

SCHEDULES

SCHEDULE 1

AMENDMENTS OF REGIMES OTHER THAN PACE

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) substitute—

“18 Destruction of national security material not subject to existing statutory restrictions

- (1) This section applies to fingerprints, DNA samples and DNA profiles that—
 - (a) are held for the purposes of national security by a law enforcement authority under the law of England and Wales or Northern Ireland, and
 - (b) are not held subject to existing statutory restrictions.
- (2) Material to which this section applies (“section 18 material”) must be destroyed if it appears to the responsible officer that the condition in subsection (3) is not met.
- (3) The condition is that the material has been—
 - (a) obtained by the law enforcement authority pursuant to an authorisation under Part 3 of the Police Act 1997 (authorisation of action in respect of property),
 - (b) obtained by the law enforcement authority in the course of surveillance, or use of a covert human intelligence source, authorised under Part 2 of the Regulation of Investigatory Powers Act 2000,
 - (c) supplied to the law enforcement authority by another law enforcement authority, or
 - (d) otherwise lawfully obtained or acquired by the law enforcement authority for any of the purposes mentioned in section 18D(1).
- (4) In any other case, section 18 material must be destroyed unless it is retained by the law enforcement authority under any power conferred by section 18A or 18B, but this is subject to subsection (5).
- (5) A DNA sample to which this section 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 it was taken.

Status: This is the original version (as it was originally enacted).

- (6) Section 18 material which ceases to be retained under a power mentioned in subsection (4) may continue to be retained under any other such power which applies to it.
- (7) Nothing in this section prevents section 18 material from being checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority within such time as may reasonably be required for the check, if the responsible officer considers the check to be desirable.
- (8) For the purposes of subsection (1), the following are “existing statutory restrictions”—
 - (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971;
 - (b) sections 22, 63A and 63D to 63U of the Police and Criminal Evidence Act 1984 and any corresponding provision in an order under section 113 of that Act;
 - (c) Articles 24, 63A and 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341 \(N.I. 12\)](#));
 - (d) section 2(2) of the Security Service Act 1989;
 - (e) section 2(2) of the Intelligence Services Act 1994;
 - (f) paragraphs 20(3) and [20A](#) to [20J](#) of Schedule 8 to the Terrorism Act 2000;
 - (g) section 56 of the Criminal Justice and Police Act 2001;
 - (h) paragraph 8 of Schedule 4 to the International Criminal Court Act 2001;
 - (i) sections 73, 83, 87, 88 and 89 of the Armed Forces Act 2006 and any provision relating to the retention of material in an order made under section 74, 93 or 323 of that Act;
 - (j) paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011.

18A Retention of material: general

- (1) Section 18 material which is not a DNA sample and relates to a person who has no previous convictions or only one exempt conviction may be retained by the law enforcement authority until the end of the retention period specified in subsection (2), but this is subject to subsection (5).
- (2) The retention period is—
 - (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
 - (b) in the case of a DNA profile, 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).
- (3) Section 18 material which is not a DNA sample and relates to a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or is so convicted before the material is required to be destroyed by virtue of this section, may be retained indefinitely.
- (4) Section 18 material which is not a DNA sample may be retained indefinitely if—

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

- (a) it is held by the law enforcement authority in a form which does not include information which identifies the person to whom the material relates, and
 - (b) the law enforcement authority does not know, and has never known, the identity of the person to whom the material relates.
- (5) In a case where section 18 material is being retained by a law enforcement authority under subsection (4), if—
- (a) the law enforcement authority comes to know the identity of the person to whom the material relates, and
 - (b) the material relates to a person who has no previous convictions or only one exempt conviction,
- the material may be retained by the law enforcement authority until the end of the retention period specified in subsection (6).
- (6) The retention period is the period of 3 years beginning with the date on which the identity of the person to whom the material relates comes to be known by the law enforcement authority.

18B Retention for purposes of national security

- (1) Section 18 material which is not a DNA sample may be retained for as long as a national security determination made by the responsible officer has effect in relation to it.
- (2) A national security determination is made if the responsible officer determines that it is necessary for any such section 18 material to be retained for the purposes of national security.
- (3) A national security determination—
 - (a) must be made in writing,
 - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and
 - (c) may be renewed.

18C Destruction of copies

- (1) If fingerprints are required by section 18 to be destroyed, any copies of the fingerprints held by the law enforcement authority concerned must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the law enforcement authority concerned except in a form which does not include information which identifies the person to whom the DNA profile relates.

18D Use of retained material

- (1) Section 18 material 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

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

- (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Subject to subsection (1), section 18 material may be checked against other fingerprints, DNA samples or DNA profiles held by a law enforcement authority or the Scottish Police Services Authority if the responsible officer considers the check to be desirable.
- (3) Material which is required by section 18 to be destroyed 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.
- (4) In this section—
 - (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.

18E Sections 18 to 18E: supplementary provisions

- (1) In sections 18 to 18D and this section—
 - “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;
 - “fingerprints” means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of a person’s fingers or either of a person’s palms;
 - “law enforcement authority” means—
 - (a) a police force,
 - (b) the Serious Organised Crime Agency,
 - (c) the Commissioners for Her Majesty’s Revenue and Customs, or
 - (d) a person formed or existing under the law of a country or territory outside the United Kingdom so far as exercising functions which—
 - (i) correspond to those of a police force, or
 - (ii) otherwise involve the investigation or prosecution of offences;
 - “police force” means any of the following—

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

- (a) the metropolitan police force;
- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (c) the City of London police force;
- (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (e) the Police Service of Northern Ireland;
- (f) the Police Service of Northern Ireland Reserve;
- (g) the Ministry of Defence Police;
- (h) the Royal Navy Police;
- (i) the Royal Military Police;
- (j) the Royal Air Force Police;
- (k) the British Transport Police;

“recordable offence” has—

- (a) 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) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

“the responsible officer” means—

- (a) in relation to material obtained or acquired by a police force in England and Wales, the chief officer of the police force;
- (b) in relation to material obtained or acquired by the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
- (c) in relation to material obtained or acquired by the Ministry of Defence Police, the Chief Constable of the Ministry of Defence Police;
- (d) in relation to material obtained or acquired by the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, the Provost Marshal for the police force which obtained or acquired the material;
- (e) in relation to material obtained or acquired by the British Transport Police, the Chief Constable of the British Transport Police;
- (f) in relation to material obtained or acquired by the Serious Organised Crime Agency, the Director General of the Serious Organised Crime Agency;
- (g) in relation to material obtained or acquired by the Commissioners for Her Majesty’s Revenue and Customs, any of those Commissioners;
- (h) in relation to any other material, such person as the Secretary of State may by order specify;

“section 18 material” has the meaning given by section 18(2);

“terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.

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

- (2) An order under subsection (1) is subject to negative resolution procedure.
- (3) For the purposes of section 18A, a person is to be treated as having been convicted of an offence if the person—
 - (a) has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
 - (b) has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
 - (c) has been found not guilty of the offence by reason of insanity, or
 - (d) has been found to be under a disability and to have done the act charged in respect of the offence.
- (4) Sections 18A and this section, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (5) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.
- (6) For the purposes of section 18A—
 - (a) a person has no previous convictions if the person has not previously been convicted in England and Wales or Northern Ireland of a recordable offence, and
 - (b) if the person has been previously so 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 was aged under 18.
- (7) In subsection (6), “qualifying offence” has—
 - (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
 - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (8) 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 purposes of calculating under section 18A whether the person has been convicted of only one offence.”