

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 1: Regulation of biometric data**

#### *Chapter 1: Destruction, retention and use of fingerprints etc.*

#### *Section 1: Destruction of fingerprints and DNA profiles*

83. **Section 1** inserts new section 63D into the Police and Criminal Evidence Act 1984 (“PACE”) which sets out the basic rules governing the destruction of fingerprints and DNA profiles (collectively referred to as ‘section 63D material’) taken from a person under the powers in Part 5 of PACE or given voluntarily in connection with the investigation of an offence. New section 63D(2) requires the destruction of section 63D material if it appears to the responsible chief officer of police that the material was taken unlawfully, or that the material was taken from a person following an unlawful arrest or where the arrest was as a result of mistaken identity. Any other section 63D material must be destroyed as soon as reasonably practicable, subject to the operation of the provisions in new sections 63E to 63O and 63U of PACE detailed below. It is a general feature of new sections 63D to 63O that material must be destroyed unless one or more of those sections applies to that material, in which case the section which delivers the longest retention period will determine the period of retention. New section 63U(3), as inserted by section 17, provides that section 63D material need not be destroyed where it may be fall to be disclosed under the Criminal Procedure and Investigations Act 1996 or its attendant Code of Practice.
84. New section 63D(5) of PACE enables a person’s section 63D material, which would otherwise fall to be destroyed, to be retained for a short period until a speculative search of the relevant databases has been carried out. The fingerprints and DNA profile of an arrested person will be searched against the national fingerprint and DNA databases respectively to ascertain whether they match any other fingerprints or DNA profile on those databases. Where such a match occurs, it may serve to confirm the person’s identity, indicate that he or she had previously been arrested under a different name, or indicate that the person may be linked to a crime scene from which fingerprints or a DNA sample had been taken.