Protection of Freedoms Act 2012

CHAPTER 9

PROTECTION OF FREEDOMS ACT 2012

PART 1
REGULATION OF BIOMETRIC DATA

CHAPTER 1
DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

Destruction rule for fingerprints and DNA profiles subject to PACE
1 Destruction of fingerprints and DNA profiles

Modification of rule for particular circumstances
2 Material retained pending investigation or proceedings
3 Persons arrested for or charged with a qualifying offence
4 Persons arrested for or charged with a minor offence
5 Persons convicted of a recordable offence
6 Persons convicted of an offence outside England and Wales
7 Persons under 18 convicted of first minor offence
8 Persons given a penalty notice
9 Material retained for purposes of national security
10 Material given voluntarily
11 Material retained with consent
12 Material obtained for one purpose and used for another
13 Destruction of copies

Destruction rules for samples and impressions of footwear subject to PACE
14 Destruction of samples
15  Destruction of impressions of footwear

Supplementary provision for material subject to PACE

16  Use of retained material
17  Exclusions for certain regimes
18  Interpretation and minor amendments of PACE

Amendments of regimes other than PACE

19  Amendments of regimes other than PACE

The Commissioner for the Retention and Use of Biometric Material

20  Appointment and functions of Commissioner
21  Reports by Commissioner

Other provisions

22  Guidance on making national security determinations
23  Inclusion of DNA profiles on National DNA Database
24  National DNA Database Strategy Board
25  Material taken before commencement

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PROTECTION OF BIOMETRIC INFORMATION OF CHILDREN IN SCHOOLS ETC.

26  Requirement to notify and obtain consent before processing biometric information
27  Exceptions and further provision about consent and notification
28  Interpretation: Chapter 2

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REGULATION OF SURVEILLANCE

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REGULATION OF CCTV AND OTHER SURVEILLANCE CAMERA TECHNOLOGY

Code of practice

29  Code of practice for surveillance camera systems

Procedural requirements

30  Issuing of code
31  Alteration or replacement of code
32  Publication of code

Enforcement and Commissioner

33  Effect of code
34  Commissioner in relation to code
35  Reports by Commissioner
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SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPA

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Judicial approval for directed surveillance and covert human
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PROTECTION OF PROPERTY FROM DISPROPORTIONATE ENFORCEMENT ACTION

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POWERS OF ENTRY

Repealing, adding safeguards or rewriting powers of entry
Repealing etc. unnecessary or inappropriate powers of entry
Adding safeguards to powers of entry
Rewriting powers of entry
Duty to review certain existing powers of entry
Consultation requirements before modifying powers of entry
Procedural and supplementary provisions
Devolution: Scotland and Northern Ireland
Sections 39 to 46: interpretation

Codes of practice in relation to powers of entry
Code of practice in relation to non-devolved powers of entry
Issuing of code
Alteration or replacement of code
Publication of code
Effect of code
Sections 47 to 51: interpretation
Corresponding code in relation to Welsh devolved powers of entry

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Alternative remedies in relation to vehicles left on land
Extension of powers to remove vehicles from land
Recovery of unpaid parking charges

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Pre-charge detention of terrorist suspects

57 Maximum detention period of 14 days
58 Emergency power for temporary extension and review of extensions

Stop and search powers: general

59 Repeal of existing stop and search powers
60 Replacement powers to stop and search persons and vehicles
61 Replacement powers to stop and search in specified locations
62 Code of practice

Stop and search powers: Northern Ireland

63 Stop and search powers in relation to Northern Ireland

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SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

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SAFEGUARDING OF VULNERABLE GROUPS

Restrictions on scope of regulation: England and Wales

64 Restriction of scope of regulated activities: children
65 Restriction of definition of vulnerable adults
66 Restriction of scope of regulated activities: vulnerable adults
67 Alteration of test for barring decisions

Abolition of other areas of regulation: England and Wales

68 Abolition of controlled activity
69 Abolition of monitoring

Main amendments relating to new arrangements: England and Wales

70 Information for purposes of making barring decisions
71 Review of barring decisions
72 Information about barring decisions
73 Duty to check whether person barred
74 Restrictions on duplication with Scottish and Northern Ireland barred lists

Other amendments relating to new arrangements: England and Wales

75 Professional bodies
76 Supervisory authorities
77 Minor amendments

Corresponding amendments relating to Northern Ireland

78 Corresponding amendments in relation to Northern Ireland

CHAPTER 2

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Safeguards in relation to certificates

79 Restriction on information provided to certain persons
80 Minimum age for applicants for certificates or to be registered
81 Additional grounds for refusing an application to be registered
82 Enhanced criminal record certificates: additional safeguards

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83 Up-dating certificates
84 Criminal conviction certificates: conditional cautions

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85 Inclusion of cautions etc. in national police records
86 Out of date references to certificates of criminal records

CHAPTER 3

THE DISCLOSURE AND BARRING SERVICE

General

87 Formation and constitution of DBS
88 Transfer of functions to DBS and dissolution of ISA

Supplementary

89 Orders under section 88
90 Transfer schemes in connection with orders under section 88
91 Tax in connection with transfer schemes

CHAPTER 4

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

General

92 Power of Secretary of State to disregard convictions or cautions
93 Applications to the Secretary of State
94 Procedure for decisions by the Secretary of State

Effect of disregard

95 Effect of disregard on police and other records
96 Effect of disregard for disclosure and other purposes
97 Saving for Royal pardons etc.
98 Section 96: supplementary

Appeals and other supplementary provision

99 Appeal against refusal to disregard convictions or cautions
100 Advisers
101 Interpretation: Chapter 4

PART 6

FREEDOM OF INFORMATION AND DATA PROTECTION
Publication of certain datasets

102 Release and publication of datasets held by public authorities

Other amendments relating to freedom of information

103 Meaning of “publicly-owned company”
104 Extension of certain provisions to Northern Ireland bodies

The Information Commissioner

105 Appointment and tenure of Information Commissioner
106 Alteration of role of Secretary of State in relation to guidance powers
107 Removal of Secretary of State consent for fee-charging powers etc.
108 Removal of Secretary of State approval for staff numbers, terms etc.

PART 7

MISCELLANEOUS AND GENERAL

Trafficking people for exploitation

109 Trafficking people for sexual exploitation
110 Trafficking people for labour and other exploitation

Stalking

111 Offences in relation to stalking
112 Power of entry in relation to stalking

Miscellaneous repeals of enactments

113 Repeal of provisions for conducting certain fraud cases without jury
114 Removal of restrictions on times for marriage or civil partnership

General

115 Consequential amendments, repeals and revocations
116 Transitional, transitory or saving provision
117 Financial provisions
118 Channel Islands and Isle of Man
119 Extent
120 Commencement
121 Short title

SCHEDULES

SCHEDULE 1 — Amendments of regimes other than PACE

Part 1 — MATERIAL SUBJECT TO THE TERRORISM ACT 2000
1 (1) Schedule 8 to the Terrorism Act 2000 (treatment of...
   Part 2 — MATERIAL SUBJECT TO THE INTERNATIONAL CRIMINAL COURT ACT 2001
2 In Schedule 4 of the International Criminal Court Act 2001...
   Part 3 — MATERIAL SUBJECT TO SECTION 18 OF THE COUNTER-TERRORISM ACT 2008
3 The Counter-Terrorism Act 2008 is amended as follows.
4 For section 18 (material not subject to existing statutory restrictions)...
   Part 4 — MATERIAL SUBJECT TO THE TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

5 After paragraph 10(2) of Schedule 6 to the Terrorism Prevention...
   Part 5 — MATERIAL SUBJECT TO THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

6 (1) The Criminal Procedure (Scotland) Act 1995 is amended as...
   Part 6 — MATERIAL SUBJECT TO THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989

7 (1) This paragraph applies to the following material—
   Part 7 — CORRESPONDING NORTHERN IRELAND PROVISION FOR EXCEPTED OR RESERVED MATTERS ETC.

8 (1) The Secretary of State may make an order under...

SCHEDULE 2 — Repeals etc. of powers of entry
   Part 1 — WATER AND ENVIRONMENT
1 Public Health (Control of Disease) Act 1984
2 Merchant Shipping Act 1995
3 Environment Act 1995
   Part 2 — AGRICULTURE
4 Dairy Herd Conversion Premium Regulations 1973 (S.I. 1973/1642)
5 Milk (Cessation of Production) Act 1985
8 Cereals Co-responsibility Levy Regulations 1988 (S.I. 1988/1001)
9 Older Cattle (Disposal) (England) Regulations 2005 (S.I. 2005/3522)
10 Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 (S.I. 2006/2821)
   Part 3 — MISCELLANEOUS
10 Distribution of German Enemy Property (No 1) Order 1950 (S.I. 1950/1642)
11 Hypnotism Act 1952
12 Landlord and Tenant Act 1985
13 Gas Appliances (Safety) Regulations 1995 (S.I. 1995/1629)
15 Payment Services Regulations 2009 (S.I. 2009/209)

SCHEDULE 3 — Corresponding code of practice for Welsh devolved powers of entry
1 Code of practice
2 Issuing of code
3 Alteration or replacement of code
4 Publication of code
5 Effect of code
6 Interpretation

SCHEDULE 4 — Recovery of unpaid parking charges
1 Introductory
2 (1) In this Schedule— “the appropriate national authority” means— in...
3 (1) In this Schedule “relevant land” means any land (including...
4 Right to claim unpaid parking charges from keeper of vehicle
5 Conditions that must be met for purposes of paragraph 4
6 (1) The second condition is that the creditor (or a...
7 (1) A notice which is to be relied on as...
8 (1) A notice which is to be relied on as...
9 (1) A notice which is to be relied on as...
10 (1) The appropriate national authority may by regulations made by...
11 (1) The third condition is that— (a) the creditor (or...
12 (1) The fourth condition is that any applicable requirements prescribed...
13 Hire vehicles
14 (1) If— (a) the creditor is by virtue of paragraph...
15 Application to Crown vehicles etc
16 Power to amend Schedule
17 Parliamentary procedure

SCHEDULE 5 — Replacement powers to stop and search: supplementary provisions

SCHEDULE 6 — Stop and search powers: Northern Ireland
1 (1) Paragraph 4 of Schedule 3 to the Justice and...
2 After paragraph 4 of that Schedule to that Act insert—...
3 In paragraph 9(1) of that Schedule to that Act (offence...

SCHEDULE 7 — Safeguarding of vulnerable groups: Northern Ireland
1 Restriction of scope of regulated activities: children
2 Restriction of definition of vulnerable adults
3 Restriction of scope of regulated activities: vulnerable adults
4 Alteration of test for barring decisions
5 Abolition of controlled activity
6 Abolition of monitoring
7 Information for purposes of making barring decisions
8 Review of barring decisions
9 Information about barring decisions
10 Duty to check whether person barred
11 Restrictions on duplication with barred lists in England and Wales and Scotland
12 Professional bodies
13 Supervisory authorities
14 Minor amendments

SCHEDULE 8 — Disclosure and Barring Service
1 Membership
2 Terms of appointment of members
3 Remuneration etc: members
4 Staff
5 Remuneration, pensions etc of staff
6 Delegation of functions
7 DBS may, to such extent as it may decide, delegate...
8 (1) In this Schedule a core function is—
9 Business plans
10 Reports
11 Funding
12 Accounts
13 Guidance
14 Directions
15 Status
16  Use of information
17  Payments in connection with maladministration
18  Incidental powers
19  Documents
20  Transitional

SCHEDULE 9 — Consequential amendments

Part 1 — DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

1  House of Commons Disqualification Act 1975
2  Northern Ireland Assembly Disqualification Act 1975
3  Police and Criminal Evidence Act 1984
4  Crime and Security Act 2010

Part 2 — THE SURVEILLANCE CAMERA COMMISSIONER

5  House of Commons Disqualification Act 1975

Part 3 — SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPAA

7  In section 22(6) (duty of postal or telecommunications operator to...)
8  After section 23(2) (form and duration of authorisations and notices...)
9  (1) Section 43 (general rules about grant, renewal and duration...)
10 (1) Section 57 (Interception of Communications Commissioner) is amended as...
11 After section 62(2) (functions of Chief Surveillance Commissioner) insert—
12 (1) Section 65 (the Tribunal) is amended as follows.
13 In section 67(7) (powers of the Tribunal), at the end...
14 In section 71(2) (issue and revision of codes of practice)...
15 After section 77 (Ministerial expenditure etc.) insert— Procedure for order...
16 In section 78 (orders, regulations and rules)—
17 After section 81(8) (general interpretation) insert— (9) References in this...

Part 4 — VEHICLES LEFT ON LAND

18 Road Traffic Regulation Act 1984
19 Airports Act 1986
20 Private Security Industry Act 2001

Part 5 — COUNTER-TERRORISM POWERS

21 Police and Criminal Evidence Act 1984
22 Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))
23 Terrorism Act 2000
24 In the italic cross-heading before section 40, after “Suspected terrorists”...
25 (1) Section 123 (orders and regulations) is amended as follows....
26 (1) Schedule 8 (detention) is amended as follows.
28 Criminal Justice and Police Act 2001
29 In Part 2 of that Schedule to that Act (powers...
30 Police Reform Act 2002
31 Police (Northern Ireland) Act 2003
32 Terrorism Act 2006
33 Counter-Terrorism Act 2008
34 Terrorism Act 2000 (Remedial) Order 2011 (S.I. 2011/631)

Part 6 — SAFEGUARDING OF VULNERABLE GROUPS
35 Police Act 1997
36 In section 113A (criminal record certificates) omit subsection (10).
37 In section 113B (enhanced criminal record certificates) omit subsection (13).
38 In section 113BA(2) (suitability information relating to children) omit paragraphs...
39 In section 113BB(2) (suitability information relating to vulnerable adults) omit...
40 (1) Section 119 (sources of information) is amended as follows....
41 In section 119B(5) (independent monitor) omit paragraphs (d) and (e)....
42 (1) Section 120A (refusal and cancellation of registration on grounds...
43 Safeguarding Vulnerable Groups Act 2006
44 In section 4(1) (appeals)— (a) omit paragraph (a),
45 In section 5(4) (regulated activity)— (a) omit “section 10(3);”, and...
46 In section 6(8) (regulated activity providers)— (a) in paragraph (a),...
47 In section 7(5) (barred person not to engage in regulated...
48 Omit section 8 (person not to engage in regulated activity... 
49 In section 9(5) (use of barred person for regulated activity)... 
50 Omit section 10 (use of person not subject to monitoring,... 
51 Omit section 11 and Schedule 5 (regulated activity provider: failure...
52 Omit section 12 and Schedule 6 (personnel suppliers: failure to...
53 Omit section 13 (educational establishments: check on members of governing...
54 Omit section 14 (office holders: offences).
55 Omit section 15 (sections 13 and 14: checks).
56 Omit section 16 (exception to requirement to make monitoring check)... 
57 Omit section 17 (NHS employment).
58 (1) Section 18 (offences: companies etc.) is amended as follows....
59 (1) Section 19 (offences: other persons) is amended as follows....
60 In section 20 (section 19: exclusions and defences) omit subsections...
61 In section 35 (regulated activity providers: duty to refer)—
62 (1) Section 36 (personnel suppliers: duty to refer) is amended...
63 (1) Section 37 (regulated activity providers: duty to provide information...
64 In section 41(7) (registers: duty to refer), in the table,...
65 (1) Section 50A (provision of information to the police) is...
66 In section 51(5) (Crown application) omit paragraph (b).
67 (1) Section 54 (devolution: alignment) is amended as follows.
68 (1) Section 56 (devolution: Wales) is amended as follows.
69 In section 57(1)(c) (damages) omit “prescribed”.
70 (1) Section 60 (interpretation) is amended as follows.
71 In section 61(3) (orders and regulations)— (a) omit paragraphs (b)...
72 (1) Schedule 3 (barred lists) is amended as follows.
73 (1) Schedule 7 (vetting information) is amended as follows.
74 In Schedule 8 (transitional provisions) omit paragraph 5.
75 Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
76 (1) Article 2 (interpretation) is amended as follows.
77 In Article 8(1) (appeals)— (a) omit sub-paragraph (a),
78 In Article 9(4) (regulated activity), omit sub-paragraphs (c) and (e)....
79 In Article 10(8) (regulated activity providers)— (a) omit sub-paragraphs (a)...
80 In Article 11(5) (barred person not to engage in regulated...
81 Omit Article 12 (person not to engage in regulated activity...
82 In Article 13(5) (use of barred person for regulated activity)...
83 Omit Article 14 (use of person not subject to monitoring)...
84 Omit Article 15 and Schedule 3 (regulated activity provider: failure to...
85 Omit Article 16 and Schedule 4 (personnel suppliers: failure to...
86 Omit Article 17 (educational establishments: check on members of governing...
87 Omit Article 18 (office holders: offences)....
88 Omit Article 19 (Articles 17 and 18: checks)....
89 Omit Article 20 (exception to requirement to make monitoring check)....
90 Omit Article 21 (HSS employment)....
91 (1) Article 22 (offences: companies etc.) is amended as follows....
92 (1) Article 23 (offences: other persons) is amended as follows....
93 In Article 24 (Article 23: exclusions and defences), omit paragraphs...
94 In Article 37 (regulated activity providers: duty to refer)—
95 (1) Article 38 (personnel suppliers: duty to refer) is amended...
96 (1) Article 39 (regulated activity providers: duty to provide information)....
97 (1) Article 52A (provision of information to the police) is...
98 In Article 53(5) (Crown application), omit sub-paragraph (b)....
99 (1) Article 56 (alignment with rest of UK) is amended...
100 In Article 57(1)(c) (damages) omit “prescribed”.
101 (1) Schedule 1 (barred lists) is amended as follows.
102 (1) Schedule 5 (vetting information) is amended as follows.
103 In Schedule 6 (transitional provisions) omit paragraph 5.
104 Police Act 1997
105 In section 113BC(1) (suitability information: power to amend), after paragraph...
106 In section 114(3) (application of other provisions of Part 5)...
107 In section 116(3) (application of other provisions of Part 5)...
108 (1) Section 117 (disputes about accuracy of certificates) is amended...
109 (1) Section 118 (evidence of identity) is amended as follows....
110 (1) Section 119 (sources of information) is amended as follows....
111 (1) Section 119B (independent monitor) is amended as follows.
112 (1) Section 120 (registered persons) is amended as follows.
113 After section 122(1) (code of practice) insert—
114 Omit section 122(3A)(a) (power of Secretary of State to refuse...
115 (1) Section 124 (offences: disclosure) is amended as follows.
116 (1) Section 124A (offences relating to disclosure of information obtained)....
117 After section 125B(2) (form of applications) insert—
118 In section 126(1) (interpretation of Part 5), in the definition...
119 Gambling Act 2005
120 National Health Service Act 2006
121 In section 129(6) (regulations as to pharmaceutical services), in paragraph...
122 In section 132(4) (persons authorised to provide pharmaceutical services), in...
123 In section 147A(3) (performers of pharmaceutical services and assistants), in...
124 National Health Service (Wales) Act 2006
125 In section 72(3) (regulations as to general ophthalmic services), in...
Protection of Freedoms Act 2012 (c. 9)

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

In section 83(6) (regulations as to pharmaceutical services), in paragraph...
In section 86(4) (persons authorised to provide pharmaceutical services), in...
In section 105(3) (supplementary lists), in paragraph (g), for the...

Part 8 — THE DISCLOSURE AND BARRING SERVICE

Part 9 — DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

Rehabilitation of Offenders Act 1974

Police Act 1997

Children and Young Persons Act 1933

Police and Criminal Evidence Act 1984

Proceeds of Crime Act 2002

Criminal Justice Act 2003

Sexual Offences Act 2003

Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Serious Crime Act 2007

Part 10 — TRAFFICKING PEOPLE FOR EXPLOITATION

Children and Young Persons Act 1933

Police and Criminal Evidence Act 1984

Proceeds of Crime Act 2002

Criminal Justice Act 2003

Sexual Offences Act 2003

Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Serious Crime Act 2007

Part 11 — STALKING

Protection from Harassment Act 1997

Crime and Disorder Act 1998

Criminal Justice and Police Act 2001

Sexual Offences Act 2003

Criminal Justice Act 2003

Part 12 — REPEAL OF PROVISIONS FOR CONDUCTING CERTAIN FRAUD CASES WITHOUT JURY

Criminal Justice Act 2003

SCHEDULE 10 — Repeals and revocations
Part 1 — DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.
Part 2 — POWERS OF ENTRY
Part 3 — VEHICLES LEFT ON LAND
Part 4 — COUNTER-TERRORISM POWERS
Part 5 — SAFEGUARDING OF VULNERABLE GROUPS
Part 6 — CRIMINAL RECORDS
Part 7 — FREEDOM OF INFORMATION
Part 8 — THE INFORMATION COMMISSIONER
Part 9 — TRAFFICKING PEOPLE FOR EXPLOITATION
Part 10 — REPEAL OF PROVISIONS FOR CONDUCTING CERTAIN FRAUD CASES WITHOUT JURY
Part 11 — REMOVAL OF RESTRICTIONS ON TIMES FOR MARRIAGE OR CIVIL PARTNERSHIP