

Status: Point in time view as at 01/06/2021. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Counter-Terrorism and Border Security Act 2019, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 19

RETENTION OF BIOMETRIC DATA FOR COUNTER-TERRORISM PURPOSES ETC

Police and Criminal Evidence Act 1984

1 The Police and Criminal Evidence Act 1984 is amended as follows.

Commencement Information

II Sch. 2 para. 1 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 2 (1) Section 63F (retention of section 63D material: persons arrested for or charged with a qualifying offence) is amended as follows.
- (2) In subsection (3), for “or (5)” substitute “, (5) or (5A)”.
- (3) In subsection (5)(a), after “qualifying offence” insert “, other than a terrorism-related qualifying offence,”.
- (4) After subsection (5) insert—
- “(5A) Material falls within this subsection if—
- (a) it relates to a person who is arrested for a terrorism-related qualifying offence but is not charged with that offence, and
- (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.”
- (5) In subsection (11), after the definition of “a specified chief officer of police” insert—
- ““terrorism-related qualifying offence” means—
- (a) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 (see section 65A(2)(r) below), or
- (b) an ancillary offence, as defined by section 65A(5) below, relating to an offence for the time being listed in section 41(1) of that Act.”

Commencement Information

I2 Sch. 2 para. 2 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 3 (1) Section 63M (retention of section 63D material for purposes of national security) is amended as follows.
- (2) In subsection (1), for “the responsible” substitute “ a ”.
- (3) In subsection (2), for “the responsible” substitute “ a ”.

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(4) In subsection (3)(b), for “2 years” substitute “ 5 years ”.

Commencement Information

I3 Sch. 2 para. 3 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

4 After section 63P insert—

“63PA Retention of further sets of fingerprints

- (1) This section applies where section 63D material is or includes a person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this section in respect of any further fingerprints taken from the same person (“the further fingerprints”) if any of conditions 1 to 3 are met.
- (3) Condition 1 is met if—
 - (a) the further fingerprints are section 63D material, and
 - (b) the further fingerprints or the original fingerprints were taken in connection with a terrorist investigation.
- (4) Condition 2 is met if the further fingerprints were taken from the person in England or Wales under—
 - (a) paragraph 10 of Schedule 8 to the Terrorism Act 2000,
 - (b) paragraph 1 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or
 - (c) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.
- (5) Condition 3 is met if the further fingerprints—
 - (a) are material to which section 18 of the Counter-Terrorism Act 2008 applies, and
 - (b) are held under the law of England and Wales.
- (6) Where a determination under this section is made in respect of the further fingerprints—
 - (a) the further fingerprints may be retained for as long as the original fingerprints are retained under a power conferred by sections 63E to 63O (including those sections as applied by section 63P), and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (7) Subsection (6)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (8) A written record must be made of a determination under this section.”

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Commencement Information

I4 Sch. 2 para. 4 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

PROSPECTIVE

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

5 (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 is amended as follows.

(2) In Article 63D (retention of Article 63B material: persons arrested for or charged with a qualifying offence) (as inserted by Schedule 2 to the Criminal Justice Act (Northern Ireland) 2013 (c. 7 N.I.))—

(a) in paragraph (1), for sub-paragraph (a) substitute—

“(a) relates to a person who—

(i) is arrested for a qualifying offence other than a terrorism-related qualifying offence but is not charged with that offence, or

(ii) is charged with any qualifying offence but is not convicted of that offence, and”;

(b) in paragraph (14), after the definition of “prescribed” insert—

““terrorism-related qualifying offence” means—

(a) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 (see Article 53A(2)(r)), or

(b) an ancillary offence, as defined by Article 53A(4), relating to an offence for the time being listed in section 41(1) of that Act.”

(3) After Article 63D insert—

“ Retention of Article 63B material: persons arrested for terrorism-related qualifying offence

63D(1) This Article applies to Article 63B material which—

(a) relates to a person who is arrested for a terrorism-related qualifying offence but is not charged with that offence, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this Article, the material may be retained indefinitely.

(3) Otherwise, the material may be retained—

(a) in the case of fingerprints, for the period of 3 years beginning with the date on which the fingerprints were taken;

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- (b) in the case of a DNA profile, for 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).

(4) In this Article—

“excluded offence”, in relation to a person, means a recordable offence—

(a) which—

- (i) is not a qualifying offence,
(ii) is the only recordable offence of which the person has been convicted, and
(iii) was committed when the person was aged under 18, and

(b) for which the person was not given a custodial sentence of 5 years or more;

“terrorism-related qualifying offence” means—

- (a) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 (see Article 53A(2)(r)), or
(b) an ancillary offence, as defined by Article 53A(4), relating to an offence for the time being listed in section 41(1) of that Act.”

Criminal Procedure (Scotland) Act 1995

6 The Criminal Procedure (Scotland) Act 1995 is amended as follows.

Commencement Information

I5 Sch. 2 para. 6 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 7 (1) Section 18G (retention of samples etc: national security) is amended as follows.
- (2) In subsection (2) for “the relevant chief constable” substitute “ the chief constable of the Police Service of Scotland ”.
- (3) In subsection (3) for “the relevant chief constable” substitute “ the chief constable of the Police Service of Scotland ”.
- (4) In subsection (4)(b) for “2 years” substitute “ 5 years ”.
- (5) Omit subsection (6).

Commencement Information

I6 Sch. 2 para. 7 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

8 After section 18G insert—

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“18GA Retention of further fingerprints

- (1) This section applies where—
 - (a) relevant physical data to which section 18G applies has been taken from or provided by a person, and
 - (b) the data is or includes the person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this section in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if—
 - (a) the further fingerprints were taken under or by virtue of—
 - (i) any provision, power or authority mentioned in section 18G(1), or
 - (ii) paragraph 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, and
 - (b) the further fingerprints or the original fingerprints were taken—
 - (i) in connection with a terrorist investigation, as defined by section 32 of the Terrorism Act 2000, or
 - (ii) under a power conferred by virtue of paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.
- (3) Where a determination under this section is made in respect of the further fingerprints—
 - (a) the further fingerprints may be retained for as long as the original fingerprints are retained in accordance with this Part, and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (4) Subsection (3)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (5) A written record must be made of a determination under this section.”

Commencement Information

I7 Sch. 2 para. 8 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

Terrorism Act 2000

- 9 Part 1 of Schedule 8 to the Terrorism Act 2000 (treatment of persons detained under section 41 of, or Schedule 7 to, that Act) is amended as follows.

Commencement Information

I8 Sch. 2 para. 9 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

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- 10 (1) Paragraph 20E is amended as follows.
- (2) In sub-paragraph (1), for “the responsible” substitute “ a ”.
- (3) In sub-paragraph (2), for “the responsible” substitute “ a ”.
- (4) In sub-paragraph (3)(b), for “2 years” substitute “ 5 years ”.
- (5) After sub-paragraph (3) insert—
- “(4) In this paragraph “chief officer of police” means—
- (a) a chief officer of police of a police force in England and Wales,
- (b) the chief constable of the Police Service of Scotland, or
- (c) the Chief Constable of the Police Service of Northern Ireland.”

Commencement Information

19 Sch. 2 para. 10 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 11 After paragraph 20E insert—
- “20E(1) This paragraph applies where paragraph 20A material is or includes a person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this paragraph in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if conditions 1 and 2 are met.
- (3) Condition 1 is met if the further fingerprints—
- (a) are paragraph 20A material,
- (b) are taken or provided under or by virtue of—
- (i) Part 5 of the Police and Criminal Evidence Act 1984,
- (ii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
- (iii) any provision, power or authority mentioned in section 18G(1) of the Criminal Procedure (Scotland) Act 1995,
- (iv) paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or
- (v) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, or
- (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if—
- (a) in a case where the further fingerprints are material to which section 18 of the Counter-Terrorism Act 2008 applies, the original fingerprints and the further fingerprints are held under the law of the same part of the United Kingdom;
- (b) in any other case, the original fingerprints and the further fingerprints were taken from or provided by the person in the same part of the United Kingdom.

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- (5) Where a determination under this paragraph is made in respect of the further fingerprints—
- (a) the further fingerprints may be retained for as long as the original fingerprints are retained under any power conferred by paragraphs 20B to 20E, and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (6) Sub-paragraph (5)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (7) A written record must be made of a determination under this paragraph.
- (8) In this paragraph—
- (a) “enactment” includes—
 - (i) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (ii) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
 - (b) references to a part of the United Kingdom are references to—
 - (i) England and Wales,
 - (ii) Scotland, or
 - (iii) Northern Ireland.”

Commencement Information

I10 Sch. 2 para. 11 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

Counter-Terrorism Act 2008

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

Commencement Information

I11 Sch. 2 para. 12 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 13 (1) Section 18B (retention for purposes of national security) is amended as follows.
- (2) In subsection (1) after “responsible officer” insert “, or by a chief officer of police,”.
 - (3) In subsection (2) after “responsible officer” insert “, or a chief officer of police,”.
 - (4) In subsection (3)(b) for “2 years” substitute “ 5 years ”.
 - (5) After subsection (3) insert—
 - “(4) In this section “chief officer of police” means a person other than the responsible officer who is—
 - (a) the chief officer of police of a police force in England and Wales, or
 - (b) the Chief Constable of the Police Service of Northern Ireland.”

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Commencement Information

I12 Sch. 2 para. 13 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

14 After section 18B insert—

“18BA Retention of further fingerprints

- (1) This section applies where section 18 material is or includes a person's fingerprints (“the original fingerprints”).
- (2) An appropriate officer may make a determination under this section in respect of any further fingerprints taken from the same person (“the further fingerprints”) if conditions 1 and 2 are met.
- (3) Condition 1 is met if the further fingerprints—
 - (a) are section 18 material, or
 - (b) are taken under—
 - (i) Part 5 of the Police and Criminal Evidence Act 1984,
 - (ii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
 - (iii) paragraph 10 of Schedule 8 to the Terrorism Act 2000,
 - (iv) paragraph 1 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or
 - (v) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.
- (4) Condition 2 is met if both the original fingerprints and the further fingerprints—
 - (a) are held by a law enforcement authority under the law of England and Wales, or
 - (b) are held by a law enforcement authority under the law of Northern Ireland.
- (5) Where a determination under this section is made in respect of the further fingerprints—
 - (a) the further fingerprints may be retained for as long as the original fingerprints are retained under a power conferred by section 18A or 18B, and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (6) Subsection (5)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (7) A written record must be made of a determination under this section.
- (8) In this section—

“appropriate officer” means—

 - (a) a constable, or

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- (b) an officer of Revenue and Customs who is not below such grade as is designated for the purposes of this section by the Commissioners for Her Majesty's Revenue and Customs;
“enactment” includes an enactment comprised in, or in an instrument made under, Northern Ireland legislation.”

Commencement Information

I13 Sch. 2 para. 14 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

Terrorism Prevention and Investigation Measures Act 2011

- 15 Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (fingerprints and samples) is amended as follows.

Commencement Information

I14 Sch. 2 para. 15 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 16 (1) Paragraph 11 is amended as follows.
- (2) In sub-paragraph (1), for “the responsible” substitute “ a ”.
- (3) In sub-paragraph (2), for “the responsible” substitute “ a ”.
- (4) in sub-paragraph (3)(b), for “2 years” substitute “ 5 years ”.
- (5) After sub-paragraph (3) insert—
- “ (4) In this paragraph “chief officer of police” means—
- (a) a chief officer of police of a police force in England and Wales,
- (b) the chief constable of the Police Service of Scotland, or
- (c) the Chief Constable of the Police Service of Northern Ireland.”

Commencement Information

I15 Sch. 2 para. 16 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

- 17 After paragraph 11 insert—
- “11A(1) This paragraph applies where paragraph 6 material is or includes a person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this paragraph in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if conditions 1 and 2 are met.
- (3) Condition 1 is met if the further fingerprints—
- (a) are paragraph 6 material,
- (b) are taken or provided under or by virtue of—
- (i) Part 5 of the Police and Criminal Evidence Act 1984,
- (ii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),

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- (iii) any provision, power or authority mentioned in section 18G(1) of the Criminal Procedure (Scotland) Act 1995,
 - (iv) paragraph 10 of Schedule 8 to the Terrorism Act 2000, or
 - (v) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, or
 - (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if—
- (a) in a case where the further fingerprints are material to which section 18 of the Counter-Terrorism Act 2008 applies, the original fingerprints and the further fingerprints are held under the law of the same part of the United Kingdom;
 - (b) in any other case, the original fingerprints and the further fingerprints were taken from or provided by the person in the same part of the United Kingdom.
- (5) Where a determination under this paragraph is made in respect of the further fingerprints—
- (a) the further fingerprints may be retained for as long as the original fingerprints are retained under any power conferred by paragraph 8, 9 or 11, and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (6) Sub-paragraph (5)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (7) A written record must be made of a determination under this paragraph.
- (8) In this paragraph—
- (a) “enactment” includes—
 - (i) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (ii) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
 - (b) references to a part of the United Kingdom are references to—
 - (i) England and Wales,
 - (ii) Scotland, or
 - (iii) Northern Ireland.”

Commencement Information

I16 Sch. 2 para. 17 in force at 13.8.2020 by S.I. 2020/792, reg. 2(e)

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PROSPECTIVE

Protection of Freedoms Act 2012

- 18 Part 6 of Schedule 1 to the Protection of Freedoms Act 2012 (material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989) is amended as follows.
- 19 In paragraph 7, in sub-paragraph (3)(b) for “2 years” substitute “ 5 years ”.
- 20 After paragraph 7 insert—
- “7A (1) This paragraph applies where—
- (a) fingerprints to which paragraph 7 applies have been taken from a person (“the original fingerprints”), and
 - (b) a national security determination under that paragraph is made in relation to the original fingerprints.
- (2) A constable may make a determination under this paragraph in respect of any further fingerprints taken from the same person (“the further fingerprints”) if condition 1 or condition 2 is met.
- (3) Condition 1 is met if—
- (a) the further fingerprints are fingerprints to which paragraph 7 applies, and
 - (b) the further fingerprints or the original fingerprints were taken in connection with a terrorist investigation, as defined by section 32 of the Terrorism Act 2000.
- (4) Condition 2 is met if the further fingerprints were taken from the person in Northern Ireland under—
- (a) paragraph 10 of Schedule 8 to the Terrorism Act 2000,
 - (b) paragraph 1 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or
 - (c) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.
- (5) Where a determination under this paragraph is made in respect of the further fingerprints—
- (a) the national security determination made in relation to the original fingerprints also applies in relation to the further fingerprints, and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as the national security determination has effect.
- (6) A written record must be made of a determination under this paragraph.
- (7) In this paragraph “enactment” includes an enactment comprised in, or in an instrument made under, Northern Ireland legislation.”

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