
EXPLANATORY NOTE

(This note is not part of the Order)

Part 1, Chapter 1 of the Protection of Freedoms Act 2012 (c. 9) (“the 2012 Act”) made provision for the retention, destruction and use of biometric data in England and Wales, including provision for the use of that data for national security related purposes and provision for material taken before commencement of the new biometric data destruction and retention regime. Corresponding provision for Northern Ireland was made by the Northern Ireland Assembly in the Criminal Justice Act (Northern Ireland) 2013 (c.7 (N.I.)) (“the 2013 (NI) Act”).

The Northern Ireland Assembly does not have the legislative competence to make provision for the retention or use of biometric data for national security purposes or for the purposes of a terrorism investigation, since such retention or use relates to an excepted matter (as defined by the Northern Ireland Act 1998 (c. 47)). Paragraph 8 of Schedule 1 to the 2012 Act gave the Secretary of State the power to make such excepted or reserved provision by Order and, in addition, a power to make appropriate provision in consequence of that Order or in consequence of the corresponding Northern Ireland Act.

Article 2 amends Article 63Q of the Police and Criminal Evidence (Northern Ireland) Order 1989 (“the 1989 Order”) to enable certain biometric data (that to which Articles 63B and 63P of the 1989 Order apply) to be used in the interests of national security and for the purposes of a terrorist investigation. Article 2 also inserts a definition of ‘terrorist investigation’ into Article 2(2) of the 1989 Order.

Article 3 amends paragraph 15 of Schedule 8 to the Terrorism Act 2000 (c. 11) (“the 2000 Act”) to ensure that Article 53(3A) of the 1989 Order (as inserted by the Criminal Justice Act (Northern Ireland) 2013), when applied for the purposes of paragraph 15(2) of Schedule 8 to the 2000 Act, is interpreted as referring to destruction of a sample under paragraph 20G of Schedule 8 to the 2000 Act.

The 2013 (NI) Act makes amendments to paragraphs 7(1) and (2) of Schedule 1 to the 2012 Act, substituting the correct references to the new provisions of the amended 1989 Order which deal with the destruction of fingerprints and DNA profiles. Article 4 amends some remaining references in paragraphs 7(1) and (7) of Schedule 1 to the 2012 Act to the destruction of samples which are redundant in consequence of the amendments to paragraph 7 made by the 2013 (NI) Act.

Article 5 makes a transitional provision relating to national security determinations. Section 9(1) of, and Schedule 2 to, the 2013 (NI) Act introduce a new framework for the destruction and retention of fingerprints and DNA profiles etc. obtained under the 1989 Order. Paragraph 7 of Schedule 1 to the 2012 Act allows the Chief Constable of the Police Service of Northern Ireland to determine that material subject to the 1989 Order can be retained for an extended period for the purposes of national security. Article 5 of this Order makes provision for biometric material taken under the 1989 Order before the new framework for the destruction and retention of that material comes into force. It provides that where such material has been identified under paragraph 7 of Schedule 1 to the 2012 Act as requiring consideration of whether it should be retained pursuant to a national security determination, the material is not to be subject to destruction for a period of 6 months following the coming fully into force of Article 63B of the 1989 Order, which is inserted by section 9(1) of, and Schedule 2 to, the 2013 (NI) Act.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.