



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 1

REGULATION OF BIOMETRIC DATA

CHAPTER 1

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

Supplementary provision for material subject to PACE

16 Use of retained material

After section 63S of the Police and Criminal Evidence Act 1984 (for which see section 15) insert—

“63T Use of retained material

- (1) Any material to which section 63D, 63R or 63S 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) Material which is required by section 63D, 63R or 63S 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.

Status: This is the original version (as it was originally enacted).

- (3) In this section—
- (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 England and Wales or of any country or territory outside England and Wales), or
 - (ii) is, or corresponds to, any conduct which, if it all took place in England and Wales, 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 England and Wales of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside England and Wales.”

17 Exclusions for certain regimes

After section 63T of the Police and Criminal Evidence Act 1984 (for which see section 16) insert—

“63U Exclusions for certain regimes

- (1) Sections 63D to 63T do not apply to material to which paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 (destruction, retention and use of material taken from terrorist suspects) apply.
- (2) Any reference in those sections to a person being arrested for, or charged with, an offence does not include a reference to a person—
 - (a) being arrested under section 41 of the Terrorism Act 2000, or
 - (b) being charged with an offence following an arrest under that section.
- (3) Sections 63D to 63T do not apply to material to which paragraph 8 of Schedule 4 to the International Criminal Court Act 2001 (requirement to destroy material) applies.
- (4) Sections 63D to 63T do not apply to material to which paragraph 6 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (requirement to destroy material) applies.
- (5) Sections 63D to 63Q, 63S and 63T do not apply to material 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.
- (6) Sections 63D to 63T do not apply to material which—
 - (a) is taken from a person, but
 - (b) relates to another person.
- (7) Nothing in sections 63D to 63T affects any power conferred by—

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- (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take reasonable steps to identify a person detained), or
- (b) section 20 of the Immigration and Asylum Act 1999 (disclosure of police information to the Secretary of State for use for immigration purposes).”

18 Interpretation and minor amendments of PACE

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 65(1) (interpretation of Part 5)—
 - (a) after the definition of “appropriate consent” insert—
 - ““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;”
 - (b) after the definition of “registered health care professional” insert—
 - ““the responsible chief officer of police”, in relation to material to which section 63D or 63R applies, means 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;
 - “section 63D material” means fingerprints or DNA profiles to which section 63D applies;” and
 - (c) after the definition of “terrorism” insert—
 - ““terrorist investigation” has the meaning given by section 32 of that Act;”.
- (3) After section 65(2) (meaning of references to a sample’s proving insufficient) insert—
 - “(2A) In subsection (2), the reference to the destruction of a sample does not include a reference to the destruction of a sample under section 63R (requirement to destroy samples).
 - (2B) Any reference in sections 63F, 63H, 63P or 63U to a person being charged with an offence includes a reference to a person being informed that the person will be reported for an offence.”
- (4) In section 65A(2) (list of “qualifying offences” for purposes of Part 5), in paragraph (j) (offences under the Theft Act 1968), for “section 9” substitute “section 8, 9”.
- (5) After section 65A insert—

“65B Persons convicted of an offence”

- (1) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to—
 - (a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
 - (b) a person who has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,

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- (c) a person who has been found not guilty of the offence by reason of insanity, or
 - (d) a person who has been found to be under a disability and to have done the act charged in respect of the offence.
- (2) This Part, so far as it relates to persons convicted of an offence, has 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) 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 sections 63F, 63H and 63N whether the person has been convicted of only one offence.
- (5) See also section 65(3) (which deals with findings equivalent to those mentioned in subsection (1)(c) or (d) by courts which exercise jurisdiction under the laws of countries or territories outside England and Wales).”