

EXPLANATORY MEMORANDUM TO

THE CORONAVIRUS (RETENTION OF FINGERPRINTS AND DNA PROFILES IN THE INTERESTS OF NATIONAL SECURITY) (NO. 2) REGULATIONS 2020

2020 No. 973

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 In accordance with section 24 of the Coronavirus Act 2020 and the power conferred on the Secretary of State under subsection (2), (4) and (8), this instrument extends the deadline for retention of fingerprints and DNA profiles by six months, in respect of fingerprints or DNA profiles that are relevant to the interests of national security; and that would otherwise fall to be destroyed on a date during the period that starts with 1st October 2020 and ends with 24th March 2021. This follows the extension provided by the Coronavirus (Retention of fingerprints and DNA profiles in the interests of national security) Regulations 2020, which covered the period from 2nd April 2020 to 1st October 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 There are no new duties imposed by the Regulations on the police.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland. The subject-matter of these Regulations, national security, is wholly reserved.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Security Minister James Brokenshire has made the following statement regarding Human Rights:

“In my view the provisions of the Coronavirus (Retention of fingerprints and DNA profiles in the interests of national security) (No. 2) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 24 of the Coronavirus Act 2020 confers a regulation-making power – under subsection (2) – on the Secretary of State so that she may vary the statutory retention deadlines for biometrics (fingerprints and DNA profiles) taken under relevant specified counter-terrorism and law enforcement legislation. The power enables the Secretary of State to make regulations extending, for up to six months, the period for which biometrics (fingerprints and DNA profiles) may be retained. The power may be exercised on more than one occasion but not so as to extend the period for which any fingerprints or DNA profiles may be retained by more than 12 months in total.
- 6.2 Regulations may only be made in response to the effects that coronavirus is having, or is likely to have, on the capacity of chief officers of police to consider whether biometrics need to be retained in the interests of national security. The regulations may only provide for the retention of biometrics which would otherwise fall to be destroyed in the period of 12 months starting with the date of Royal Assent (25th March 2020) of the Coronavirus Act 2020; and only after consulting the Biometrics Commissioner.
- 6.3 The power was limited so that it would cease to have effect unless it was exercised within three months of Royal Assent. The Coronavirus (Retention of fingerprints and DNA profiles in the interests of national security) Regulations 2020 entered into force on 2 April. This is the second instrument to be laid under section 24, subsection (2) of the Coronavirus Act 2020.
- 6.4 The retention deadlines for biometric material within scope of the instrument will be extended by six months as soon as the instrument comes into force.

7. Policy background

What is being done and why?

- 7.1 Biometrics taken or received in the UK can be retained for initial specified periods. The statutory retention periods for biometrics taken under terrorism legislation vary from 6 months to 3 years depending on the power by which the biometrics were taken. Biometrics taken under Police and Criminal Evidence Act (PACE) 1984 powers, or similar legislation applicable in Scotland and Northern Ireland, may also be retained depending on the alleged offence and conviction status of the individual.
- 7.2 Under powers established in the Protection of Freedom Act 2012, a chief officer of police may order that biometrics be retained on grounds of national security by making a national security determination if it is necessary and proportionate to do so. A national security determination must be in writing and lasts for a maximum of two years beginning with the date on which it is made. A national security determination may be renewed for a further period of up to two years on any number of occasions.
- 7.3 The Counter-Terrorism Policing Command has confirmed that – due to the ongoing impact of coronavirus on its resourcing, including the ability of specially trained staff with the necessary security clearances to access sensitive IT systems – it is unable to maintain business-as-usual in relation to the reviews of intelligence required to process and submit national security determinations to chief officers of police for their consideration. As statutory retention periods end, biometrics will automatically be deleted. The police estimate that the Coronavirus (Retention of fingerprints and DNA profiles in the interests of national security) Regulations 2020 safeguarded 870 biometrics samples.

7.4 Biometric material held using national security determinations is known in the past to have led to the identification of individuals thought to have travelled to take part in the conflict in Syria/Iraq; linked individuals to other intelligence provided by overseas partners; linked individuals to unidentified crime stains; provided evidence of potential terrorist offences; and matched to potential visa and asylum applications, resulting in individuals being refused entry to the UK.

7.5 It is vitally important that where the effects of coronavirus restrict the capacity of chief officers of police to consider the case for making or remaking a national security determination that biometrics are not automatically deleted. The Secretary of State has therefore decided to exercise the power in section 24, subsection (2), of the Coronavirus Act 2020.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Government does not assess that there is any need for consolidation measures.

10. Consultation outcome

10.1 The statutorily independent Biometrics Commissioner has been consulted in the process of making these Regulations and has confirmed that it is his view that the extension that they permit is reasonable and proportionate.

11. Guidance

11.1 No guidance is necessary in connection with this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument.

12.4 An Equality Impact Assessment was prepared for the Coronavirus Act 2020, which covered section 24.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Office of the Biometrics Commissioner will prepare, on behalf of the Commissioner, a report for Parliament detailing the impact of the regulations once they expire.

15. Contact

15.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, Telephone: 020 7035 4848.

- 15.2 The Deputy Director for CT Pursue Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon. James Brokenshire MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.