



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 4

#### POLICE POWERS

### CHAPTER 2

#### RETENTION OF BIOMETRIC MATERIAL

#### **70 Retention of fingerprints and DNA profiles: PACE**

- (1) Part 5 of the Police and Criminal Evidence Act 1984 (questioning and treatment of persons by police) is amended as follows.
- (2) In section 63F (retention of section 63D material: persons arrested for or charged with a qualifying offence), after subsection (2) insert—

“(2A) In subsection (2), references to a recordable offence include an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (and, in the application of subsection (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

- (3) In that section, after subsection (11) insert—

“(12) For the purposes of the definition of “excluded offence” in subsection (11)—

- (a) references to a recordable offence or a qualifying offence include an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence or (as the case may be) a qualifying offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted), and

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- (b) in the application of paragraph (b) of that definition in relation to an offence under the law of a country or territory outside England and Wales, the reference to a relevant custodial sentence of 5 years or more is to be read as a reference to a sentence of imprisonment or other form of detention of 5 years or more.”
- (4) In section 63H (retention of section 63D material: persons arrested for or charged with a minor offence), after subsection (2) insert—
  - “(2A) In subsection (2), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”
- (5) In that section, in subsection (3), after “section 63F(11)” insert “(read with section 63F(12))”.
- (6) After section 63I insert—

**“63IA Retention of material: persons convicted of an offence outside England and Wales after taking of section 63D material**

- (1) This section applies where—
  - (a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,
  - (b) at any time before the material is required to be destroyed by virtue of this Part of this Act, the person is convicted of an offence under the law of a country or territory outside England and Wales, and
  - (c) the act constituting the offence mentioned in paragraph (b) would constitute a recordable offence if done in England and Wales.
- (2) The material may be retained indefinitely.
- (3) This section does not apply where section 63KA applies.”
- (7) In the heading of section 63J, at the end insert “: other cases”.
- (8) In section 63K (retention of section 63D material: exception for persons under 18 convicted of minor offence), after subsection (1) insert—
  - “(1A) In subsection (1)(a)(ii), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”
- (9) In that section, after subsection (5) insert—
  - “(5A) In subsection (5), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.”
- (10) After section 63K insert—

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**“63KA Retention of section 63D material under section 63IA: exception for persons under 18 convicted of first minor offence outside England and Wales**

- (1) This section applies where—
    - (a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,
    - (b) at any time before the material is required to be destroyed by virtue of this Part of this Act, the person is convicted of an offence under the law of a country or territory outside England and Wales,
    - (c) the act constituting the offence mentioned in paragraph (b) would constitute a recordable offence if done in England and Wales but would not constitute a qualifying offence,
    - (d) the person is aged under 18 at the time of the offence mentioned in paragraph (b), and
    - (e) the person has not previously been convicted of a recordable offence.
  - (2) In subsection (1)(e), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).
  - (3) Where the person is sentenced to imprisonment or another form of detention for less than 5 years in respect of the offence mentioned in subsection (1)(b), the section 63D material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
  - (4) Where the person is sentenced to imprisonment or another form of detention for 5 years or more in respect of the offence mentioned in subsection (1)(b), the material may be retained indefinitely.
  - (5) Where the person is given a sentence other than a sentence of imprisonment or other form of detention in respect of the offence mentioned in subsection (1)(b), the material may be retained until the end of the period of 5 years beginning with the date on which the person was arrested for the offence (or, if the person was not arrested for the offence, the date on which the person was charged with it).
  - (6) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of a recordable offence, the material may be retained indefinitely.
  - (7) In subsection (6), the reference to a recordable offence includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.”
- (11) In section 63N (retention of section 63D material given voluntarily), after subsection (4) insert—

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“(5) The reference to a recordable offence in subsection (3)(a) includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence if done in England and Wales.

(6) The reference to a recordable offence in subsections (3)(b) and (4), and the reference to a qualifying offence in subsection (4), includes an offence under the law of a country or territory outside England and Wales where the act constituting the offence would constitute a recordable offence or (as the case may be) a qualifying offence if done in England and Wales (whether or not it constituted such an offence when the person was convicted).”

## 71 Retention of fingerprints and DNA profiles: Terrorism Act 2000

(1) Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.

(2) In paragraph 20B (retention of paragraph 20A material: persons detained under section 41), after sub-paragraph (2) insert—

“(2A) In sub-paragraph (2) —

(a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—

(i) a recordable offence under the law of England and Wales if done there, or

(ii) a recordable offence under the law of Northern Ireland if done there,

(and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);

(b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

(3) In paragraph 20C (retention of paragraph 20A material: persons detained under Schedule 7), after sub-paragraph (2) insert—

“(2A) In sub-paragraph (2) —

(a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—

(i) a recordable offence under the law of England and Wales if done there, or

(ii) a recordable offence under the law of Northern Ireland if done there,

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(and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);

- (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).”

(4) In paragraph 20D (interpretation), after sub-paragraph (5) insert—

“(5A) For the purposes of sub-paragraph (4)—

- (a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if—
- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
  - (ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);
- (b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—
- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
  - (ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);
- (c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—
- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
  - (ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if done there (whether or not it constituted such an offence when the person was convicted);
- (d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).

(5B) For the purposes of paragraphs 20B and 20C and this paragraph—

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- (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
- (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
  - (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
  - (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.”