

*Status: This version of this provision is prospective.*

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# Crime and Security Act 2010

## 2010 CHAPTER 17

*Retention, destruction and use of fingerprints and samples etc*

PROSPECTIVE

### **15 Material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989**

- (1) For Article 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (destruction of fingerprints and samples) there is substituted—

#### **“64 Retention of samples and fingerprints, etc generally**

- (1) This Article applies to the following material—
- (a) fingerprints, samples or impressions of footwear—
    - (i) taken from a person under any power conferred by this Part of this Order, or
    - (ii) taken in connection with the investigation of an offence with the consent of the person from whom they were taken, and
  - (b) a DNA profile derived from a DNA sample falling within paragraph (a).
- (2) Material to which this Article applies may be retained after it has fulfilled the purpose for which it was taken or derived.
- (3) This Article is subject to Articles 64ZA to 64ZJ.
- (4) This Article and Articles 64ZA to 64ZH do not apply to material to which paragraph 14 of Schedule 8 to the Terrorism Act 2000 applies.
- (5) Any reference in those Articles 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.

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- (6) Nothing in this Article, or Articles 64ZA to 64ZN, affects any power conferred by—
- (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).”
- (2) After Article 64 of that Order (as substituted by subsection (1) above) there is inserted—

**“64ZA Destruction of samples**

- (1) A DNA sample to which Article 64 applies must be destroyed—
  - (a) as soon as a DNA profile has been derived from the sample, or
  - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (2) Any other sample to which Article 64 applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

**64ZB Destruction of data given voluntarily**

- (1) This Article applies to—
  - (a) fingerprints or impressions of footwear taken in connection with the investigation of an offence with the consent of the person from whom they were taken, and
  - (b) a DNA profile derived from a DNA sample taken in connection with the investigation of an offence with the consent of the person from whom the sample was taken.
- (2) Material to which this Article applies must be destroyed as soon as it has fulfilled the purpose for which it was taken or derived, unless it is—
  - (a) material relating to a person who is convicted of the offence,
  - (b) material relating to a person who has previously been convicted of a recordable offence, other than a person who has only one exempt conviction,
  - (c) material in relation to which any of Articles 64ZC to 64ZH applies, or
  - (d) material which is not required to be destroyed by virtue of consent given under Article 64ZL.
- (3) If material to which this Article applies leads to the person to whom the material relates being arrested for or charged with an offence other than the offence under investigation—
  - (a) the material is not required to be destroyed by virtue of this Article, and
  - (b) Articles 64ZD to 64ZH have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from material taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.

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#### **64ZC Destruction of data relating to a person subject to a control order**

- (1) This Article applies to material falling within paragraph (2) relating to a person who—
  - (a) has no previous convictions or only one exempt conviction, and
  - (b) is subject to a control order.
- (2) Material falls within this paragraph if it is—
  - (a) fingerprints taken from the person, or
  - (b) a DNA profile derived from a DNA sample taken from the person.
- (3) The material must be destroyed before the end of the period of 2 years beginning with the date on which the person ceases to be subject to a control order.
- (4) This Article ceases to have effect in relation to the material if the person is convicted—
  - (a) in England and Wales or Northern Ireland of a recordable offence, or
  - (b) in Scotland of an offence which is punishable by imprisonment, before the material is required to be destroyed by virtue of this Article.
- (5) For the purposes of paragraph (1)—
  - (a) a person has no previous convictions if the person has not previously been convicted—
    - (i) in England and Wales or Northern Ireland of a recordable offence, or
    - (ii) in Scotland of an offence which is punishable by imprisonment, and
  - (b) if the person has been previously convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence other than a qualifying offence, committed when the person is aged under 18.
- (6) For the purposes of that paragraph—
  - (a) a person is to be treated as having been convicted of an offence if—
    - (i) he has been given a caution in England and Wales or Northern Ireland in respect of the offence which, at the time of the caution, he has admitted, or
    - (ii) he has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence, and
  - (b) 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.
- (7) In this Article—
  - (a) “recordable offence” has, in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
  - (b) “qualifying offence” has, in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of that Act.

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#### **64ZD Destruction of data relating to persons not convicted**

- (1) This Article applies to material falling within paragraph (2) relating to a person who—
  - (a) has no previous convictions or only one exempt conviction,
  - (b) is arrested for or charged with a recordable offence, and
  - (c) is aged 18 or over at the time of the alleged offence.
- (2) Material falls within this paragraph if it is—
  - (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
  - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
  - (a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken,
  - (b) in the case of a DNA profile, before the end of the period of 6 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if the person is convicted of a recordable offence before the material is required to be destroyed by virtue of this Article.

#### **64ZE Destruction of data relating to persons under 18 not convicted: recordable offences other than qualifying offences**

- (1) This Article applies to material falling within paragraph (2) relating to a person who—
  - (a) has no previous convictions or only one exempt conviction,
  - (b) is arrested for or charged with a recordable offence other than a qualifying offence, and
  - (c) is aged under 18 at the time of the alleged offence.
- (2) Material falls within this paragraph if it is—
  - (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
  - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
  - (a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken,

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- (b) in the case of a DNA profile, before the end of the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—
- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (b) where—
    - (i) the alleged offence is not a qualifying offence, and
    - (ii) the person is aged under 18 at the time of the alleged offence,the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (c) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged under 16 at the time of the alleged offence,the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (d) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged 16 or 17 at the time of the alleged offence,the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (e) where—
    - (i) the person is convicted of the offence,
    - (ii) the offence is not a qualifying offence,
    - (iii) the person is aged under 18 at the time of the offence, and
    - (iv) the person has no previous convictions,the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—
- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
  - (b) is convicted of a qualifying offence, or
  - (c) having a previous exempt conviction, is convicted of a recordable offence.

**64ZF Destruction of data relating to persons under 16 not convicted: qualifying offences**

- (1) This Article applies to material falling within paragraph (2) relating to a person who—
- (a) has no previous convictions or only one exempt conviction,
  - (b) is arrested for or charged with a qualifying offence, and

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- (c) is aged under 16 at the time of the alleged offence.
- (2) Material falls within this paragraph if it is—
- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
  - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken,
  - (b) in the case of a DNA profile, before the end of the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—
- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (b) where—
    - (i) the alleged offence is not a qualifying offence, and
    - (ii) the person is aged under 18 at the time of the alleged offence,
 the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (c) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged under 16 at the time of the alleged offence,
 the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (d) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged 16 or 17 at the time of the alleged offence,
 the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (e) where—
    - (i) the person is convicted of the offence,
    - (ii) the offence is not a qualifying offence,
    - (iii) the person is aged under 18 at the time of the offence, and
    - (iv) the person has no previous convictions,
 the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—
- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,

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- (b) is convicted of a qualifying offence, or
- (c) having a previous exempt conviction, is convicted of a recordable offence.

#### **64ZG Destruction of data relating to persons aged 16 or 17 not convicted: qualifying offences**

- (1) This Article applies to material falling within paragraph (2) relating to a person who—
  - (a) has no previous convictions or only one exempt conviction,
  - (b) is arrested for or charged with a qualifying offence, and
  - (c) is aged 16 or 17 at the time of the alleged offence.
- (2) Material falls within this paragraph if it is—
  - (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
  - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
  - (a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken,
  - (b) in the case of a DNA profile, before the end of the period of 6 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—
  - (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (b) where—
    - (i) the alleged offence is not a qualifying offence, and
    - (ii) the person is aged under 18 at the time of the alleged offence, the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (c) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged 16 or 17 at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (d) where—
    - (i) the person is convicted of the offence,
    - (ii) the offence is not a qualifying offence,
    - (iii) the person is aged under 18 at the time of the offence, and
    - (iv) the person has no previous convictions,

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the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

- (5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—
- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
  - (b) is convicted of a qualifying offence, or
  - (c) having a previous exempt conviction, is convicted of a recordable offence.

#### **64ZH Destruction of data relating to persons under 18 convicted of a recordable offence other than a qualifying offence**

- (1) This Article applies to material falling within paragraph (2) relating to a person who—
- (a) has no previous convictions,
  - (b) is convicted of a recordable offence other than a qualifying offence, and
  - (c) is aged under 18 at the time of the offence.
- (2) Material falls within this paragraph if it is—
- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
  - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 5 years beginning with the date on which the fingerprints or impressions were taken,
  - (b) in the case of a DNA profile, before the end of the period of 5 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—
- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (b) where—
    - (i) the alleged offence is not a qualifying offence, and
    - (ii) the person is aged under 18 at the time of the alleged offence,
 the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (c) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged under 16 at the time of the alleged offence,



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the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(d) where—

(i) the alleged offence is a qualifying offence, and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.

(5) This Article ceases to have effect in relation to the material if the person is convicted of a further recordable offence before the material is required to be destroyed by virtue of this Article.

#### **64ZI Articles 64ZB to 64ZH: supplementary provision**

(1) Any reference in Article 64ZB or Articles 64ZD to 64ZH to a person being charged with an offence includes a reference to a person being informed that he will be reported for an offence.

(2) For the purposes of those Articles—

(a) a person has no previous convictions if the person has not previously been convicted of a recordable offence, and

(b) if the person has been previously convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence other than a qualifying offence, committed when the person is aged under 18.

(3) For the purposes of those Articles, a person is to be treated as having been convicted of an offence if he has been given a caution in respect of the offence which, at the time of the caution, he has admitted.

(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 purpose of any provision of those Articles relating to an exempt, first or subsequent conviction.

(5) Subject to the completion of any speculative search that the Chief Constable considers necessary or desirable, material falling within any of Articles 64ZD to 64ZH must be destroyed immediately if it appears to the Chief Constable that—

(a) the arrest was unlawful,

(b) the taking of the fingerprints, impressions of footwear or DNA sample concerned was unlawful,

(c) the arrest was based on mistaken identity, or

(d) other circumstances relating to the arrest or the alleged offence mean that it is appropriate to destroy the material.

#### **64ZJ Destruction of fingerprints taken under Article 61(6A)**

Fingerprints taken from a person by virtue of Article 61(6A) (taking fingerprints for the purposes of identification) must be destroyed as soon as they have fulfilled the purpose for which they were taken.

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#### **64ZK Retention for purposes of national security**

- (1) Paragraph (2) applies if the Chief Constable determines that it is necessary for—
  - (a) a DNA profile to which Article 64 applies, or
  - (b) fingerprints to which Article 64 applies, other than fingerprints taken under Article 61(6A),to be retained for the purposes of national security.
- (2) Where this paragraph applies—
  - (a) the material is not required to be destroyed in accordance with Articles 64ZB to 64ZH, and
  - (b) Article 64ZN(2) does not apply to the material,for as long as the determination has effect.
- (3) A determination under paragraph (1) has effect for a maximum of 2 years beginning with the date on which the material would otherwise be required to be destroyed, but a determination may be renewed.

#### **64ZL Retention with consent**

- (1) If a person consents in writing to the retention of fingerprints, impressions of footwear or a DNA profile to which Article 64 applies, other than fingerprints taken under Article 61(6A)—
  - (a) the material is not required to be destroyed in accordance with Articles 64ZB to 64ZH, and
  - (b) Article 64ZN(2) does not apply to the material.
- (2) It is immaterial for the purposes of paragraph (1) whether the consent is given at, before or after the time when the entitlement to the destruction of the material arises.
- (3) Consent given under this Article can be withdrawn at any time.

#### **64ZM Destruction of copies, and notification of destruction**

- (1) If fingerprints or impressions of footwear are required to be destroyed by virtue of any of Articles 64ZB to 64ZJ, any copies of the fingerprints or impressions of footwear must also be destroyed.
- (2) If a DNA profile is required to be destroyed by virtue of any of those Articles, no copy may be kept except in a form which does not include information which identifies the person to whom the DNA profile relates.
- (3) If a person makes a request to the Chief Constable to be notified when anything relating to the person is destroyed under any of Articles 64ZA to 64ZJ, the Chief Constable or a person authorised by the Chief Constable or on the Chief Constable's behalf must within 3 months of the request issue the person with a certificate recording the destruction.

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#### 64ZN Use of retained material

- (1) Any material to which Article 64 applies which is retained after it has fulfilled the purpose for which it was taken or derived 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 to be destroyed by virtue of any of Articles 64ZA to 64ZJ, or of Article 64ZM, 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.
- (3) In this Article—
  - (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 a part of the United Kingdom or of a country or territory outside the United Kingdom), or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, 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 the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.”
- (3) In Article 53 of that Order, in paragraph (1)—
  - (a) after the definition of “control order” there is inserted—

““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 “sufficient” and “insufficient” there is inserted—

““terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.”
- (4) In that Article, after paragraph (3) there is inserted—

“(3A) In paragraph (3), the reference to the destruction of a sample does not include a reference to the destruction of a sample under Article 64ZA (requirement to destroy samples).”

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**Changes and effects yet to be applied to :**

- s. 15 repealed by [2013 c. 7 \(N.I.\) Sch. 4 Pt. 3](#)