
DRAFT STATUTORY INSTRUMENTS

2015 No.

CRIMINAL LAW, NORTHERN IRELAND

POLICE, NORTHERN IRELAND

**The Protection of Freedoms Act 2012 (Northern Ireland)
(Biometric data) Order 2015**

Made - - - -

2015

Coming into force in accordance with article 1(2)

In accordance with paragraph 8(1) of Schedule 1 to the Protection of Freedoms Act 2012^(a) (“the Act”), the Secretary of State considers that the Criminal Justice Act (Northern Ireland) 2013^(b) made by the Northern Ireland Assembly contains provision with the same subject-matter in relation to Northern Ireland as the subject-matter in relation to England and Wales of provision made by one or more of sections 1 to 18 and 23 to 25 of the Act.

In accordance with paragraph 8(6) of Schedule 1 to the Act a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by paragraph 8(2), (3) and (4) of Schedule 1 to the Act, makes the following Order:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Protection of Freedoms Act 2012 (Northern Ireland) (Biometric data) Order 2015.

(2) It comes into force on the day on which section 9(1) of, and Schedule 2 to, the Criminal Justice Act (Northern Ireland) 2013 come into force for the purpose of inserting Article 63B in the 1989 Order^(c) for all purposes (whether or not that section and Schedule also come into force for other purposes at the same time).

(3) Subject to paragraph (4), this Order extends to Northern Ireland only.

(4) Article 3 and this article also extend to England and Wales and Scotland.

^(a) 2012 c. 9. Paragraph 8(1) of Schedule 1 to the Protection of Freedoms 2012 Act is amended by section 24 of the Northern Ireland (Miscellaneous Provisions) Act 2014 (c.13).

^(b) 2013 c. 7 (N.I.)

^(c) S.I. 1989/1341 (N.I. 12) (“the 1989 Order”).

(5) In this Order “the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989.

Corresponding provision for Northern Ireland dealing with excepted matters

2.—(1) The 1989 Order is amended as follows.

(2) In Article 2(2) (general interpretation)(a) after the definition of “terrorism” insert—

““terrorist investigation” has the meaning given in section 32 of that Act(b);”.

(3) In Article 63Q(1) (use of retained material)(c) before sub-paragraph (a) insert—

“(za) in the interests of national security,

(zb) for the purposes of a terrorist investigation,”.

3.—(1) The Terrorism Act 2000(d) is amended as follows.

(2) In paragraph 15 of Schedule 8 (interpretation of paragraphs 10 to 13 of Schedule 8)(e) after sub-paragraph (2) insert—

“(2A) In the application of Article 53(3A) of the Police and Criminal Evidence (Northern Ireland) Order 1989(f) for the purposes of sub-paragraph (2) of this paragraph, the reference to the destruction of a sample under Article 63P of that Order (destruction of samples) is a reference to the destruction of a sample under paragraph 20G(g) of this Schedule.”.

Amendments to the Protection of Freedoms Act 2012

4.—(1) The Protection of Freedoms Act 2012 is amended as follows.

(2) In paragraph 7(1)(a) of Schedule 1 (material subject to the 1989 Order)(h) for “(destruction of fingerprints and samples)” substitute “(destruction of fingerprints and DNA profiles)”.

(3) In paragraph 7(7) omit the definitions of “DNA profile” and “DNA sample”.

Corresponding transitional provision for Northern Ireland dealing with excepted matters

5.—(1) In its application to PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before the day on which this Order comes into force and identified by the Chief Constable of the Police Service of Northern Ireland as material requiring consideration under paragraph 7 of Schedule 1 to the Protection of Freedoms Act 2012, Schedule 2 to the Criminal Justice Act (Northern Ireland) 2013 has effect as if Article 63B(2)(i) of the 1989 Order did not

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- (a) Article 2 of the 1989 Order has been amended on various occasions. Of relevance to this Order, definitions of “the terrorism provisions” and “terrorism” were inserted by paragraph 8(1) and (2) of Schedule 15 to the Terrorism Act 2000 (c.11).
- (b) 2000 c. 11. The reference to, “that Act” is, by virtue of the definition of “the terrorism provisions”, a reference to the Terrorism Act 2000. Section 32 of the Terrorism Act 2000 Act has been amended by section 37(1) of the Terrorism Act 2006 (c. 11).
- (c) Article 63Q of the 1989 Order is inserted by section 9(1) of, and Schedule 2 to, the Criminal Justice Act (Northern Ireland) 2013 (c.7 (N.I.)).
- (d) 2000 c. 11.
- (e) Paragraph 15 of Schedule 8 to the Terrorism Act 2000 (c. 11) has been amended a number of times. Of relevance to this Order, paragraph 15(2) has been amended by section 19 of, and paragraph 1(1) and (8) of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9). Paragraph 15(2) was previously amended by, and paragraph 15(2A) was previously inserted by, section 17(1), (6) and (7) of the Crime and Security Act 2010 (c. 17) but those amendments have not been commenced and section 17 of the 2010 Act has been repealed by section 115(2) of, and Part 1 of Schedule 10 to, the Protection of Freedoms Act 2012.
- (f) Article 53(3A) of the 1989 Order was inserted by section 9(2) of, and paragraph 1(3) of Schedule 3 to, the Criminal Justice Act (Northern Ireland) 2013 (c.7 (N.I.)).
- (g) Paragraph 20G of Schedule 8 to the Terrorism Act 2000 (c. 11) was inserted by section 19 of, and paragraph 1(4) of Schedule 1 to the Protection of Freedoms Act 2012 (c. 9).
- (h) Paragraph 7(1) of Schedule 1 to the Protection of Freedoms Act 2012 (c.9) has been amended by paragraphs 7(1) and (2) of Schedule 3 to the Criminal Justice Act (Northern Ireland) 2013 (c. 7 (N.I.)).
- (i) Article 63B(2) of the 1989 Order is inserted by section 9(1) of, and Schedule 2 to, the Criminal Justice Act (Northern Ireland) 2013 (c.7 (N.I.)).

apply until the end of the period of six months beginning with the day on which this Order comes into force.

(2) In this article “PACE material” means material that would have been material to which Article 63B of the 1989 Order applied if those provisions had been in force when it was taken or derived.

Northern Ireland Office
Date

Name
Parliamentary Under Secretary of State

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.

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