



## 2015 CHAPTER 9

### PART 9

#### MISCELLANEOUS

PROSPECTIVE

#### *Personal samples, DNA profiles and fingerprints*

#### **Power to take further fingerprints or non-intimate samples**

**83.**—(1) In Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting)—

(a) in paragraphs (5A) and (5B) for the words after “investigation” in subparagraph (b) substitute “but—

(i) paragraph (4A)(a) or (b) applies, or

(ii) paragraph (5C) applies.”;

(b) after paragraph (5B) insert—

“(5C) This paragraph applies where—

(a) the investigation was discontinued but subsequently resumed, and

(b) before the resumption of the investigation the fingerprints were destroyed pursuant to Article 63B(2).”.

(2) In Article 63 of that Order (non-intimate samples)—

(a) at the end of paragraph (3ZA)(b) insert “, or

(iii) paragraph (3AA) applies.”;

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- (b) in paragraph (3A)(b) for “insufficient; or” substitute “insufficient, or  
“(iii) paragraph (3AA) applies; or”;
- (c) after paragraph (3A) insert—
  - “(3AA) This paragraph applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation—
    - (a) any DNA profile derived from the sample was destroyed pursuant to Article 63B(2), and
    - (b) the sample itself was destroyed pursuant to Article 63P(2), (3) or (10).”.
- (3) In Schedule 2A to that Order (fingerprinting and samples: power to require attendance at police station)—
  - (a) in paragraph 1 (fingerprinting: persons arrested and released)—
    - (i) in sub-paragraph (2) for “Article 61(5A)(b)” substitute “ Article 61(5A)(b)(i) ”;
    - (ii) after sub-paragraph (3) insert—
      - “(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b)(ii) (fingerprints destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”;
  - (b) in paragraph 2 (fingerprinting: persons charged, etc.)—
    - (i) in sub-paragraph (2)(b) for “Article 61(5B)(b)” substitute “ Article 61(5B)(b)(i) ”;
    - (ii) at the end of sub-paragraph (2) insert “, or  
“(c) in a case falling within Article 61(5B)(b)(ii) (fingerprints destroyed where investigation interrupted), the day on which the investigation was resumed.”;
  - (c) in paragraph 9 (non-intimate samples: persons arrested and released)—
    - (i) in sub-paragraph (2) for “within Article 63(3ZA)(b)” substitute “ within Article 63(3ZA)(b)(i) or (ii) ”;
    - (ii) after sub-paragraph (3) insert—
      - “(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”;
  - (d) in paragraph 10 (non-intimate samples: person charged etc.)—

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(i) in sub-paragraph (3) for “within Article 63(3A)(b)” substitute “within Article 63(3A)(b)(i) or (ii)”;

(ii) after sub-paragraph (4) insert—

“(5) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.”.

### **Retention of material: persons convicted of an offence in England and Wales or Scotland**

**84.** After Article 63G of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

#### **“Retention of material: effect of convictions in England and Wales or Scotland**

**63GA.**—(1) This Article applies to Article 63B material which does not fall within Article 63G (2).

(2) If the material relates to a person who has been convicted under the law in force in England and Wales of a recordable offence within the meaning of section 118(1) of PACE (“an EW recordable offence”) Articles 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of an EW recordable offence (and section 65B(1) of PACE (meaning of “convicted”) applies for that purpose);

(b) references in Article 63D(14) to a qualifying offence included references to a qualifying offence within the meaning of section 65A of PACE;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a relevant custodial sentence within the meaning of section 63K(6) of PACE.

(3) If the material relates to a person who has been convicted under the law in force in Scotland of an offence which is punishable by imprisonment (“a relevant Scottish offence”) Article 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable

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offence included references to a person being convicted of a relevant Scottish offence;

(b) references in Article 63D(14) to a qualifying offence included references to—

(i) a relevant sexual offence and a relevant violent offence within the meaning of section 19A of the Criminal Procedure (Scotland Act) 1995; and

(ii) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a sentence of imprisonment or detention.

(4) In this Article “PACE” means the Police and Criminal Evidence Act 1984.”.

#### **Retention of DNA profiles or fingerprints: persons given a prosecutorial fine**

**85.** After Article 63K of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

#### **“Retention of Article 63B material: persons given a prosecutorial fine notice**

**63KA.**—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a prosecutorial fine notice under section 18 of the Justice Act (Northern Ireland) 2015, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence (or one of the offences) to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.”.

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### **Power to retain DNA profile or fingerprints in connection with different offence**

**86.** For Article 63N of the Police and Criminal Evidence (Northern Ireland) Order 1989 (Article 63B material obtained for one purpose and used for another) substitute—

#### **“Retention of Article 63B material in connection with different offence**

**63N.**—(1) Paragraph (2) applies if—

- (a) Article 63B material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and
- (b) the person subsequently—
  - (i) is arrested for or charged with a different offence,
  - (ii) is convicted of a different offence,
  - (iii) is given a penalty notice or a prosecutorial fine notice in respect of a different offence;
  - (iv) is given a caution in respect of a different offence committed when the person is under the age of 18; or
  - (v) completes a diversionary youth conference process with respect to a different offence.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken)—

- (a) in connection with the investigation of the offence mentioned in paragraph (1)(b),
- (b) on the date on which the person was arrested for that offence or, if the person was not arrested, on the date on which the person—
  - (i) was charged with the offence or given a penalty notice or prosecutorial fine in respect of the offence, or
  - (ii) was cautioned in respect of the offence; or
  - (iii) completed the diversionary youth conference process with respect to the offence.

(3) Paragraph (3) of Article 63J applies for the purposes of this Article as it applies for the purposes of Article 63J.”

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### **Retention of personal samples that are or may be disclosable**

**87.** In Article 63R of the Police and Criminal Evidence (Northern Ireland) Order 1989 (exclusions for other regimes)—

(a) in paragraph (5) (material that is or may become disclosable to the defence) for “Articles 63B to 63O and 63Q” substitute “ Articles 63B to 63Q ”;

(b) after that paragraph insert—

“(5A) A sample that—

(a) falls within paragraph (5), and

(b) but for that paragraph would be required to be destroyed under Article 63P,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within paragraph (5) but no longer does, and so becomes a sample to which Article 63P applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.”.

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