in a criminal investigation in respect of an indictable offence committed or believed to have been committed by a suspect who is a child or was a child at the time the offence was committed and in relation to which that suspect may not be lawfully prosecuted, a buccal sample may be taken from that suspect, for the purposes of the investigation, on behalf of any member of the police, only if—
- “(a) both the suspect and a parent of the suspect have consented to the taking of a buccal sample under section 24G; and
  - “(b) the sample is taken in accordance with the procedures set out in Part IV.
- “(2) Every reference in this Part to an indictable offence for which a suspect may not be lawfully prosecuted is a reference to an indictable offence other than murder or manslaughter.

*“Obtaining buccal sample from suspect***“24D Request to consent to taking of buccal sample from suspect**

A member of the police may request that a suspect give a buccal sample (being a Part 2A request) if—

- “(a) there is good cause to suspect that the suspect has committed or may have committed an indictable offence for which the suspect may not lawfully be prosecuted (because the suspect is a child or was a child at the time the offence was committed); and
- “(b) the suspect—
  - “(i) is under the age of 17 years; and
  - “(ii) is a person in relation to whom an application for a declaration for care or protection may be made

on the ground set out in section 14(1)(e) of the Children, Young Persons, and Their Families Act 1989 if the suspect's involvement in the offence tends to be confirmed by the analysis of a buccal sample; and

- “(c) a member of the police has reasonable grounds to believe that the analysis of a buccal sample from the suspect would tend to confirm or disprove the suspect's involvement in the commission of the offence.

**“24E Police obligations if Part 2A request made**

If a member of the police makes a Part 2A request, the police must—

- “(a) hand to the suspect a written notice containing the particulars specified in section 24F(b); and
- “(b) ensure that a copy of the notice is also handed to a parent of the suspect; and
- “(c) inform the person being handed the notice or a copy of the notice in a manner and in a language that the person is likely to understand,—
  - “(i) of the offence in respect of which the request is made; and
  - “(ii) that a member of the police has reasonable grounds to believe that the analysis of a buccal sample from the suspect would tend to confirm or disprove the suspect's involvement in the offence; and
  - “(iii) that the buccal sample may not be taken unless both the suspect and a parent of the suspect consent to the taking of the buccal sample; and
  - “(iv) that the suspect is under no obligation to give the buccal sample; and
  - “(v) that no parent of the suspect is under any obligation to consent to the taking of the buccal sample; and
  - “(vi) that if the suspect or a parent of the suspect consents to the taking of the buccal sample, he or she may, at any time before the buccal sample

is taken, withdraw his or her consent to it being taken; and

- “(vii) that the suspect and any parent of the suspect may wish to consult a lawyer before deciding whether or not to consent to the buccal sample being taken; and
- “(viii) that the suspect or any parent of the suspect is able to consult with any person (not being a member of the police) that he or she wishes before deciding whether or not to consent to the buccal sample being taken; and
- “(ix) that the sample will be analysed and may, if it tends to confirm the suspect’s involvement in the offence, be used to make an application for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Children, Young Persons, and Their Families Act 1989, but may not be used to prosecute the suspect for any offence.

**“24F Form and content of notice**

A notice given under section 24E(a) must—

- “(a) be in the prescribed form; and
- “(b) contain the following particulars:
  - “(i) a statement that it is believed that the suspect has or may have committed an indictable offence for which he or she may not be lawfully prosecuted and that the suspect is being requested to consent to the giving of a buccal sample in relation to that offence:
  - “(ii) a statement that there are reasonable grounds to believe that analysis of the buccal sample will tend to confirm or disprove the suspect’s involvement in the commission of the offence:
  - “(iii) a statement that the buccal sample may not be taken from the suspect unless both the suspect and a parent of the suspect consent to the taking of the buccal sample:

- “(iv) a statement that the suspect is under no obligation to give the buccal sample:
- “(v) a statement that no parent of the suspect is under any obligation to consent to the giving of the buccal sample:
- “(vi) a statement that the suspect and any parent of the suspect may wish to consult a lawyer before consenting to the taking of the buccal sample:
- “(vii) a statement that the suspect or any parent of the suspect is able to consult with any person (not being a member of the police) that he or she wishes before consenting to the buccal sample being taken:
- “(viii) a statement that, if the suspect or a parent of the suspect consents to the taking of the sample, he or she may, at any time before the buccal sample is taken, withdraw his or her consent to it being taken:
- “(ix) a statement that the sample will be analysed and may, if it tends to confirm the suspect’s involvement in the offence, be used to make an application for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Children, Young Persons, and Their Families Act 1989, but may not be used to prosecute the suspect for any offence:
- “(x) a summary of section 49A relating to who may take the buccal sample:
- “(xi) a statement that a buccal sample may be taken in the presence of a parent:
- “(xii) a summary of section 52A relating to who must be present if the suspect takes a buccal sample himself or herself:
- “(xiii) a statement that the suspect or a parent of the suspect may request that the buccal sample be taken in the presence of a lawyer, or another person, of the suspect’s or parent’s choice:

- “(xiv) a summary of sections 56A and 59 relating to the procedures for the analysis of the sample and disclosure of the results of the analysis:
- “(xv) a reference to section 61A relating to the disposal of the buccal sample and of any information derived from any analysis of the buccal sample:
- “(xvi) any other particulars that may be prescribed under regulations made under this Act.

**“24G Consent to taking of buccal sample**

- “(1) A consent to the taking of a buccal sample as a result of a Part 2A request is valid if the consent—
  - “(a) is in writing and signed by the person giving the consent; or
  - “(b) is given orally and recorded on a videotape.
- “(2) If consent is given in writing, the consent must be signified on the notice required by section 24E(a) to be handed to the suspect at the time of the making of the request, or on a copy of that notice.
- “(3) If consent is recorded on a videotape, the videotape must clearly show,—
  - “(a) in the case of a consent given by a suspect,—
    - “(i) the making of the request to the suspect; and
    - “(ii) the handing to the suspect of the notice required by section 24E(a); and
    - “(iii) the giving of consent to the taking of the buccal sample; and
  - “(b) in the case of consent given by a parent of a suspect,—
    - “(i) the handing to that person of a copy of the notice required by section 24E(b) or an acknowledgement by that person that a copy of that notice has been given to him or her; and
    - “(ii) the giving of consent to the taking of the buccal sample from the suspect.

**“24H Withdrawal of consent**

- “(1) A suspect or a suspect’s parent who has given consent to the taking of a buccal sample as a result of a Part 2A request may,

at any time before the sample is taken, withdraw that consent either orally or in writing.

“(2) If the consent is withdrawn orally, the withdrawal must be recorded in writing by a member of the police as soon as is practicable.

**“24I Buccal sample to be forwarded to approved agency as soon as practicable**

If a buccal sample is taken as a result of a Part 2A request, the police must ensure that the buccal sample is forwarded to an approved agency as soon as is practicable after it is taken.”

**20 Access to and disclosure of information on DNA profile databank**

Section 27(4) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) the issuing of a databank compulsion notice or the making of a Part III order; or”.

**21 Authority to take blood sample from DNA profile databank**

Section 29(a) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) the sample is taken pursuant to a databank compulsion notice; and”.

**22 Form and content of notice**

(1) Section 31(b)(vi) of the principal Act is amended by omitting the words “and 49”, and substituting the words “, 49, and 49A”.

(2) Section 31(b) of the principal Act is amended by repealing subparagraph (vii), and substituting the following subparagraph:

“(vii) a statement that the person may request that the sample be taken in the presence of a lawyer, or another person, of the person’s own choice:”.

- (3) Section 31(b)(viii) of the principal Act is amended by omitting the expression “56”, and substituting the expression “56, 56A”.

**23 New sections 39 to 44B and headings substituted**

The principal Act is amended by repealing sections 39 to 44 and the headings before sections 39, 42, and 44, and substituting the following sections and headings:

*“Obtaining bodily sample by databank  
compulsion notice*

**“39 Issue and service of databank compulsion notice**

- “(1) A commissioned officer of the police may issue a databank compulsion notice requiring a person to give a bodily sample if—
- “(a) the person has been convicted of a relevant offence; and
  - “(b) the conviction is one to which this Part applies under section 4.
- “(2) If a databank compulsion notice is issued, the police must—
- “(a) serve the notice on the person to whom it relates by handing the notice to the person; and
  - “(b) if that person is under the age of 17 years, take all reasonable steps to serve a copy of the notice on a parent or other person having the care of that person by giving him or her a copy of it; and
  - “(c) explain the contents of the notice to the person being served in a manner, and in a language, that the person is likely to understand.
- “(3) If a person in relation to whom a databank compulsion notice is issued is not detained under a sentence of imprisonment for the relevant offence in relation to which it is issued, the notice—
- “(a) must be served on a date as soon as is reasonably practicable after the person’s conviction for the relevant offence is entered; but
  - “(b) need not be served on a date before the person is sentenced for the relevant offence; and
  - “(c) must be served on a date that allows for the taking of a bodily sample in accordance with section 39C(3) (which describes the dates between which a person who



is not detained under a sentence of imprisonment may be required to attend to give a bodily sample).

- “(4) If a person in relation to whom a databank compulsion notice is issued is detained under a sentence of imprisonment for the relevant offence in relation to which it is issued, the notice must be served on a date that allows for the taking of a bodily sample in accordance with section 39C(4) (which describes the dates between which a person who is detained under a sentence of imprisonment may be required to attend to give a bodily sample).

**“39A Form and content of databank compulsion notice**

- “(1) Every databank compulsion notice must be in the prescribed form.
- “(2) Every databank compulsion notice must contain the following particulars:
- “(a) the offence in relation to which the notice is issued:
  - “(b) a place where, and a date on which, the person to whom the notice relates is to attend to give a bodily sample, as specified by a commissioned officer of the police under section 39C:
  - “(c) a statement that the person in relation to whom the notice is issued must attend to give a bodily sample at the place and on the date specified in the order, unless the person and a member of the police agree that the person may attend to give the sample at a different place, on an earlier date, or at a different place and on an earlier date than that specified in the notice:
  - “(d) a statement that information obtained from the bodily sample will be stored on a DNA profile databank and may be used by the police in the investigation of criminal offences:
  - “(e) a statement that the person in relation to whom the notice is issued may request a databank compulsion notice hearing under section 41(1):
  - “(f) a summary of the grounds on which a hearing may be requested under section 41(2):
  - “(g) a summary of the provisions of sections 48, 49, and 49A relating to the procedure for taking a bodily sample and

- a statement that in certain circumstances a Judge may specify the method by which the sample is to be taken:
- “(h) a statement that, if the suspect refuses to allow a bodily sample to be taken, a sample may be taken by force under section 54(2) and, if applicable, section 54(3):
  - “(i) a statement that the person may request that the sample be taken in the presence of a lawyer, or another person, of the person’s own choice:
  - “(j) a summary of the provisions of sections 55, 56, 56A, and 59 relating to the procedure for the analysis of the sample and the disclosure of the results of the analysis:
  - “(k) a summary of the provisions of section 27 relating to the use of any DNA profile obtained from the sample:
  - “(l) any other particulars that may be prescribed.
- “(3) If a databank compulsion notice is issued in relation to a person who is serving a sentence by way of home detention, the notice must contain—
- “(a) the particulars in subsection (2)(a) and (d) to (l); but
  - “(b) instead of the particulars in subsection (2)(b) and (c), the following particulars:
    - “(i) a statement that the person must give a bodily sample at the residence at which the person is detained; and
    - “(ii) a statement that the person and a member of the police may not agree to vary the place at which the sample is to be given, but may agree to vary the date on which the person is to attend to give the sample to a date earlier than the date specified in the notice.
- “(4) Despite subsection (3)(b)(i), a commissioned officer of the police may state in a databank compulsion notice that a person serving a sentence by way of home detention may give a bodily sample at a place other than the residence at which the person is detained, if the commissioned officer of the police issuing the notice is of the view that it is necessary to do so on account of the person’s health.

**“39B Form and content of databank compulsion notice issued in relation to person under age of 17 years**

- “(1) Every databank compulsion notice issued in relation to a person under the age of 17 years must be in the prescribed form.
- “(2) Every databank compulsion notice issued in relation to a person under the age of 17 years must contain the particulars listed in section 39A(2), or if applicable section 39A(3), as well as the following particulars:
- “(a) a statement that a bodily sample may not be taken unless all reasonable steps have been taken to serve a copy of the notice on a parent or other person having the care of that person; and
  - “(b) a statement that a parent or other person having the care of that person may request a databank compulsion notice hearing under section 41(3); and
  - “(c) a statement that a parent or other person having the care of the person may be present when the bodily sample is taken.

**“39C Date and place for taking of sample to be specified in databank compulsion notice**

- “(1) A commissioned officer of the police who issues a databank compulsion notice must specify in the notice the place where and the date on which the person to whom the notice relates is to attend to give a bodily sample.
- “(2) If a person to whom a databank compulsion notice relates is serving a sentence by way of home detention, the place the commissioned officer of the police must specify under subsection (1) must be the residence at which the person is detained, unless the commissioned officer of the police is of the view that it is necessary for the person to give the sample at another place on account of the person’s state of health.
- “(3) If a person to whom a databank compulsion notice relates is not detained under a sentence of imprisonment for the relevant offence in relation to which the notice is issued at the time the notice is served, the date specified in the notice under subsection (1)—
- “(a) must be later than the 14th day after the date on which the notice is served; and

- “(b) must be before the date 6 months after the date the person’s conviction for the relevant offence was entered.
- “(4) If the person to whom a databank compulsion notice relates is detained under a sentence of imprisonment for the relevant offence in relation to which the notice is issued at the time the notice is served, the date specified in the notice under subsection (1)—
- “(a) must be later than the 14th day after the date on which the notice is served; and
- “(b) must be before the later of the 2 following dates:
- “(i) the date the person is released from being detained under a sentence of imprisonment for the relevant offence; or
- “(ii) the date 6 months from the date on which the conviction for the relevant offence was entered.

**“39D Parent or other person having care to be notified if police suggest variation of databank compulsion notice issued in relation to person under age of 17 years**

- “(1) If a member of the police suggests varying, under section 39A(2)(c), the place where, the date on which, or the place where and the date on which a person under the age of 17 years is to attend to give a bodily sample pursuant to a databank compulsion notice, the member of the police must take all reasonable steps to notify a parent or other person having the care of the person of the suggested variation.
- “(2) If a member of the police suggests varying, under section 39A(3)(b)(ii), the date on which a person under the age of 17 years is to attend to give a bodily sample pursuant to a databank compulsion notice, the member of the police must take all reasonable steps to notify a parent or other person having the care of the person of the suggested variation.

**“40 Databank compulsion notice of no effect if conviction for relevant offence quashed**

- “(1) A databank compulsion notice ceases to have effect if, before a bodily sample is taken pursuant to the notice, the person’s conviction for the relevant offence in relation to which the notice has been issued is quashed.

- “(2) If subsection (1) applies, a member of the police must,—
- “(a) as soon as practicable after the conviction is quashed, notify the person to whom the notice relates and, in the case of a person under the age of 17 years, a parent or other person having the care of that person that—
    - “(i) the notice is of no effect; and
    - “(ii) the person to whom the notice relates is no longer required to give a bodily sample pursuant to that notice; and
    - “(iii) the notice may be disregarded; and
  - “(b) as soon as practicable after notifying the person and, if applicable, the person’s parent or other person having the care of that person, of the matters listed in paragraph (a), confirm those matters in writing.

*“Databank compulsion notice hearing*

**“41 Databank compulsion notice hearing may be requested on certain grounds**

- “(1) A person served with a databank compulsion notice or required to be served with a databank compulsion notice under section 39(2) may, before the date specified in the notice as the date on which the person to whom the notice relates is to attend to give a bodily sample, request a member of the police to arrange a databank compulsion notice hearing before a Judge of the appropriate court.
- “(2) A databank compulsion notice hearing may only be requested on 1 or more of the following grounds:
- “(a) that—
    - “(i) the offence in relation to which the databank compulsion notice has been issued is not a relevant offence; or
    - “(ii) the conviction for the relevant offence in relation to which the databank compulsion notice has been issued is not a conviction to which this Part applies:
  - “(b) that the conviction for the relevant offence in relation to which the databank compulsion notice has been issued—
    - “(i) was quashed before the notice was issued; or

- “(ii) was quashed after the notice was issued but before the sample was taken and the police have not notified the person that the notice is of no effect under section 40(2):
- “(c) that all 3 methods available for the taking of a bodily sample will cause serious harm to the person’s health on the date specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample:
- “(d) that the date specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample is a date on or before the date that is 14 days after the date on which the notice was served:
- “(e) that the date specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample is,—
  - “(i) if the person is not detained under a sentence of imprisonment for the relevant offence in relation to which the notice is issued at the time the notice is served, a date that is on or after the date 6 months after the date the person’s conviction for the relevant offence was entered; or
  - “(ii) if the person is detained under a sentence of imprisonment for the relevant offence in relation to which the notice is issued at the time the notice is served, a date that is on or after the later of the 2 following dates:
    - “(A) the date the person is to be released from being detained under a sentence of imprisonment for the relevant offence; or
    - “(B) the date 6 months after the date the person’s conviction for the relevant offence was entered:
- “(f) that the person to whom the databank compulsion notice relates was not served with the notice:
- “(g) if the person in relation to whom the databank compulsion notice has been issued is under the age of 17 years,—

- “(i) that person was not served with the notice; or
  - “(ii) that all reasonable steps have not been taken to serve the parent or other person having the care of the person with a copy of the notice.
- “(3) If a databank compulsion notice is issued in relation to a person who is under the age of 17 years, that person’s parent or other person having the care of that person may request a hearing under any of the grounds set out in subsection (2).
- “(4) In this section and section 41B, the appropriate court is the court before which the person to whom the databank compulsion notice relates was sentenced for the relevant offence, or is due to appear for sentence for the relevant offence, in relation to which the notice has been issued.

**“41A Form and effect of request for databank compulsion notice hearing**

- “(1) A request for a databank compulsion notice hearing—
- “(a) must be in writing; and
  - “(b) must specify the ground or grounds listed in section 41(2) that are relied on.
- “(2) If a request is made for a databank compulsion notice hearing, a bodily sample must not be taken from the person to whom the databank compulsion notice relates unless a Judge at a databank compulsion notice hearing makes a Part III order.

**“41B Obligations if databank compulsion notice hearing requested**

- “(1) A member of the police must, as soon as is practicable after receiving a request for a databank compulsion notice hearing, file a notice of hearing, in the prescribed form, in the appropriate court.
- “(2) The registrar of the court in which the notice of hearing is filed must advise the following persons of the time and place for the hearing:
- “(a) the person to whom the notice relates:
  - “(b) if the person to whom the notice relates is under the age of 17 years, a parent or other person having the care of that person:

- “(c) if a lay advocate has been appointed under section 326 of the Children, Young Persons, and Their Families Act 1989 in respect of the person to whom the notice relates, that lay advocate:
- “(d) the officer of police in charge of the police station where the member of the police who filed the notice of hearing is stationed.

**“41C Appearance at databank compulsion notice hearing**

- “(1) The following persons are entitled to appear and to adduce evidence at a databank compulsion notice hearing:
  - “(a) the person to whom the databank compulsion notice relates:
  - “(b) any lawyer who represents the person to whom the databank compulsion notice relates:
  - “(c) the police.
- “(2) If a person to whom a databank compulsion notice relates is under the age of 17 years, the following persons, as well as the persons listed in subsection (1), are entitled to appear and to adduce evidence at the databank compulsion notice hearing:
  - “(a) any person who is a parent or other person having the care of the person to whom the databank compulsion notice relates:
  - “(b) any lawyer representing a person referred to in paragraph (a):
  - “(c) a lay advocate of the person to whom the databank compulsion notice relates, if any has been appointed under section 326 of the Children, Young Persons, and Their Families Act 1989:
  - “(d) with the leave of the Judge, any other person.
- “(3) The provisions of sections 21 and 22 (which relate to the appointment of a lawyer to represent a respondent who is under the age of 17 years) apply, with any necessary modifications, to a databank compulsion notice hearing if the person to whom the hearing relates is under the age of 17 years.



*“Part III orders and other orders made at  
databank compulsion notice hearings*

**“42 Part III orders and other orders made at databank  
compulsion notice hearings**

- “(1) If a Judge at a databank compulsion notice hearing is satisfied that either of the grounds specified in section 41(2)(a) or (b) have been proved, the Judge must make an order that the databank compulsion notice is of no effect.
- “(2) If a Judge at a databank compulsion notice hearing is satisfied that the ground specified in section 41(2)(c) has been proved, the Judge must,—
- “(a) if he or she believes on reasonable grounds that the state of the person’s health is unlikely to change, make an order that the databank compulsion notice is of no effect; or
  - “(b) if he or she believes on reasonable grounds that the taking of a bodily sample by a particular method will not cause serious harm to the person’s health if taken on a date other than the date specified in the databank compulsion notice,—
    - “(i) make a Part III order; and
    - “(ii) vary the notice by specifying a new date on which the person to whom a notice relates is to attend to give a bodily sample that need not be a date in accordance with the applicable date set out in section 39C(3)(b) or (4)(b); and
    - “(iii) vary the notice to require the sample be taken by a particular method.
- “(3) A Judge must not vary a databank compulsion notice under subsection (2)(b)(ii) and (iii) unless an independent medical practitioner approved by the Judge certifies that the taking of the sample by the method specified will not cause serious harm to the person’s health on the new date specified.
- “(4) If a Judge at a databank compulsion notice hearing is satisfied that the ground specified in section 41(2)(d) has been proved, the Judge must—
- “(a) make a Part III order; and
  - “(b) vary the databank compulsion notice by specifying a new date on which the person to whom the notice re-

lates is to attend to give a bodily sample pursuant to the databank compulsion notice, being a date later than 14 days after the date on which the notice was served and in accordance with the applicable date set out in section 39C(3)(b) or (4)(b).

- “(5) If a Judge at a databank compulsion notice hearing is satisfied that the ground specified in section 41(2)(e) has been proved, the Judge must,—
- “(a) if the latest permissible date that may be specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample had passed when the databank compulsion notice was served, make an order that the notice is of no effect; or
  - “(b) if the latest permissible date that may be specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample had not passed when the databank compulsion notice was served,—
    - “(i) make a Part III order; and
    - “(ii) vary the databank compulsion notice by specifying a new date on which the person to whom the notice relates is to attend to give a bodily sample pursuant to the notice, being a date in accordance with the applicable dates set out in section 39C(3) or (4).
- “(6) If a Judge at a databank compulsion notice hearing is satisfied that either or both of the grounds specified in section 41(2)(f) or (g) have been proved, the Judge may make any order he or she considers appropriate.
- “(7) If a Judge at a databank compulsion hearing is satisfied that none of the grounds specified in section 41(2) (including grounds other than those raised by the person requesting the hearing) been proved, the Judge must make a Part III order.
- “(8) This section is subject to sections 43A and 43B.

**“43 Judge may vary, or impose conditions on, databank  
compulsion notice**

- “(1) If a Judge makes a Part III order, the Judge may also, if the Judge considers it appropriate, do any of the following:
- “(a) specify in the databank compulsion notice in relation to which the order is made a new place at which the person to whom the notice relates is to attend to give a bodily sample:
  - “(b) specify in the databank compulsion notice in relation to which the order is made a new date on which the person to whom the notice relates is to attend to give a bodily sample, being a date in accordance with the applicable dates set out in section 39C(3) or (4):
  - “(c) include any reasonable conditions the Judge thinks fit in the databank compulsion notice.
- “(2) A Judge may not do anything under subsection (1) that is inconsistent with what the Judge must do under section 42.
- “(3) This section is subject to section 43A.

**“43A Change of circumstances before databank compulsion  
notice hearing takes place or is completed**

- “(1) Subsection (2) applies if,—
- “(a) in the case of a person who was not detained under a sentence of imprisonment in relation to the relevant offence for which a databank compulsion notice was issued at the time the databank compulsion notice was served,—
    - “(i) that person makes a request for a databank compulsion notice hearing on any of the grounds set out in section 41(2); and
    - “(ii) before an application is made for a databank compulsion notice hearing, after an application is made but before the matter is considered by a Judge, or before consideration of the matter is complete, a date is reached that is 6 months or more since the person’s conviction for the relevant offence in relation to which the databank compulsion notice was issued was entered:

- “(b) in the case of a person who was detained under a sentence of imprisonment for the relevant offence in relation to which a databank compulsion notice was issued at the time a databank compulsion notice was served,—
  - “(i) that person makes a request for a databank compulsion notice hearing on any of the grounds set out in section 41(2); and
  - “(ii) before an application is made for a databank compulsion notice hearing, after an application is made but before the matter is considered by a Judge, or before consideration of the matter is complete, the later of the 2 following dates is reached:
    - “(A) the date of the person’s release from detention under a sentence of imprisonment for the relevant offence in relation to which the databank compulsion notice was issued; or
    - “(B) the date that is 6 months from the date on which the conviction for the relevant offence in relation to which the databank compulsion notice was issued was entered.
- “(2) If this subsection applies,—
  - “(a) a databank compulsion notice hearing must take place and be completed as if the applicable date referred to in subsection (1)(a)(ii) or (b)(ii) had not been reached; and
  - “(b) a Judge—
    - “(i) must make an appropriate order under section 42; and
    - “(ii) may, if applicable, vary, or include any condition in, the databank compulsion notice under section 42 or section 43.
- “(3) Despite anything in this Part, if subsection (2) applies, a Judge may vary the date in a databank compulsion notice on which a person to whom the notice relates is to attend to give a bodily sample to a date that is not in accordance with the applicable date set out in section 39C(3)(b) or (4)(b).
- “(4) This section is subject to section 43B.

**“43B Order that databank compulsion notice of no effect must be made in certain circumstances**

- “(1) Nothing in section 42 or section 43A allows a Judge to make a Part III order if the Judge is satisfied that—
- “(a) the date specified in a databank compulsion notice by a commissioned officer of the police on which the person to whom the notice relates is to attend to give a bodily sample is on or before the 14th day after the date on which the notice was served (meaning the date is not in accordance with the applicable date set out in section 39C(3)(a) or (4)(a)); and
  - “(b) if the date in the notice had complied with section 39C(3)(a) or (4)(a) by being a date later than the 14th day after the date on which the notice was served, then that date would not have been in accordance with the applicable date set out in section 39C(3)(b) or (4)(b) (because the date would have been after the latest permissible date specified in those sections).
- “(2) If the Judge is satisfied of the matters in subsection (1)(a) and (b), the Judge must make an order that a databank compulsion notice is of no effect.

*“Further databank compulsion notice*

**“44 Further databank compulsion notice**

- “(1) If a person to whom a databank compulsion notice relates has given a bodily sample pursuant to that notice, a further databank compulsion notice must not be issued in relation to that person for the same conviction without the leave of a Judge of the appropriate court on an application from a member of the police who is of or above the rank of sergeant.
- “(2) In this section, the appropriate court is the court before which the person to whom the databank compulsion notice relates was sentenced for the relevant offence in relation to which the notice has been issued, or is due to appear for sentence for the relevant offence in relation to which the notice has been issued.

**“44A Certain matters relating to further databank compulsion notice**

- “(1) A Judge must not grant leave for a further databank compulsion notice to be issued unless he or she is satisfied that it is necessary to obtain another bodily sample from the person in relation to whom the databank compulsion notice was issued because—
- “(a) the sample taken pursuant to the notice—
    - “(i) has been lost; or
    - “(ii) has been destroyed (other than under section 62(1) or (2)); or
  - “(b) a proper analysis of the sample taken pursuant to the notice has not been possible on account of the condition of that sample.
- “(2) A Judge may refuse to grant leave to issue a further databank compulsion notice if he or she is satisfied that the taking of a further bodily sample would be vexatious or an abuse of process.
- “(3) A Judge may grant leave for a further databank compulsion notice to be issued even if the applicable date set out in section 39C(3)(b) or (4)(b) before which a person may be required to attend to give a bodily sample has been reached.
- “(4) If a Judge grants leave for a further databank compulsion notice to be issued in the circumstances referred to in subsection (3), the commissioned officer of the police issuing the notice must comply with all of the obligations relating to the issuing of a databank compulsion notice, except for the inclusion of a date for the person to attend to give a sample that is in accordance with the applicable date set out in section 39C(3)(b) or (4)(b).
- “(5) A person in relation to whom a further databank compulsion notice is issued in the circumstances referred to in subsection (3) may not request a databank compulsion hearing on the ground specified in section 41(2)(e), but may do so on any other ground specified in section 41(2).

**“44B Judge to specify method of taking sample if further databank compulsion notice issued**

- “(1) If a Judge grants leave for a further databank compulsion notice to be issued, the Judge must specify the method by which a bodily sample is to be taken.
- “(2) In determining the method by which a bodily sample is to be taken, the Judge must have regard to—
- “(a) any view expressed by the member of the police who is making the application (being a member of the police who is of or above the rank of sergeant) regarding which of the 3 methods should be used; and
  - “(b) any view expressed by the person to whom the notice relates regarding which of the 3 methods should be used.”

**24 New sections 45AA to 47 substituted**

- (1) The principal Act is amended by repealing sections 45 to 47, and substituting the following sections:

**“45AA Date on which bodily sample to be taken**

- “(1) A bodily sample must not be taken pursuant to a compulsion order or databank compulsion notice if the date specified in the order or notice on which the person to whom the order or notice relates is to attend to give a bodily sample has passed, unless—
- “(a) a warrant to arrest the person to whom the order or notice relates has been issued under section 45; or
  - “(b) the date has been varied by a Judge under section 42, section 43, section 43A, or section 47 to a date later than the date originally specified in the order or notice.
- “(2) If a person to whom a compulsion order or databank compulsion notice relates and a member of the police agree to vary the date specified in a compulsion order or databank compulsion notice on which the person is to attend to give a bodily sample, but for any reason the person does not attend to give the sample on that date, the person may attend to give the sample on—
- “(a) the date specified in the order or notice, which may be the date as varied by a Judge under section 42, section 43, section 43A, or section 47; or

“(b) any other date before the date specified in the order or notice, agreed to by the person to whom the order or notice relates and a member of the police under section 24A(2) or (4)(b) or section 39A(2)(c) or (3)(b)(ii).

**“45 Judge may issue warrant for arrest and detention**

“(1) To avoid doubt, in this section and section 45A, a reference to a date specified in a compulsion order or databank compulsion notice on which the person to whom the order or notice relates is to attend to give a bodily sample—

“(a) includes, if applicable, a date varied by a Judge under section 42, section 43, section 43A, or section 47; but

“(b) does not include a date varied by agreement between the person to whom the order or notice relates and a member of the police under section 24A(2) or (4)(b) or section 39A(2)(c) or (3)(b)(ii).

“(2) If a compulsion order is made or a databank compulsion notice is issued, a Judge of the appropriate court may, on an application made by the applicant for the order, or any other member of the police who is above the rank of sergeant, direct the issue of a warrant to arrest and detain the person to whom the order or notice relates, subject to section 45A(2)(b), until a bodily sample is taken.

“(3) For the purposes of subsection (2), the appropriate court is,—

“(a) in relation to a compulsion order, the court in which the compulsion order was made; and

“(b) in relation to a databank compulsion notice, the court before which the person to whom the databank compulsion notice relates was sentenced for the relevant offence, or is due to appear for sentence for the relevant offence, in relation to which the notice has been issued.

“(4) A Judge must not direct the issue of a warrant before the date specified in a compulsion order or databank compulsion notice on which the person to whom the order or notice relates is to attend to give a bodily sample, unless the Judge is satisfied by evidence given on oath—

“(a) that the person to whom the order or notice relates is unlikely to attend to give a bodily sample on the date specified in the order or notice, either—



- “(i) because the person to whom the order or notice relates has absconded; or
- “(ii) because there are reasonable grounds to believe that the person to whom the order or notice relates is about to abscond; and
- “(b) that—
  - “(i) all reasonable steps have been taken to serve the person to whom the order relates with the order specifying the date on which the person is to attend to give the bodily sample; or
  - “(ii) the person to whom the notice relates has been served with the notice specifying the date on which the person is to attend to give the bodily sample; and
- “(c) that, if applicable, all reasonable steps have been taken to give the person notice of the varying of the date—
  - “(i) in the order or notice under section 47 if the person to whom the order or notice relates was not the applicant for the variation; or
  - “(ii) in the notice under section 42, section 43, or section 43A.
- “(5) A Judge must not direct the issue of a warrant on or after the date specified in a compulsion order or databank compulsion notice on which the person to whom the order or notice relates was to attend to give a bodily sample unless the Judge is satisfied by evidence given on oath—
  - “(a) that the person to whom the order or notice relates has failed to attend to give a bodily sample on the date specified in the order or notice; and
  - “(b) that—
    - “(i) all reasonable steps have been taken to serve the person to whom the order relates with the order specifying the date on which the person is to attend to give the bodily sample; or
    - “(ii) the person to whom the notice relates has been served with the notice specifying the date on which the person is to attend to give the bodily sample; and

- “(c) that, if applicable, all reasonable steps have been taken to give the person notice of the varying of the date—
  - “(i) in the order or notice under section 47 if the person to whom the order or notice relates was not the applicant for the variation; or
  - “(ii) in the notice under section 42, section 43, or section 43A.
- “(6) Nothing in this section requires a Judge to direct the issue of an arrest warrant if the Judge is satisfied that the person to whom a compulsion order or databank compulsion notice relates was, or will be, unable to attend to give a bodily sample on the date specified in the compulsion order or databank compulsion notice due to reasons outside that person’s control.

**“45A Form and effect of warrant for arrest and detention**

- “(1) Every warrant issued under section 45—
  - “(a) must be in the prescribed form; and
  - “(b) expires immediately after a bodily sample is taken from the person to whom the compulsion order or databank compulsion notice in relation to which the warrant is issued relates.
- “(2) A warrant issued under section 45 authorises—
  - “(a) the arrest of the person to whom the compulsion order or databank compulsion notice relates; and
  - “(b) the detention of that person for as long as is reasonably necessary to take a bodily sample from that person, but in no case longer than 24 hours.
- “(3) A bodily sample taken pursuant to a warrant issued under section 45 must be taken in accordance with the compulsion order or databank compulsion notice to which the person is subject.
- “(4) Despite subsection (3), a bodily sample taken pursuant to a warrant need not be taken at the place, on the date, or at the place and on the date specified in the compulsion order or databank compulsion notice.
- “(5) The power to arrest and detain a person pursuant to a warrant issued under section 45 may be exercised on 1 occasion only.

**“46 Person in custody to attend to give bodily sample**

- “(1) This section applies to a person in respect of whom a compulsion order has been made, or a databank compulsion notice has been issued, if that person is detained—
- “(a) in the custody of the police; or
  - “(b) in the custody of the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
  - “(c) in the custody of a Superintendent in any penal institution; or
  - “(d) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- “(2) A person having custody of, or responsibility for, a person to whom this section applies must cause that person to attend at the place where, and on the date on which, a bodily sample is to be taken pursuant to the compulsion order or databank compulsion notice.
- “(3) To avoid doubt, a place where, or a date on which, a person is to attend to give a bodily sample pursuant to a compulsion order or databank compulsion notice may be, if applicable,—
- “(a) a place or date as varied by a Judge under section 42, section 43, section 43A, or section 47; or
  - “(b) a place or date as varied by agreement between the person to whom the order or notice relates and a member of the police under section 24A(2) or section 39A(2)(c).
- “(4) An agreement reached, under section 24A(2) or section 39A(2)(c), between a person to whom this section applies and a member of the police, to vary the place where, the date on which, or the place where and the date on which, a bodily sample is to be taken under a compulsion order or databank compulsion notice is of no effect unless it has been approved by the person having custody of, or responsibility for, the person to whom this section applies.
- “(5) The Commissioner must meet any of the following expenses incurred by any person:
- “(a) the expense of bringing a person to whom this section applies to the place where the bodily sample is to be taken; and

“(b) the expense of returning that person to the place where he or she is required to be detained.

“(6) The expenses referred to in subsection (5) include, but are not limited to, expenses relating to the maintenance and custody of a person to whom this section applies while he or she is absent from the place where he or she would otherwise be detained.

**“46A Home detainee to attend to give bodily sample**

“(1) An agreement reached, under section 24A(4)(b) or section 39A(3)(b)(ii), between a person serving a sentence by way of home detention and a member of the police to vary the date on which a bodily sample is to be taken pursuant to a compulsion order or databank compulsion notice is of no effect unless it has been approved by the probation officer supervising the person who is serving his or her sentence by way of home detention.

“(2) Subsection (3) applies if—

“(a) a condition is included in a suspect compulsion order or juvenile compulsion order under section 24A(5); or

“(b) a statement is included in a databank compulsion notice under section 39A(4).

“(3) If this subsection applies,—

“(a) the police must, as soon as is practicable, give the Department of Corrections notice of the need for the home detainee to leave his or her place of detention for the purposes of having a bodily sample taken pursuant to a compulsion order or databank compulsion notice; and

“(b) section 46(5) and (6) applies with all necessary modifications.

**“47 Variation by Judge on application of place and date for taking sample**

“(1) If a compulsion order is made, or a databank compulsion notice is issued, a member of the police who is of or above the rank of sergeant, or a person to whom the order or notice relates, may at any time apply to a Judge of the appropriate court to—

- “(a) vary the date specified in the order or notice on which the person to whom the order or notice relates is to attend to give a bodily sample; or
  - “(b) vary the place specified in the order or notice where the person to whom the order or notice relates is to attend to give a bodily sample; or
  - “(c) do both of the matters referred to in paragraphs (a) and (b).
- “(2) For the purposes of subsection (1), the appropriate court is,—
- “(a) in relation to a compulsion order, the court in which the compulsion order was made; and
  - “(b) in relation to a databank compulsion notice, the court before which the person to whom the databank compulsion notice relates was sentenced for the relevant offence, or is due to appear for sentence for the relevant offence, in relation to which the notice has been issued.
- “(3) An application may be made under this section at any time, whether before or after the date specified in the compulsion order or databank compulsion notice as the date on which the person to whom the order or notice relates is to attend to give a bodily sample.
- “(4) If a place, date, or place and date is varied under subsection (1), the varied place, date, or place and date must be treated for the purposes of the relevant compulsion order or databank compulsion notice, and this Act, as the place, date, or place and date specified in the order or notice.
- “(5) A Judge may, if he or she considers it appropriate, on an application under this section, vary a compulsion order or databank compulsion notice in any manner he or she thinks fit, including (without limitation) variation of—
- “(a) the application of a condition included in an order under section 24A(2), (3), or (5); or
  - “(b) the particulars included in a notice under section 39A(2)(c), or (4).
- “(6) To avoid doubt, an application must not be made under subsection (1) to vary a date or place, or date and place, agreed to by the person to whom the compulsion order or databank compulsion notice relates and a member of the police under section 24A(2) or section 39A(2)(c), or to vary

a date agreed to by those persons under section 24A(4)(b) or section 39A(3)(b)(ii), but that date or place, or date and place, may be varied by a further agreement between the parties.”

- (2) Part 1 of the Schedule of the Department of Child, Youth and Family Services Act 1999 is amended by repealing so much of it as relates to the Criminal Investigations (Blood Samples) Act 1995.

**25 New section 48 inserted**

The principal Act is amended by repealing section 48 and substituting the following section:

**“48 Method by which bodily sample may be taken**

- “(1) If a bodily sample is being taken as a result of a Part 2A request, it may only be taken by way of a buccal sample.
- “(2) If a bodily sample is being taken as a result of a suspect request or a databank request, or pursuant to a compulsion order or databank compulsion notice, it may, subject to subsections (3) to (5), be taken by any of the following methods:
- “(a) venous sample:
  - “(b) fingerprick sample:
  - “(c) buccal sample.
- “(3) In the case of a bodily sample being taken as a result of a suspect request or a databank request, the person from whom the sample is to be taken must be given an opportunity to elect which of the 3 methods referred to in subsection (2) is to be used to take the sample.
- “(4) In the case of a bodily sample being taken pursuant to a compulsion order or a databank compulsion notice where the Judge has not specified the method by which the sample is to be taken under section 17A, section 24A(1), section 42(2)(b)(iii), or section 44B, the person from whom the sample is to be taken must be given an opportunity to elect which of the 3 methods referred to in subsection (2) is to be used to take the sample, and, if—
- “(a) he or she agrees to give a sample in compliance with the order or notice, the sample must be taken by the method he or she has chosen; or

- “(b) he or she refuses to give a bodily sample in compliance with the order or notice, the sample, if it is taken by force under section 54(2) and, if applicable, section 54(3), must be taken by fingerprick sample.
- “(5) In the case of a bodily sample being taken pursuant to a compulsion order or databank compulsion notice where the Judge has specified under section 17A, section 24A(1), section 42(2)(b)(iii), or section 44B the method by which the sample is to be taken,—
- “(a) if the person agrees to give a sample in compliance with the order or notice, the sample must be taken by the method specified by the Judge; or
- “(b) if the person refuses to give a bodily sample in compliance with the order or notice, the sample, if taken by force under section 54(2) and, if applicable, section 54(3), must be taken by way of—
- “(i) buccal sample, if the Judge has specified under section 24A(1) or section 42(2)(b)(iii) a buccal sample as the method by which the sample is to be taken (because of the person’s state of health);  
or
- “(ii) fingerprick sample, in any other case.
- “(6) A member of the police may indicate to a person making an election under subsection (3) or (4)(a) that the police prefer a particular method for taking the sample be used.
- “(7) If a person has been given a reasonable opportunity under subsection (3) or (4)(a) to chose the method by which the sample is to be taken and has indicated that he or she has no preference as to the method by which the sample is taken, a member of the police must choose which of the 3 methods is to be used to take the sample.
- “(8) Section 54(2) and, if applicable, section 54(3) apply if a person refuses to allow a bodily sample to be taken after a decision has been made by a member of the police under subsection (7).”

**26 New section 49 substituted**

The principal Act is amended by repealing section 49, and substituting the following section:

**“49 Persons authorised to take blood samples**

A blood sample taken from a person under this Act must be taken by a suitably qualified person.”

**27 New section 49A inserted**

The principal Act is amended by inserting, after section 49, the following section:

**“49A Persons authorised to take buccal samples**

- “(1) If a buccal sample is being taken pursuant to a compulsion order or databank compulsion notice from a person of or over the age of 17 years, he or she may elect to—
- “(a) take the buccal sample himself or herself under the supervision of a member of the police; or
  - “(b) have the buccal sample taken by a suitably qualified person.
- “(2) If a buccal sample is being taken pursuant to a suspect request or a databank request from a person of or over the age of 17 years, the buccal sample must be taken by the person from whom the buccal sample is to be taken himself or herself under the supervision of a member of the police.
- “(3) If a buccal sample is being taken under this Act from a person of or over the age of 14 years but under the age of 17 years, he or she may elect to—
- “(a) take the buccal sample himself or herself under the supervision of a member of the police; or
  - “(b) have the buccal sample taken by a suitably qualified person.
- “(4) If a buccal sample is being taken under this Act from a child, he or she may elect—
- “(a) 1 of the options set out in subsection (3); or
  - “(b) to have the buccal sample taken by a parent, under the supervision of a member of the police.
- “(5) Despite subsections (1)(a), (2), and (3)(a), if a person is unable to take a buccal sample himself or herself due to disability or injury, the buccal sample must be taken by a suitably qualified person.



- “(6) Despite subsection (4), a child who is unable to take a buccal sample himself or herself due to disability or injury may only elect to have the buccal sample taken by—
- “(a) a parent, under the supervision of a member of the police; or
  - “(b) a suitably qualified person.
- “(7) A bodily sample must not be taken from a child if—
- “(a) a buccal sample is to be taken as a result of a Part 2A request; and
  - “(b) the child is unable to take the buccal sample himself or herself due to disability or injury; and
  - “(c) the child does not make an election under subsection (6).”

**28 Person giving sample entitled to have certain other persons present**

Section 50 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) A person from whom a bodily sample is taken is entitled to have the following persons present during the taking of the sample:
- “(a) a lawyer, or another person, of the person’s choice; and
  - “(b) in the case of a person under the age of 17 years, a parent or other person who has the care of that person.”

**29 Medical practitioner, etc, not compelled to take sample or be present**

- (1) The heading to section 51 of the principal Act is amended by omitting the words “Medical practitioner, etc”, and substituting the words “Suitably qualified persons and certain other persons”.
- (2) Section 51(a) of the principal Act is amended by omitting the words “medical practitioner or registered nurse”, and substituting the words “suitably qualified person”.
- (3) Section 51 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:
  - “(b) compels any lawyer or person chosen under section 50(1)(a) or (3), or any person referred to in section 50(1)(b), to be present during the taking of a bodily sample; or

“(c) compels any parent to take a buccal sample from his or her child under section 49A(4)(b) or (6)(a).”

### **30 Who may be present when blood sample taken**

(1) Section 52(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) the suitably qualified person who is to take the sample or the member of the police who will supervise the taking of the sample or, if section 49A(4)(b) or (6)(a) applies, the parent taking a buccal sample and the member of the police who will supervise the taking of the buccal sample:”.

(2) Section 52(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

“(da) in the case of a suspect under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself, an independent adult, who may be one of the persons referred to in paragraph (c) or paragraph (d):”.

(3) Section 52(1)(e) of the principal Act is amended by inserting, after the words “for the time being guarding”, the words “or escorting”.

(4) Section 52 of the principal Act is amended by repealing subsection (2).

### **31 New section 52A inserted**

The principal Act is amended by inserting, after section 52, the following section:

#### **“52A Who must be present when suspect under age of 17 years takes own buccal sample for suspect request or Part 2A request**

A suspect who is under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself must not take the buccal sample unless—

“(a) an independent adult is present when the buccal sample is taken; and

- “(b) the suspect has confirmed, in the presence of that independent adult, before taking the buccal sample, that he or she has elected to take a buccal sample himself or herself.”

**32 New section 54 substituted**

The principal Act is amended by repealing section 54, and substituting the following section:

**“54 Procedure for taking bodily sample pursuant to compulsion order or databank compulsion notice**

- “(1) If a bodily sample is to be taken pursuant to a compulsion order or databank compulsion notice, a member of the police must do the following:
  - “(a) unless the method by which the sample is to be taken has been specified by a Judge under section 17A, section 24A(1), section 42(2)(b)(iii), or section 44B, first ascertain from the person from whom the sample is to be taken whether he or she wishes the sample to be taken by way of venous sample, fingerprick sample, or buccal sample:
  - “(b) if the person is not a person in relation to whom a Judge has specified the method by which the sample is to be taken, inform the person that if he or she refuses to give a bodily sample, that a member of the police may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample:
  - “(c) if the person is a person in relation to whom a Judge has specified the method by which the sample is to be taken under section 17A or section 44B, or is a person in relation to whom a Judge has specified under section 24A(1) or section 42(2)(b)(iii) that the sample is to be taken by way of a blood sample, inform the person that if he or she refuses to give a bodily sample, that, despite the Judge having specified the method by which the sample is to be taken, a member of the police may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample:
  - “(d) if he or she is a person in relation to whom a Judge has specified under section 24A(1) or section 42(2)(b)(iii)

that because of the state of the person's health, the bodily sample must be taken by way of a buccal sample, inform the person that if he or she refuses to give a buccal sample, a member of the police may use or cause to be used reasonable force to assist a suitably qualified person to take a buccal sample.

- “(2) If a person refuses to give a bodily sample pursuant to a compulsion order or a databank compulsion notice, a member of the police may—
- “(a) use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample; or
  - “(b) if a Judge has specified under section 24A(1) or section 42(2)(b)(iii) that, because of the state of the person's health, the bodily sample must be taken by way of buccal sample, use or cause to be used reasonable force to assist a suitably qualified person to take a buccal sample.
- “(3) If a person who refuses to give a bodily sample is detained in a penal institution, a prison officer may, on a request made by a member of the police, use or cause to be used reasonable force to aid a member of the police to assist a suitably qualified person to take a fingerprick sample or, if subsection (2)(b) applies, a buccal sample, from that person.
- “(4) If a member of the police exercises the power conferred by subsection (2), that member of the police must, not later than 3 days after exercising that power, furnish to the Commissioner a written report of the exercise of that power.”

### 33 How venous sample to be dealt with

Section 55(2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

- “(c) one part of the venous sample must be delivered—
- “(i) immediately to the person from whom it was taken; or
  - “(ii) if the person from whom the venous sample is taken is in custody (other than pursuant to a warrant issued under section 45),—
    - “(A) as soon as is practicable to any person nominated by that person for the purpose if the nominated

person is not present when the venous sample is taken; or

“(B) immediately to any person nominated for the purpose if the nominated person is present when the venous sample is taken.”

**34 How fingerprick sample to be dealt with**

Section 56 of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) deliver any second fingerprick sample—

“(i) immediately to that person; or

“(ii) if the person from whom the fingerprick sample is taken is in custody (other than pursuant to a warrant issued under section 45),—

“(A) as soon as is practicable to any person nominated by that person for the purpose if the nominated person is not present when the fingerprick sample is taken; or

“(B) immediately to any person nominated for the purpose if the nominated person is present when the fingerprick sample is taken.”

**35 New section 56A inserted**

The principal Act is amended by inserting, after section 56, the following section:

**“56A How buccal sample to be dealt with**

“(1) This section applies to the following persons:

“(a) any member of the police supervising the taking of a buccal sample; and

“(b) any suitably qualified person taking a buccal sample.

“(2) Any person to whom this section applies must, after the taking of a buccal sample,—

“(a) as soon as is practicable,—

“(i) seal the buccal sample in a container once it has dried; or

“(ii) place the buccal sample in a container in a way that allows it to dry; and

“(b) ask the person from whom the buccal sample was taken whether or not he or she wishes to have a second buc-

- cal sample taken for the purposes of having the buccal sample analysed on his or her own behalf; and
- “(c) if the person responds in the affirmative,—
- “(i) in the case of a member of the police supervising the taking of the buccal sample, provide the person from whom the second buccal sample is to be taken with the means to take a second buccal sample himself or herself (or in the case of a buccal sample being taken from a child, if applicable, provide a parent with the means to take a second buccal sample from the child); or
- “(ii) in the case of a suitably qualified person, with the person’s consent take a second buccal sample or, if the person so requests, provide the person from whom the second buccal sample is to be taken with the means to take a second buccal sample himself or herself (or in the case of a buccal sample being taken from a child, if applicable, provide a parent with the means to take a second buccal sample from the child); and
- “(d) deliver any second buccal sample—
- “(i) immediately to that person; or
- “(ii) if the person from whom the buccal sample was taken is in custody (other than pursuant to a warrant issued under section 45),—
- “(A) as soon as is practicable to any person nominated by that person for the purpose if the nominated person is not present when the buccal sample is taken; or
- “(B) immediately to any person nominated for the purpose if the nominated person is present when the buccal sample is taken.”

### **36 Analysis of material found at scene, etc**

- (1) Section 57 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:
- “(a) material reasonably believed to be from, or genetically traceable to, the body of a person who committed the offence has been found or is available—

- “(i) at the scene of the offence; or
  - “(ii) on the victim of the offence; or
  - “(iii) from within the body or from any thing coming from within the body of the victim of the offence that is reasonably believed to be associated with, or having resulted from, the commission of the offence; or
  - “(iv) on any thing reasonably believed to have been worn or carried by the victim when the offence was committed; or
  - “(v) on any person or thing reasonably believed to have been associated with the commission of the offence; and”.
- (2) Section 57 of the principal Act is amended by adding the following subsection:
- “(2) Subsection (1) applies with all necessary modifications to a buccal sample taken as a result of a Part 2A request if an application is made for a declaration that the suspect from whom the buccal sample is taken is in need of care or protection on the ground set out in section 14(1)(e) of the Children, Young Persons, and Their Families Act 1989.”

**37 New section 61A inserted**

The principal Act is amended by inserting, after section 61, the following section:

**“61A Disposal of buccal samples and identifying information obtained under Part 2A**

- “(1) The Commissioner must ensure that a buccal sample taken from a suspect as a result of a Part 2A request, and the information referred to in subsection (2), is destroyed,—
- “(a) in a case where the results of analysis of the buccal sample do not tend to confirm the suspect’s involvement in the offence in relation to which the buccal sample was taken, as soon as practicable after the police receive those results; or
  - “(b) in a case where the results of analysis of the buccal sample tend to confirm the suspect’s involvement in the offence in relation to which the buccal sample was taken but an application is not made for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Children, Young Persons,

and Their Families Act 1989, not later than 60 days after the police receive the results of analysis of the buccal sample; or

“(c) in the case where the results of analysis of the buccal sample tend to confirm the suspect’s involvement in the offence in relation to which the buccal sample was taken and an application has been made for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Children, Young Persons, and Their Families Act 1989, as soon as practicable after a decision is made by the Family Court in relation to that application (whether or not a declaration is made).

“(2) The information is—

“(a) every record of any analysis of the buccal sample carried out on behalf of any member of the police; and

“(b) every record to the extent that it contains

“(i) information about the buccal sample; and

“(ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the buccal sample was taken.”

### **38 Disposal of blood samples and identifying information obtained under Part 3**

Section 62(4)(a) of the principal Act is amended by omitting the words “order made”, and substituting the words “notice issued”.

### **39 Material extracted from samples to be destroyed**

Section 63 of the principal Act is amended by inserting, after the expression “section 60”, the expression “, section 61A,”.

### **40 Translation of notices**

(1) Section 64(a) of the principal Act is amended by inserting, after the words “section 8(2)(a)”, the words “or section 24E(a)”.

(2) Section 64(d) of the principal Act is amended by inserting, after the words “as the case requires,”, the words “section 24G(2) or”.



- 41 Application of Legal Services Act 2000**  
Section 67 of the principal Act is amended by repealing subsection (2).
- 42 Consent to taking of bodily sample may not be given on person's behalf**  
Section 73 of the principal Act is amended by inserting after the words "response to a suspect request", the words ", Part 2A request,".
- 43 Payment of lawyer appointed to represent suspect**  
Section 74(1) of the principal Act is amended by omitting the words "section 44(2) of this Act", and substituting the words "section 41C(3)".
- 44 Fees and expenses of lay advocate**  
Section 75 of the principal Act is amended by omitting the words "or section 44(1)(b)(vi) of this Act, any person appears at the hearing of any application for a juvenile compulsion order or a databank compulsion order", and substituting the words "or section 41C(2)(c), any person appears at the hearing of an application for a juvenile compulsion order or at a databank compulsion notice hearing for a person under the age of 17 years".
- 45 Information relating to blood samples to be included in annual report of Police**
- (1) Section 76 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:  
“(ab) the number of occasions on which a buccal sample has been taken with the consent of a person given in response to a databank request.”.
- (2) Section 76 of the principal Act is amended by inserting, after paragraph (c), the following paragraphs:  
“(ca) the number of occasions on which a blood sample has been taken pursuant to a compulsion order:  
“(cb) the number of occasions on which a buccal sample has been taken pursuant to a compulsion order:

- “(cc) the number of occasions on which a blood sample has been taken pursuant to a databank compulsion notice:
- “(cd) the number of occasions on which a buccal sample has been taken pursuant to a databank compulsion notice:
- “(ce) the number of—
- “(i) databank compulsion notice hearings requested; and
  - “(ii) Part III orders made, and the number of orders made that the databank compulsion notice is of no effect, in respect of those hearings:”.
- (3) Section 76 of the principal Act is amended by repealing paragraph (d), and substituting the following paragraphs:
- “(d) the number of—
- “(i) occasions on which a DNA profile obtained under a Part II procedure has been used as evidence against a person in a trial; and
  - “(ii) persons referred to in subparagraph (i) in respect of whom a conviction has been entered as a result of the trial:
- “(da) the number of—
- “(i) occasions on which a DNA profile obtained under a Part III procedure has been used in support of an application for a suspect compulsion order under Part II; and
  - “(ii) suspect compulsion orders granted in respect of those applications:”.
- (4) Section 76 of the principal Act is amended by repealing paragraph (e), and substituting the following paragraphs:
- “(e) the number of occasions on which any member of the police has used or caused to be used force to assist a suitably qualified person to take a fingerprick or buccal sample pursuant to a compulsion order or databank compulsion notice:
- “(ea) the number of occasions on which a buccal sample has been taken as a result of a Part 2A request:”.
- (5) Section 76 of the principal Act is amended by repealing paragraph (f), and substituting the following paragraphs:
- “(f) the total number of DNA profiles stored on a DNA profile databank at the end of the period under review, together with a breakdown of that total according to whether the bodily samples from which the DNA profiles were obtained were taken

by consent or pursuant to a compulsion order or databank compulsion notice:

- “(g) the number of occasions on which a DNA profile obtained from evidence at the scene of an offence or in connection with an offence is matched with a DNA profile obtained under a Part II procedure:
- “(h) the number of occasions on which a DNA profile obtained from evidence at the scene of an offence or in connection with an offence is matched with a DNA profile on the DNA profile databank obtained under a Part III procedure.”

**46 Offences**

Section 77(1)(b) of the principal Act is amended by omitting the word “order”, and substituting the word “notice”.

**47 Breach of compulsion order not punishable as contempt**

- (1) The heading to section 78 of the principal Act is amended by inserting, after the words “compulsion order”, the words “or Part III order”.
- (2) Section 78 of the principal Act is amended by adding the words “or a Part III order”.

**48 Indemnity**

Section 79(1) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “or (3)”.

**49 Regulations**

- (1) Section 80(a) of the principal Act is amended by omitting the word “blood”, and substituting the word “bodily”.
- (2) Section 80(b) of the principal Act is amended by omitting the word “blood”, and substituting the word “bodily”.
- (3) Section 80(g) of the principal Act is amended by omitting the words “section 44(2) of this Act”, and substituting the expression “section 41C(3)”.

**50 Amendment to Summary Proceedings Act 1957**

Section 82 of the principal Act is repealed.

**51 New sections 83 and 84 inserted**

The principal Act is amended by inserting, after section 82, the following sections:

**“83 Transitional provision**

- “(1) Despite the amendments made to this Act by the Criminal Investigations (Bodily Samples) Amendment Act 2003, this Act continues to apply as if those amendments had not been made in respect of—
- “(a) a suspect request or a databank request to take a blood sample made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 and every matter arising out of that suspect request or databank request, until the blood sample is taken pursuant to that request:
  - “(b) an application for a suspect compulsion order, juvenile compulsion order, or databank compulsion order to take a blood sample made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 and every matter arising out of that application (including but not limited to any warrant issued), until the sample is taken pursuant to that order.
- “(2) Leave may be sought to apply for a further databank compulsion order in relation to a databank compulsion order made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003, and the application must be dealt with under this Act as if the Criminal Investigations (Bodily Samples) Amendment Act 2003 had not been passed.
- “(3) If leave is sought to apply for a further suspect compulsion order or further juvenile compulsion order in relation to a suspect compulsion order or juvenile compulsion order made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003, the application for the further suspect compulsion order or further juvenile compulsion order must be dealt with as if it is an application for a further suspect compulsion order or further juvenile compulsion order under this Act as amended by the Criminal Investigations (Bodily Samples) Amendment Act 2003.

**“84 Savings**

The amendments made to this Act by the Criminal Investigations (Bodily Samples) Amendment Act 2003 do not affect the validity or effect of anything done under this Act before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003.”

**52 New Schedule substituted**

The principal Act is amended by repealing the Schedule, and substituting the Schedule set out in Schedule 2.

**Part 2  
Amendment to Summary Proceedings  
Act 1957**

**53 Amendment to Summary Proceedings Act 1957**

Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by omitting from the item relating to the Criminal Investigations (Blood Samples) Act 1995 the word “Blood”, and substituting the word “Bodily”.

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**Schedule 1  
Amendments to terminology in principal  
Act**

s 6

**Heading to Part 2**

Omit the word “blood” and substitute the word “bodily”.

**Heading before section 5**

Omit the word “blood” and substitute the word “bodily”.

**Section 5**

Omit from the heading to that section the word “blood” and substitute the word “bodily”.

Omit the words “sample of blood” and substitute the words “bodily sample”.

**Heading before section 6**

Omit the word “blood” and substitute the word “bodily”.

**Section 6 and heading to section 6**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 7**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 8(2)**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 9(1) and heading to section 9**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 10(1)**

Omit the word “blood” and substitute the word “bodily”.

**Section 11**

Omit the word “blood” and substitute the word “bodily”.

**Heading before section 13**

Omit the word “blood” and substitute the word “bodily”.

**Section 13 and heading to section 13**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 16**

Omit from the heading to that section the word “blood” and substitute the word “bodily”.

Omit from subsection (1) the words “sample of the respondent’s blood” and substitute the words “bodily sample”.

Omit from subsection (1)(c) and (d) the word “blood” and substitute in each case the word “bodily”.

Omit from subsection (2)(c) the word “blood” and substitute the word “bodily”.

Omit from subsection (3)(a) the words “bodily sample (other than a sample of blood)” and substitute the words “specimen from his or her body (other than a bodily sample)”.

Omit from subsection (3)(b) and (c) the words “bodily sample” and substitute in each case the word “specimen”.

Omit from subsection (3)(c) the words “that sample” and substitute the words “that specimen”.

Omit from subsection (4) the words “bodily sample (whether a sample of blood or any other bodily sample)” and substitute the words “specimen from his or her body (including a bodily sample)”.

#### **Heading before section 18**

Omit the word “blood” and substitute the word “bodily”.

#### **Section 18 and heading to section 18**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

#### **Section 23**

Omit from the heading to that section the word “blood” and substitute the word “bodily”.

Omit from subsection (1) the words “sample of the respondent’s blood” and substitute the words “bodily sample”.

Omit from subsections (1) and (2) the word “blood” wherever it appears and substitute in each case the word “bodily”.

Omit from subsection (3)(a) the words “bodily sample (other than a sample of blood)” and substitute the words “specimen from his or her body (other than a bodily sample)”.

Omit from subsection (3)(b) and (c) the words “bodily sample” in both places where they appear and substitute in each case the word “specimen”.

Omit from subsection (3)(c) the words “that sample” and substitute the words “that specimen”.

Omit from subsection (4) the words “bodily sample (whether a sample of blood or any other bodily sample)” and substitute the words “specimen from his or her body (including a bodily sample)”.

**Section 24(4)(a)**

Omit the word “blood” and substitute the word “bodily”.

**Section 25**

Omit the word “blood” and substitute the word “bodily”.

**Section 26**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 28 and heading to section 28**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Heading before section 29**

Omit the word “blood” and substitute the word “bodily”.

**Section 29**

Omit from the heading to that section the word “blood” and substitute the word “bodily”.

Omit the words “sample of blood” and substitute the words “bodily sample”.

**Heading before section 30**

Omit the word “blood” and substitute the word “bodily”.

**Section 30 and heading to section 30**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.



**Section 31(b)(xi)**

Omit the word “blood” and substitute the word “bodily”.

**Section 32**

Omit the word “blood” and substitute the word “bodily”.

**Section 33(a)**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 34(1) and heading to section 34**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 36**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 37**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 38**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Heading to Part 4**

Omit the word “blood” and substitute the word “bodily”.

**Heading before section 45**

Repeal the heading and substitute the heading “Attendance for purpose of taking bodily sample”.

**Heading before section 48**

Omit the word “blood” and substitute the word “bodily”.

**Section 50(2) and (3)**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 51(a)**

Omit the word “blood” and substitute the word “bodily”.

**Section 52(1) and heading to section 52**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 53**

Omit the word “blood” and substitute the word “bodily”.

**Heading before section 57**

Omit the word “blood” and substitute the word “bodily”.

**Section 57**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 58 and heading to section 58**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 59**

Omit the word “blood” and substitute the word “bodily”.

**Heading before section 60**

Omit the word “blood” and substitute the word “bodily”.

**Section 60 and heading to section 60**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 61(1) and (3)**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 62 and heading to section 62**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 63**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 64(d)**

Omit the word “blood” and substitute the word “bodily”.

**Section 69**

Omit the word “blood” and substitute the word “bodily”.

**Section 70**

Omit the word “blood” wherever it appears and substitute in each case the word “bodily”.

**Section 71(1) and (2)**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Section 72**

Omit from the heading to that section the words “bodily samples” and substitute the words “specimens from person’s body”.

Omit from paragraph (a) the words “sample of blood, or any other bodily sample, from any person” and substitute the words “bodily sample, or any other specimen from a person’s body”.

Omit from paragraph (c) the words “bodily sample (other than a sample of blood)” and substitute the words “specimen from a person’s body (other than a bodily sample)”.

**Section 73 and heading to section 73**

Omit the word “blood” in both places where it appears and substitute in each case the word “bodily”.

**Heading to section 76**

Omit the word “blood” and substitute the word “bodily”.

**Section 77**

Omit from subsections (1)(a) and (2) the word “blood” wherever it appears and substitute in each case the word “bodily”.

Omit from subsection (1)(b) the words “sample of his or her blood to be taken” and substitute the words “bodily sample to be taken”.

**Section 79**

Omit from subsection (1) the word “blood” and substitute the word “fingerprick or buccal”.

Omit from subsection (2) the word “blood” and substitute the word “bodily”.

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**Schedule 2**  
**New Schedule of principal Act**  
**Schedule**  
**Relevant offences**

s 52

s 2

1

Offence	Provision of Act
	<i>Crimes Act 1961</i>
Sexual violation	section 128
Attempt to commit sexual violation	section 129
Inducing sexual connection by coercion	section 129A
Incest	section 130

1—*continued*

Offence	Provision of Act
Sexual intercourse with girl under care or protection	section 131
Sexual intercourse with girl under 12	section 132(1)
Attempted sexual intercourse with girl under 12	section 132(2)
Indecency with girl under 12	section 133
Sexual intercourse with girl between 12 and 16	section 134(1)
Indecency with girl between 12 and 16	section 134(2)
Indecent assault on woman or girl	section 135
Sexual intercourse with severely subnormal woman or girl	section 138
Indecency with boy under 12	section 140
Indecency with boy between 12 and 16	section 140A
Indecent assault on man or boy	section 141
Anal intercourse	section 142
Murder	sections 167 and 168
Manslaughter	section 171
Attempt to murder	section 173
Wounding with intent to cause grievous bodily harm	section 188(1)
Wounding with intent to injure	section 188(2)
Injuring with intent to cause grievous bodily harm	section 189(1)

1—*continued*

Offence	Provision of Act
Injuring with intent to injure, or with reckless disregard for the safety of others	section 189(2)
Aggravated wounding	section 191(1)
Aggravated injury	section 191(2)
Infecting with disease	section 201
Abduction of woman or girl	section 208
Kidnapping	section 209
Burglary	section 231
Aggravated burglary	section 232
Robbery	section 234
Aggravated robbery	section 235
Assault with intent to rob	section 236
	<i>Crimes Act 1961 (before commencement of Crimes Amendment Act 2003)</i>
Robbery	section 234
Aggravated robbery	section 235
Assault with intent to rob	section 237
Aggravated burglary	section 240A
Burglary	section 241
Entering with intent	section 242

2

Offences	Provision of Act
	<i>Aviation Crimes Act 1972</i>
Hijacking	section 3
Other crimes relating to aircraft	section 5
Crimes relating to international airports	section 5A
	<i>Crimes Act 1961</i>
Smuggling migrants	section 98C
Trafficking in people by means of coercion or deception	section 98D
Inducing sexual intercourse under pretence of marriage	section 137
Indecent act between woman and girl	section 139
Compelling indecent act with animal	section 142A
Sexual conduct with children outside New Zealand	section 144A
Counselling or attempting to procure murder	section 174
Conspiracy to murder	section 175
Discharging firearm or doing dangerous act with intent	section 198
Using any firearm against law enforcement officer, etc	section 198A
Commission of crime with firearm	section 198B
Acid throwing	section 199
Poisoning with intent	section 200

## 2—continued

Offences	Provision of Act
Endangering transport	section 203
Abduction of child under 16	section 210
Theft or stealing	section 219
Theft by person in special relationship	section 220
Theft of animals	section 221
Theft by spouse	section 222
Being in possession of an instrument for conversion	section 227
Being disguised or in possession of instruments for burglary	section 233
Arson	section 267
Attempted arson	section 268
Intentional damage	section 269
	<i>Crimes Act 1961 (before commencement of Crimes Amendment Act 2003)</i>
Being in possession of instrument for conversion	section 229
Being armed with intent to break or enter	section 243
Being disguised or in possession of instruments for burglary	section 244
Arson	section 294
Attempted arson	section 295



*2—continued*

Offences	Provision of Act
Wilful damage (aggravating factors)	section 298(1)
Wrecking	section 301
Attempting to wreck	section 302
	<i>Terrorism Suppression Act 2002</i>
Terrorist bombing	section 7
Financing of terrorism	section 8
Recruiting members of terrorist groups	section 12
Participating in terrorist groups	section 13

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**Notes****1 General**

This is an eprint of the Criminal Investigations (Bodily Samples) Amendment Act 2003. It incorporates all the amendments to the Criminal Investigations (Bodily Samples) Amendment Act 2003 as at 1 August 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

**3 List of amendments incorporated in this eprint  
(most recent first)**

Lawyers and Conveyancers Act 2006 (2006 No 1): section 349

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