

*Status: Point in time view as at 08/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Terrorism Prevention and Investigation Measures Act 2011, SCHEDULE 6. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6

Section 25

#### FINGERPRINTS AND SAMPLES

##### *Taking of fingerprints and samples: England, Wales and Northern Ireland*

- 1 (1) This paragraph applies at any time when a TPIM notice is in force in respect of an individual in England, Wales or Northern Ireland.
- (2) A constable may take fingerprints or a non-intimate sample from the individual—
- (a) with the consent of the individual given in writing, or
  - (b) without that consent.
- (3) A constable may use reasonable force, if necessary, for the purpose of exercising the power under sub-paragraph (2)(b).
- (4) Before any fingerprints or a non-intimate sample are taken the individual must be informed—
- (a) of the reason for taking the fingerprints or sample,
  - (b) of the fact that the fingerprints or sample are taken under the power conferred by this paragraph, and
  - (c) that the fingerprints or sample may be the subject of a relevant search.
- (5) The matters mentioned in sub-paragraph (4) must be recorded as soon as practicable after the fingerprints or non-intimate sample are taken.
- (6) The information mentioned in sub-paragraph (4) must be given by—
- (a) the constable taking the fingerprints or non-intimate sample, or
  - (b) if the fingerprints or non-intimate sample are taken at a police station (see paragraph 3), any other officer.
- (7) Where a sample of hair other than pubic hair is to be taken under this paragraph, the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.
- 2 (1) A constable may exercise the power under paragraph 1 to take fingerprints or a non-intimate sample from an individual only if at the time when the power is to be exercised—
- (a) in the case of fingerprints, the condition in sub-paragraph (2) is met;
  - (b) in the case of a sample, the condition in sub-paragraph (3) is met.
- (2) The condition in the case of fingerprints is that—
- (a) the individual has not had fingerprints taken under paragraph 1 on a previous occasion after the time on which the present TPIM notice came into force, or
  - (b) fingerprints were so taken on a previous occasion after that time but—

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- (i) the fingerprints taken do not constitute a complete set of the individual's fingerprints, or
    - (ii) some or all of the fingerprints taken are not of sufficient quality to allow satisfactory analysis, comparison or matching.
  - (3) The condition in the case of a non-intimate sample is that—
    - (a) the individual has not had a sample of the same type and from the same part of the body taken under paragraph 1 on a previous occasion after the time on which the present TPIM notice came into force, or
    - (b) a sample was so taken on a previous occasion after that time but it proved insufficient.
  - (4) In this paragraph “the present TPIM notice” means the TPIM notice in force at the time when it is proposed to exercise the power to take the fingerprints or sample.
- 3 (1) A constable may—
  - (a) require an individual to attend a police station for the purposes of taking fingerprints or a non-intimate sample from the individual under paragraph 1, and
  - (b) arrest without warrant an individual who fails to comply with such a requirement.
- (2) A requirement under sub-paragraph (1)(a)—
  - (a) must give the individual a period of at least 7 days within which the individual must attend the police station (subject to sub-paragraph (4)), and
  - (b) may direct the individual to attend at a specified time of day or between specified times of day.
- (3) In specifying a period or time or times of day for the purposes of sub-paragraph (2), the constable must consider whether the fingerprints or non-intimate sample could reasonably be taken at a time when the individual is for any other reason required to attend the police station (including, in particular, under measures imposed on the individual by virtue of paragraph 10 of Schedule 1).
- (4) In giving a requirement under this paragraph a constable may specify a period of shorter than 7 days if—
  - (a) there is an urgent need for the fingerprints or sample for the purposes of the investigation of an offence, and
  - (b) the shorter period is authorised by an officer of at least the rank of inspector.
- (5) Where an authorisation is given under sub-paragraph (4)(b)—
  - (a) the fact of the authorisation, and
  - (b) the reasons for giving it,must be recorded as soon as practicable after it has been given.
- (6) If the constable who gives a requirement to an individual under this paragraph and the individual agree, it may be varied so as to specify any period within which, or date or time at which, the individual must attend; but a variation does not have effect unless confirmed by the constable in writing.

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*Taking of relevant physical data and samples: Scotland*

- 4 (1) This paragraph applies at any time when a TPIM notice is in force in respect of an individual in Scotland.
- (2) A constable may—
- (a) take from the individual, or require the individual to provide, any relevant physical data;
  - (b) with the authority of an officer of a rank no lower than inspector, take from the individual any sample mentioned in paragraph (a), (b) or (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 (prints, samples etc in criminal investigations) by the means specified in that paragraph in relation to the sample;
  - (c) take, or direct a police custody and security officer to take, from the individual a sample mentioned in subsection (6A) of that section by the means specified in that subsection.
- (3) A constable may—
- (a) require the individual to attend a police station for the purposes mentioned in sub-paragraph (2), and
  - (b) arrest without warrant an individual who fails to comply with such a requirement.
- (4) A requirement under sub-paragraph (3)(a)—
- (a) must give the individual at least 7 days' notice of the date on which the individual is required to attend the police station, and
  - (b) may direct the individual to attend at a specified time of day or between specified times of day.
- (5) In specifying a date or time or times of day for the purposes of sub-paragraph (4), the constable must consider whether the relevant physical data or sample could reasonably be taken at a time when the individual is for any other reason required to attend the police station (including, in particular, under measures imposed on the individual by virtue of paragraph 10 of Schedule 1).
- (6) A constable may use reasonable force, if necessary, in—
- (a) taking any relevant physical data under sub-paragraph (2)(a),
  - (b) securing compliance with a requirement imposed by the constable under that sub-paragraph, or
  - (c) taking any sample under sub-paragraph (2)(b).
- (7) A constable may, with the authority of an officer of a rank no lower than inspector, use reasonable force, if necessary, in taking any sample under sub-paragraph (2)(c).

*Checking of fingerprints, samples etc*

- 5 Any fingerprints, data or samples obtained under paragraph 1 or 4, or information derived from such samples, may be checked against—
- (a) other such fingerprints, data or samples or any information derived from such a sample,
  - (b) any fingerprints or samples taken under paragraph 10 or 12 of Schedule 8 to the Terrorism Act 2000 or any information derived from such a sample,

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- (c) any relevant physical data taken or provided by virtue of paragraph 20 of that Schedule, any samples taken by virtue of that paragraph or any information derived from such a sample,
- (d) material to which section 18 of the Counter-Terrorism Act 2008 applies,
- (e) any fingerprints, samples or information mentioned in section 63A(1)(a) or (b) of the Police and Criminal Evidence Act 1984,
- (f) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,
- (g) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, and
- (h) any fingerprints, samples or information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

*Requirement to destroy material*

- 6 (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 1,
  - (b) a DNA profile derived from a DNA sample taken under that paragraph,
  - (c) relevant physical data taken or provided under paragraph 4,
  - (d) a DNA profile derived from a DNA sample taken under that paragraph.
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 6 material”) must be destroyed if it appears to the responsible chief officer of police that the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful.
- (3) In any other case, paragraph 6 material must be destroyed unless it is retained under a power conferred by paragraph 8, 9 or 11.
- (4) Paragraph 6 material that ceases to be retained under a power mentioned in subparagraph (3) may continue to be retained under any other such power that applies to it.
- (5) Nothing in this paragraph prevents a relevant search from being carried out, in relation to paragraph 6 material, within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
- 7 (1) If fingerprints or relevant physical data are required by paragraph 6 to be destroyed, any copies of the fingerprints or data held by a police force must also be destroyed.
- (2) If a DNA profile is required by that paragraph to be destroyed, no copy may be retained by a police force except in a form which does not include information which identifies the individual to whom the DNA profile relates.

*Retention of paragraph 6 material*

- 8 (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual who has no previous convictions or (in the case of England and Wales or Northern Ireland) only one exempt conviction.

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- (2) The material may be retained until the end of the period of 6 months beginning with the date on which the TPIM notice that was in force when the material was taken ceases to be in force (subject to sub-paragraphs (3) and (4)).
  - (3) If, before the end of that period, the TPIM notice is quashed by the court under this Act, the material may be retained only until there is no possibility of an appeal against—
    - (a) the decision to quash the notice, or
    - (b) any decision made on an appeal against that decision.
  - (4) If, after a TPIM notice is quashed or otherwise ceases to be in force, measures are imposed on the individual (whether by the revival of a TPIM notice or the imposition of a new TPIM notice)—
    - (a) within the period for which material in relation to the individual is retained by virtue of sub-paragraph (2), or
    - (b) within, or immediately after the end of, the period for which such material is retained by virtue of sub-paragraph (3),sub-paragraphs (2) and (3) apply again for the purposes of the retention of that material (taking references to the TPIM notice as references to the revived or new TPIM notice).
  - (5) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (3), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.
- 9 (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual—
  - (a) who has been convicted of a recordable offence (other than a single exempt conviction) or of an offence in Scotland which is punishable by imprisonment, or
  - (b) who is so convicted before the end of the period within which the material may be retained by virtue of paragraph 8.
- (2) The material may be retained indefinitely.
- 10 (1) For the purposes of paragraphs 8 and 9 an individual is to be treated as having been convicted of an offence if—
  - (a) in relation to a recordable offence in England and Wales or Northern Ireland—
    - (i) the individual has been given a caution in respect of the offence which, at the time of the caution, the individual has admitted,
    - (ii) the individual has been found not guilty of the offence by reason of insanity,<sup>F1</sup> or
    - (iii) the individual has been found to be under a disability and to have done the act charged in respect of the offence,<sup>F2</sup> ...

<sup>F2</sup>(iv) . . . . .
  - (b) the individual, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept—
    - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,

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- (ii) a compensation offer under section 302A of that Act,
  - (iii) a combined offer under section 302B of that Act, or
  - (iv) a work offer under section 303ZA of that Act,
  - (c) the individual, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the individual's insanity at the time of the offence or (as the case may be) by virtue of section 51A of the Criminal Procedure (Scotland) Act 1995,
  - (d) a finding in respect of the individual has been made under section 55(2) of the Criminal Procedure (Scotland) Act 1995 in relation to an offence in Scotland punishable by imprisonment,
  - (e) the individual, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid—
    - (i) the fixed penalty, or
    - (ii) (as the case may be) the sum which the individual is liable to pay by virtue of section 131(5) of that Act, or
  - (f) the individual, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
- (2) Paragraphs 8, 9 and this paragraph, so far as they relate to individuals convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) For the purposes of paragraphs 8 and 9—
- (a) an individual has no previous convictions if the individual has not previously been convicted—
    - (i) in England and Wales or Northern Ireland of a recordable offence, or
    - (ii) in Scotland of an offence which is punishable by imprisonment, and
  - (b) if the individual has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the individual was aged under 18.
- (4) In sub-paragraph (3) “qualifying offence” has—
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 ( S.I. 1989/1341 (N.I. 12)).
- (5) If an individual is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 8 or 9 whether the individual has been convicted of one offence.

#### **Textual Amendments**

- F1** Word in Sch. 6 para. 10(1)(a)(ii) inserted (8.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 32\(a\)](#) (with s. 135(4)); S.I. 2013/453, art. 4(f)

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**F2** Sch. 6 para. 10(1)(a)(iv) and preceding word omitted (8.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 32\(b\)](#) (with s. 135(4)); S.I. 2013/453, art. 4(f)

- 11 (1) Paragraph 6 material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it.
- (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any paragraph 6 material to be retained for the purposes of national security.
- (3) A national security determination—
- (a) must be in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and
  - (c) may be renewed.

*Requirement to destroy samples*

- 12 (1) This paragraph applies to—
- (a) non-intimate samples taken under paragraph 1, or
  - (b) samples taken under paragraph 4(2)(b) or (c).
- (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that the taking of the sample was unlawful.
- (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this paragraph applies must be destroyed—
- (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.

*Use of retained material*

- 13 (1) Any material to which paragraph 6 or 12 applies must not be used other than—
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation within the meaning of the Terrorism Act 2000 (see section 32 of that Act),
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required by paragraph 6 or 12 to be destroyed must not at any time after it is required to be destroyed be used—

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- (a) in evidence against the individual to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) In this paragraph—
- (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) the reference to crime includes a reference to any conduct which—
    - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and
  - (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

#### *Interpretation*

14

In this Schedule—

“DNA profile” means any information derived from a DNA sample;

“DNA sample” means any material that has come from a human body and consists of or includes human cells;

“fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984;

“non-intimate sample” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984;

“paragraph 6 material” has the meaning given by paragraph 6(2);

“police force” means any of the following—

- (a) the metropolitan police force;
- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (c) the City of London police force;
- (d) [<sup>F3</sup>the Police Service of Scotland;]
- (e) <sup>F4</sup>...
- (f) the Police Service of Northern Ireland;
- (g) the Police Service of Northern Ireland Reserve;
- (h) the Ministry of Defence Police;
- (i) the Royal Navy Police;
- (j) the Royal Military Police;
- (k) the Royal Air Force Police;
- (l) the British Transport Police;

“recordable offence” has—

- (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and



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(b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

“relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995;

“relevant search” means a search carried out for the purpose of checking any fingerprints, samples, data or information against any of the fingerprints, samples, data or information mentioned in paragraph 5(a) to (h);

“responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the police area—

(a) in which the material concerned was taken, or

(b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

“responsible chief officer of police” means, in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken, the chief constable of the [<sup>F5</sup>Police Service of Scotland];

“responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland;

“sufficient” and “insufficient”, in relation to a sample, have the same meaning as in Part 5 of the Police and Criminal Evidence Act 1984 (see section 65(1) and (2) of that Act).

#### Textual Amendments

- F3** Words in Sch. 6 para. 14 substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 64(3)(a)(i)**
- F4** Words in Sch. 6 para. 14 omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 64(3)(a)(ii)**
- F5** Words in Sch. 6 para. 14 substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 64(3)(b)**

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