

**Status:** Point in time view as at 30/10/2016. This version of this schedule contains provisions that are prospective.

**Changes to legislation:** Protection of Freedoms Act 2012, SCHEDULE 1 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 1 U.K.

Section 19

#### AMENDMENTS OF REGIMES OTHER THAN PACE

#### PART 1 U.K.

##### MATERIAL SUBJECT TO THE TERRORISM ACT 2000

- 1 (1) Schedule 8 to the Terrorism Act 2000 (treatment of persons detained under section 41 or Schedule 7 of that Act) is amended as follows.
- (2) Omit paragraph 14 (retention of material: England and Wales and Northern Ireland).
- (3) In paragraph 20 (retention of material: Scotland)—
  - (a) in sub-paragraph (3), omit the words from “but” to the end of the sub-paragraph, and
  - (b) omit sub-paragraph (4).
- (4) After paragraph 20 insert—

*“Destruction and retention of fingerprints and samples etc: United Kingdom*

- 20A(1) This paragraph applies to—
- (a) fingerprints taken under paragraph 10,
  - (b) a DNA profile derived from a DNA sample taken under paragraph 10 or 12,
  - (c) relevant physical data taken or provided by virtue of paragraph 20, and
  - (d) a DNA profile derived from a DNA sample taken by virtue of paragraph 20.
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 20A material”) must be destroyed if it appears to the responsible chief officer of police that—
- (a) 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, or
  - (b) the material was taken or provided, or (in the case of a DNA profile) was derived from a sample taken, from a person in connection with that person's arrest under section 41 and the arrest was unlawful or based on mistaken identity.
- (3) In any other case, paragraph 20A material must be destroyed unless it is retained under any power conferred by paragraphs 20B to 20E.

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- (4) Paragraph 20A material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other such power which applies to it.
  - (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 20A material, 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.
  - (6) For the purposes of sub-paragraph (5), “a relevant search” is a search carried out for the purpose of checking the material against—
    - (a) other fingerprints or samples taken under paragraph 10 or 12 or a DNA profile derived from such a sample,
    - (b) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,
    - (c) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003,
    - (d) material to which section 18 of the Counter-Terrorism Act 2008 applies,
    - (e) any of the fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or information derived from such samples,
    - (f) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and
    - (g) any of the fingerprints, samples and information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples).
- 20B (1) This paragraph applies to paragraph 20A material relating to a person who is detained under section 41.
- (2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.
  - (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
  - (4) The retention period is—
    - (a) in the case of fingerprints or relevant physical data, the period of 3 years beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
    - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

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- (5) The responsible chief officer of police or a specified chief officer of police may apply to a relevant court for an order extending the retention period.
- (6) An application for an order under sub-paragraph (5) must be made within the period of 3 months ending on the last day of the retention period.
- (7) An order under sub-paragraph (5) may extend the retention period by a period which—
  - (a) begins with the date on which the material would otherwise be required to be destroyed under this paragraph, and
  - (b) ends with the end of the period of 2 years beginning with that date.
- (8) The following persons may appeal to the relevant appeal court against an order under sub-paragraph (5), or a refusal to make such an order—
  - (a) the responsible chief officer of police;
  - (b) a specified chief officer of police;
  - (c) the person from whom the material was taken.
- (9) In Scotland—
  - (a) an application for an order under sub-paragraph (5) is to be made by summary application;
  - (b) an appeal against an order under sub-paragraph (5), or a refusal to make such an order, must be made within 21 days of the relevant court's decision, and the relevant appeal court's decision on any such appeal is final.
- (10) In this paragraph—

“relevant court” means—

  - (a) in England and Wales, a District Judge (Magistrates' Courts),
  - (b) in Scotland, the sheriff—
    - (i) in whose sheriffdom the person to whom the material relates resides,
    - (ii) in whose sheriffdom that person is believed by the applicant to be, or
    - (iii) to whose sheriffdom that person is believed by the applicant to be intending to come; and
  - (c) in Northern Ireland, a district judge (magistrates' court) in Northern Ireland;

“the relevant appeal court” means—

  - (a) in England and Wales, the Crown Court,
  - (b) in Scotland, the sheriff principal, and
  - (c) in Northern Ireland, the County Court in Northern Ireland;

“a specified chief officer of police” means—

  - (a) in England and Wales and Northern Ireland—
    - (i) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
    - (ii) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer's police area, and

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(b) in Scotland—

- (i) the chief constable of the police force in the area in which the person who provided the material, or from whom it was taken, resides, or
- (ii) a chief constable who believes that the person is in, or is intending to come to, the area of the chief constable's police force.

20C (1) This paragraph applies to paragraph 20A material relating to a person who is detained under Schedule 7.

- (2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.
- (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
- (4) The retention period is—
  - (a) in the case of fingerprints or relevant physical data, the period of 6 months beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
  - (b) in the case of a DNA profile, the period of 6 months beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

20D (1) For the purposes of paragraphs 20B and 20C, a person 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 person has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
  - (ii) the person has been found not guilty of the offence by reason of insanity,
  - (iii) the person has been found to be under a disability and to have done the act charged in respect of the offence, or
  - (iv) the person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
- (b) the person, 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,
  - (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 person, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the person's insanity

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- 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 person 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 person, 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 person is liable to pay by virtue of section 131(5) of that Act, or
- (f) the person, 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 20B and 20C and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.
- (4) For the purposes of paragraphs 20B and 20C—
- (a) a person has no previous convictions if the person 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 person 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 person was aged under 18.
- (5) In sub-paragraph (4), “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)).
- (6) If a person 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 20B or 20C whether the person has been convicted of only one offence.
- (7) Nothing in paragraph 20B or 20C prevents the start of a new retention period in relation to paragraph 20A material if a person is detained again under

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section 41 or (as the case may be) Schedule 7 when an existing retention period (whether or not extended) is still in force in relation to that material.

20E (1) Paragraph 20A 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 20A material to be retained for the purposes of national security.

(3) A national security determination—

- (a) must be made 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.

20F (1) If fingerprints or relevant physical data are required by paragraph 20A to be destroyed, any copies of the fingerprints or relevant physical 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 person to whom the DNA profile relates.

20G (1) This paragraph applies to—

- (a) samples taken under paragraph 10 or 12, or
- (b) samples taken by virtue of paragraph 20.

(2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that—

- (a) the taking of the sample was unlawful, or
- (b) the sample was taken from a person in connection with that person's arrest under section 41 and the arrest was unlawful or based on mistaken identity.

(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) The responsible chief officer of police may apply to a relevant court for an order to retain a sample to which this paragraph applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5) if—

- (a) the sample was taken from a person detained under section 41 in connection with the investigation of a qualifying offence, and

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- (b) the responsible chief officer of police considers that the condition in sub-paragraph (7) is met.
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
  - (a) disclosure to, or use by, a defendant, or
  - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (8) An application under sub-paragraph (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5).
- (9) If, on an application made by the responsible chief officer of police under sub-paragraph (6), the relevant court is satisfied that the condition in sub-paragraph (7) is met, it may make an order under this sub-paragraph which—
  - (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5), and
  - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (10) An application for an order under sub-paragraph (9) (other than an application for renewal)—
  - (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
  - (b) may be heard and determined in private in the absence of that person.
- (11) In Scotland, an application for an order under sub-paragraph (9) (including an application for renewal) is to be made by summary application.
- (12) A sample retained by virtue of an order under sub-paragraph (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (13) A sample that ceases to be retained by virtue of an order under sub-paragraph (9) must be destroyed.
- (14) 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.
- (15) In this paragraph—
  - “ancillary offence”, in relation to an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008, means—
    - (a) aiding, abetting, counselling or procuring the commission of the offence, or
    - (b) inciting, attempting or conspiring to commit the offence;
  - “qualifying offence”—

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- (a) in relation to the investigation of an offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984,
- (b) in relation to the investigation of an offence committed in Scotland, means a relevant offence, an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 or an ancillary offence to an offence so listed, and
- (c) in relation to the investigation of an offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

“relevant court” means—

- (a) in England and Wales, a District Judge (Magistrates' Courts),
- (b) in Scotland, the sheriff—
  - (i) in whose sheriffdom the person to whom the sample relates resides,
  - (ii) in whose sheriffdom that person is believed by the responsible chief officer of police to be, or
  - (iii) to whose sheriffdom that person is believed by the responsible chief officer of police to be intending to come; and
- (c) in Northern Ireland, a district judge (magistrates' court) in Northern Ireland;

“relevant offence” has the same meaning as in section 19A of the Criminal Procedure (Scotland) Act 1995;

“a relevant search” has the meaning given by paragraph 20A(6).

20H(1) Any material to which paragraph 20A or 20G applies must not be used other than—

- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (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) Subject to sub-paragraph (1), a relevant search (within the meaning given by paragraph 20A(6)) may be carried out in relation to material to which paragraph 20A or 20G applies if the responsible chief officer of police considers the search to be desirable.
- (3) Material which is required by paragraph 20A or 20G to be destroyed must not at any time after it is required to be destroyed be used—
- (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (4) 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—



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- (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.
- (5) Sub-paragraphs (1), (2) and (4) do not form part of the law of Scotland.
- 20I Paragraphs 20A to 20F and 20H do not apply to paragraph 20A material relating to a person detained under section 41 which is, or may become, disclosable under—
  - (a) the Criminal Procedure and Investigations Act 1996, or
  - (b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.
- 20J In paragraphs 20A to 20I—
  - “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 (Part 5 definitions);
  - “paragraph 20A material” has the meaning given by paragraph 20A(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) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
    - (e) the Scottish Police Services Authority;
    - (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;

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

“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 or provided, the chief constable of the police force for the area—

- (a) in which the material concerned was taken or provided, 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 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.”

(5) In paragraph 11(1)(a), for “paragraph 14(4),” substitute “ a relevant search (within the meaning given by paragraph 20A(6)) or for the purposes of ”.

(6) In paragraph 15(1) for “paragraphs 10 to 14” substitute “ paragraphs 10 to 13 ”.

(7) After paragraph 15(1) insert—

“(1A) In the application of section 65(2A) of the Police and Criminal Evidence Act 1984 for the purposes of sub-paragraph (1) of this paragraph, the reference to the destruction of a sample under section 63R of that Act is a reference to the destruction of a sample under paragraph 20G of this Schedule.”

(8) In paragraph 15(2) for “paragraphs 10 to 14” substitute “ paragraphs 10 to 13 ”.

#### **Commencement Information**

- I1** Sch. 1 para. 1(1)-(3) in force at 31.10.2013 by [S.I. 2013/1814](#), **art. 2(h)** (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), arts. 1, 3, 4))
- I2** Sch. 1 para. 1(4) in force at 31.10.2013 for specified purposes by [S.I. 2013/1814](#), **art. 2(i)** (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), arts. 1, 3, 4))
- I3** Sch. 1 para. 1(4) in force at 31.1.2014 for specified purposes by [S.I. 2013/1814](#), **art. 3(b)** (with transitional provisions and savings in [S.I. 2013/1813](#))
- I4** Sch. 1 para. 1(5)-(8) in force at 31.10.2013 by [S.I. 2013/1814](#), **art. 2(j)** (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), arts. 1, 3, 4))

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## PART 2 **E+W+N.I.**

### MATERIAL SUBJECT TO THE INTERNATIONAL CRIMINAL COURT ACT 2001

2 In Schedule 4 of the International Criminal Court Act 2001 (taking of fingerprints or non-intimate samples) for paragraph 8 substitute—

- “8 (1) This paragraph applies to the following material—
- (a) fingerprints and samples taken under this Schedule, and
  - (b) DNA profiles derived from such samples.
- (2) The material must be destroyed—
- (a) before the end of the period of 6 months beginning with the date on which the material was transmitted to the ICC (see paragraph 6(2)), or
  - (b) if later, as soon as it has fulfilled the purpose for which it was taken or derived.
- (3) If fingerprints are required to be destroyed by virtue of subparagraph (2), any copies of the fingerprints held by the police must also be destroyed.
- (4) If a DNA profile is required to be destroyed by virtue of subparagraph (2), no copy may be retained by the police except in a form which does not include information from which the person to whom the DNA profile relates can be identified.
- (5) In this paragraph—
- “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.”

#### Commencement Information

- I5** Sch. 1 para. 2 in force at 31.10.2013 by [S.I. 2013/1814](#), [art. 2\(k\)](#) (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), [arts. 1, 3, 4](#)))

## PART 3 **U.K.**

### MATERIAL SUBJECT TO SECTION 18 OF THE COUNTER-TERRORISM ACT 2008

3 The Counter-Terrorism Act 2008 is amended as follows.

#### Commencement Information

- I6** Sch. 1 para. 3 in force at 31.10.2013 by [S.I. 2013/1814](#), [art. 2\(k\)](#) (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), [arts. 1, 3, 4](#)))

4 For section 18 (material not subject to existing statutory restrictions) substitute—

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### **“18 Destruction of national security material not subject to existing statutory restrictions**

- (1) This section applies to fingerprints, DNA samples and DNA profiles that—
  - (a) are held for the purposes of national security by a law enforcement authority under the law of England and Wales or Northern Ireland, and
  - (b) are not held subject to existing statutory restrictions.
- (2) Material to which this section applies (“section 18 material”) must be destroyed if it appears to the responsible officer that the condition in subsection (3) is not met.
- (3) The condition is that the material has been—
  - (a) obtained by the law enforcement authority pursuant to an authorisation under Part 3 of the Police Act 1997 (authorisation of action in respect of property),
  - (b) obtained by the law enforcement authority in the course of surveillance, or use of a covert human intelligence source, authorised under Part 2 of the Regulation of Investigatory Powers Act 2000,
  - (c) supplied to the law enforcement authority by another law enforcement authority, or
  - (d) otherwise lawfully obtained or acquired by the law enforcement authority for any of the purposes mentioned in section 18D(1).
- (4) In any other case, section 18 material must be destroyed unless it is retained by the law enforcement authority under any power conferred by section 18A or 18B, but this is subject to subsection (5).
- (5) A DNA sample to which this section 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 it was taken.
- (6) Section 18 material which ceases to be retained under a power mentioned in subsection (4) may continue to be retained under any other such power which applies to it.
- (7) Nothing in this section prevents section 18 material from being checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority within such time as may reasonably be required for the check, if the responsible officer considers the check to be desirable.
- (8) For the purposes of subsection (1), the following are “existing statutory restrictions”—
  - (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971;
  - (b) sections 22, 63A and 63D to 63U of the Police and Criminal Evidence Act 1984 and any corresponding provision in an order under section 113 of that Act;
  - (c) Articles 24, 63A and 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

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- (d) section 2(2) of the Security Service Act 1989;
- (e) section 2(2) of the Intelligence Services Act 1994;
- (f) paragraphs 20(3) and 20A to 20J of Schedule 8 to the Terrorism Act 2000;
- (g) section 56 of the Criminal Justice and Police Act 2001;
- (h) paragraph 8 of Schedule 4 to the International Criminal Court Act 2001;
- (i) sections 73, 83, 87, 88 and 89 of the Armed Forces Act 2006 and any provision relating to the retention of material in an order made under section 74, 93 or 323 of that Act;
- (j) paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011.

### **18A Retention of material: general**

- (1) Section 18 material which is not a DNA sample and relates to a person who has no previous convictions or only one exempt conviction may be retained by the law enforcement authority until the end of the retention period specified in subsection (2), but this is subject to subsection (5).
- (2) The retention period is—
  - (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
  - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (3) Section 18 material which is not a DNA sample and relates to a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or is so convicted before the material is required to be destroyed by virtue of this section, may be retained indefinitely.
- (4) Section 18 material which is not a DNA sample may be retained indefinitely if—
  - (a) it is held by the law enforcement authority in a form which does not include information which identifies the person to whom the material relates, and
  - (b) the law enforcement authority does not know, and has never known, the identity of the person to whom the material relates.
- (5) In a case where section 18 material is being retained by a law enforcement authority under subsection (4), if—
  - (a) the law enforcement authority comes to know the identity of the person to whom the material relates, and
  - (b) the material relates to a person who has no previous convictions or only one exempt conviction,the material may be retained by the law enforcement authority until the end of the retention period specified in subsection (6).

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- (6) The retention period is the period of 3 years beginning with the date on which the identity of the person to whom the material relates comes to be known by the law enforcement authority.

### **18B Retention for purposes of national security**

- (1) Section 18 material which is not a DNA sample may be retained for as long as a national security determination made by the responsible officer has effect in relation to it.
- (2) A national security determination is made if the responsible officer determines that it is necessary for any such section 18 material to be retained for the purposes of national security.
- (3) A national security determination—
- (a) must be made 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.

### **18C Destruction of copies**

- (1) If fingerprints are required by section 18 to be destroyed, any copies of the fingerprints held by the law enforcement authority concerned must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the law enforcement authority concerned except in a form which does not include information which identifies the person to whom the DNA profile relates.

### **18D Use of retained material**

- (1) Section 18 material must not be used other than—
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (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) Subject to subsection (1), section 18 material may be checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority or the Scottish Police Services Authority if the responsible officer considers the check to be desirable.
- (3) Material which is required by section 18 to be destroyed must not at any time after it is required to be destroyed be used—
- (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (4) In this section—

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- (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.

### **18E Sections 18 to 18E: supplementary provisions**

(1) In sections 18 to 18D and this section—

“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” means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of a person's fingers or either of a person's palms;

“law enforcement authority” means—

- (a) a police force,
- (b) the Serious Organised Crime Agency,
- (c) the Commissioners for Her Majesty's Revenue and Customs, or
- (d) a person formed or existing under the law of a country or territory outside the United Kingdom so far as exercising functions which—
  - (i) correspond to those of a police force, or
  - (ii) otherwise involve the investigation or prosecution of offences;

“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) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (e) the Police Service of Northern Ireland;
- (f) the Police Service of Northern Ireland Reserve;
- (g) the Ministry of Defence Police;
- (h) the Royal Navy Police;
- (i) the Royal Military Police;

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- (j) the Royal Air Force Police;
  - (k) 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
  - (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));
- “the responsible officer” means—
- (a) in relation to material obtained or acquired by a police force in England and Wales, the chief officer of the police force;
  - (b) in relation to material obtained or acquired by the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
  - (c) in relation to material obtained or acquired by the Ministry of Defence Police, the Chief Constable of the Ministry of Defence Police;
  - (d) in relation to material obtained or acquired by the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, the Provost Marshal for the police force which obtained or acquired the material;
  - (e) in relation to material obtained or acquired by the British Transport Police, the Chief Constable of the British Transport Police;
  - (f) in relation to material obtained or acquired by the Serious Organised Crime Agency, the Director General of the Serious Organised Crime Agency;
  - (g) in relation to material obtained or acquired by the Commissioners for Her Majesty's Revenue and Customs, any of those Commissioners;
  - (h) in relation to any other material, such person as the Secretary of State may by order specify;
- “section 18 material” has the meaning given by section 18(2);
- “terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.
- (2) An order under subsection (1) is subject to negative resolution procedure.
  - (3) For the purposes of section 18A, a person is to be treated as having been convicted of an offence if the person—
    - (a) has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
    - (b) has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
    - (c) has been found not guilty of the offence by reason of insanity, or
    - (d) has been found to be under a disability and to have done the act charged in respect of the offence.



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- (4) Sections 18A and this section, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (5) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.
- (6) For the purposes of section 18A—
  - (a) a person has no previous convictions if the person has not previously been convicted in England and Wales or Northern Ireland of a recordable offence, and
  - (b) if the person has been previously so convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.
- (7) In subsection (6), “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)).
- (8) If a person 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 section 18A whether the person has been convicted of only one offence.”

#### Commencement Information

**I7** Sch. 1 para. 4 in force at 31.10.2013 by [S.I. 2013/1814](#), [art. 2\(k\)](#) (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), [arts. 1, 3, 4](#)))

## PART 4 **U.K.**

### MATERIAL SUBJECT TO THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

- 5 After paragraph 10(2) of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (fingerprints and samples) insert—
  - “(2A) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.”

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### Commencement Information

- 18** Sch. 1 para. 5 in force at 31.10.2013 by [S.I. 2013/1814](#), **art. 2(k)** (with transitional provisions and savings in [S.I. 2013/1813](#) (as amended (30.10.2016) by [S.I. 2016/682](#), arts. 1, 3, 4))

## PART 5 S

### MATERIAL SUBJECT TO THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

- 6 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 18(3), for “18F” substitute “ 18G ”.
- (3) After section 18F insert—

#### “18G Retention of samples etc: national security

- (1) This section applies to—
- (a) relevant physical data taken from or provided by a person under section 18(2) (including any taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000),
  - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A) (including any taken by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000),
  - (c) any relevant physical data, sample or information derived from a sample taken from, or provided by, a person under section 19AA(3),
  - (d) any relevant physical data, sample or information derived from a sample which is held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, and
  - (e) any relevant physical data, sample or information derived from a sample taken from a person—
    - (i) by virtue of any power of search,
    - (ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or
    - (iii) under the authority of a warrant.
- (2) The relevant physical data, sample or information derived from a sample may be retained for so long as a national security determination made by the relevant chief constable has effect in relation to it.
- (3) A national security determination is made if the relevant chief constable determines that is necessary for the relevant physical data, sample or information derived from a sample to be retained for the purposes of national security.
- (4) A national security determination—
- (a) must be made 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.

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- (5) Any relevant physical data, sample or information derived from a sample which is retained in pursuance of a national security determination must be destroyed as soon as possible after the determination ceases to have effect (except where its retention is permitted by any other enactment).
- (6) In this section, “the relevant chief constable” means the chief constable of the police force of which the constable who took the relevant physical data, or to whom it was provided, or who took or directed the taking of the sample, was a member.”

#### Commencement Information

- I9** Sch. 1 para. 6 in force at 31.10.2013 by S.I. 2013/1814, art. 2(k) (with transitional provisions and savings in S.I. 2013/1813)

PROSPECTIVE

### PART 6 **N.I.**

#### MATERIAL SUBJECT TO THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989

- 7 (1) This paragraph applies to the following material—
- (a) a DNA profile to which Article 64 of the 1989 Order (destruction of fingerprints and samples) applies, or
  - (b) fingerprints to which Article 64 of the 1989 Order applies, other than fingerprints taken under Article 61(6A) of that Order.
- (2) If the Chief Constable of the Police Service of Northern Ireland determines that it is necessary for any material to which this paragraph applies to be retained for the purposes of national security—
- (a) the material is not required to be destroyed in accordance with Article 64 of the 1989 Order, and
  - (b) Article 64(3AB) of that Order does not apply to the material, for as long as the determination has effect.
- (3) A determination under sub-paragraph (2) (“a national security determination”)—
- (a) must be made in writing,
  - (b) has effect for a maximum of 2 years beginning with the date on which the material would (but for this paragraph) first become liable for destruction under the 1989 Order, and
  - (c) may be renewed.
- (4) Material retained under this paragraph must not be used other than—
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation,
  - (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or

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(d) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(5) This paragraph has effect despite any provision to the contrary in the 1989 Order.

(6) 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 Northern Ireland or of any country or territory outside Northern Ireland), or

(ii) is, or corresponds to, any conduct which, if it all took place in Northern Ireland, 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 Northern Ireland of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Northern Ireland.

(7) In this paragraph—

“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

“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;

“offence”, in relation to any country or territory outside Northern Ireland, includes an act punishable under the law of that country or territory, however it is described;

“terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.

## PART 7 U.K.

### CORRESPONDING NORTHERN IRELAND PROVISION FOR EXCEPTED OR RESERVED MATTERS ETC.

- 8 (1) The Secretary of State may make an order under sub-paragraph (2) or (3) if the Secretary of State considers that the subject-matter in relation to Northern Ireland of any provision of an Act of the Northern Ireland Assembly made in [<sup>F1</sup>2013 or 2014] is the same as the subject-matter in relation to England and Wales of any provision made by any of sections 1 to 18 and 23 to 25 of this Act.
- (2) The Secretary of State may by order make excepted or reserved provision in relation to Northern Ireland which is about the same subject-matter as any provision made in relation to England and Wales by any of sections 1 to 18 and 23 to 25 of this Act.
- (3) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of the Act of the Northern Ireland Assembly or an order under sub-paragraph (2).
- (4) The power to make an order under this paragraph—

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- (a) is exercisable by statutory instrument,
  - (b) includes power to make incidental, supplementary, transitional, transitory or saving provision,
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including this Act).
- (5) An order under this paragraph may not make provision which—
- (a) if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a transferred matter without being ancillary to other provision (whether in the Act or previously enacted) which deals with an excepted or reserved matter,
  - (b) if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of the Scottish Parliament, or
  - (c) if it were contained in an Act of the National Assembly for Wales, would be within the legislative competence of the National Assembly for Wales.
- (6) Subject to sub-paragraph (7), a statutory instrument containing an order under this paragraph is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) A statutory instrument containing an order under this paragraph which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this paragraph—
- “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation,
  - “excepted or reserved matter” have the meanings given by section 4(1) of the Northern Ireland Act 1998,
  - “excepted or reserved provision” means provision which—
    - (a) forms part of the law of Northern Ireland, and
    - (b) is not prohibited by sub-paragraph (5)(a),
  - “primary legislation” means—
    - (a) a public general Act,
    - (b) an Act of the Scottish Parliament,
    - (c) a Measure or Act of the National Assembly for Wales, and
    - (d) Northern Ireland legislation,
  - “transferred matter” has the meaning given by section 4(1) of the Northern Ireland Act 1998.

#### Textual Amendments

**F1** Words in Sch. 1 para. 8(1) substituted (13.3.2014) by [Northern Ireland \(Miscellaneous Provisions\) Act 2014 \(c. 13\)](#), **ss. 24, 28(1)(h)(3)**

#### Commencement Information

**I10** Sch. 1 para. 8 in force at 16.12.2014 by [S.I. 2014/3315](#), **art. 2**

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