



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 1

REGULATION OF BIOMETRIC DATA

CHAPTER 1

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

The Commissioner for the Retention and Use of Biometric Material

20 Appointment and functions of Commissioner

- (1) The Secretary of State must appoint a Commissioner to be known as the Commissioner for the Retention and Use of Biometric Material (referred to in this section and section 21 as “the Commissioner”).
- (2) It is the function of the Commissioner to keep under review—
 - (a) every national security determination made or renewed under—
 - (i) section 63M of the Police and Criminal Evidence Act 1984 (section 63D material retained for purposes of national security),
 - (ii) paragraph 20E of Schedule 8 to the Terrorism Act 2000 (paragraph 20A material retained for purposes of national security),
 - (iii) section 18B of the Counter-Terrorism Act 2008 (section 18 material retained for purposes of national security),
 - (iv) paragraph 11 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (paragraph 6 material retained for purposes of national security),
 - (v) section 18G of the Criminal Procedure (Scotland) Act 1995 (certain material retained for purposes of national security), and

Status: This is the original version (as it was originally enacted).

- (vi) paragraph 7 of Schedule 1 to this Act (material subject to the Police and Criminal Evidence (Northern Ireland) Order 1989 retained for purposes of national security),
 - (b) the uses to which material retained pursuant to a national security determination is being put.
- (3) It is the duty of every person who makes or renews a national security determination under a provision mentioned in subsection (2)(a) to—
- (a) send to the Commissioner a copy of the determination or renewed determination, and the reasons for making or renewing the determination, within 28 days of making or renewing it, and
 - (b) disclose or provide to the Commissioner such documents and information as the Commissioner may require for the purpose of carrying out the Commissioner’s functions under subsection (2).
- (4) If, on reviewing a national security determination made or renewed under a provision mentioned in subsection (2)(a), the Commissioner concludes that it is not necessary for any material retained pursuant to the determination to be so retained, the Commissioner may order the destruction of the material if the condition in subsection (5) is met.
- (5) The condition is that the material retained pursuant to the national security determination is not otherwise capable of being lawfully retained.
- (6) The Commissioner also has the function of keeping under review—
- (a) the retention and use in accordance with sections 63A and 63D to 63T of the Police and Criminal Evidence Act 1984 of—
 - (i) any material to which section 63D or 63R of that Act applies (fingerprints, DNA profiles and samples), and
 - (ii) any copies of any material to which section 63D of that Act applies (fingerprints and DNA profiles),
 - (b) the retention and use in accordance with paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 of—
 - (i) any material to which paragraph 20A or 20G of that Schedule applies (fingerprints, relevant physical data, DNA profiles and samples), and
 - (ii) any copies of any material to which paragraph 20A of that Schedule applies (fingerprints, relevant physical data and DNA profiles),
 - (c) the retention and use in accordance with sections 18 to 18E of the Counter-Terrorism Act 2008 of—
 - (i) any material to which section 18 of that Act applies (fingerprints, DNA samples and DNA profiles), and
 - (ii) any copies of fingerprints or DNA profiles to which section 18 of that Act applies,
 - (d) the retention and use in accordance with paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 of—
 - (i) any material to which paragraph 6 or 12 of that Schedule applies (fingerprints, relevant physical data, DNA profiles and samples), and
 - (ii) any copies of any material to which paragraph 6 of that Schedule applies (fingerprints, relevant physical data and DNA profiles).
- (7) But subsection (6) does not apply so far as the retention or use of the material falls to be reviewed by virtue of subsection (2).

- (8) In relation to Scotland—
- (a) the reference in subsection (6)(b) to use of material, or copies of material, in accordance with paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 includes a reference to use of material, or copies of material, in accordance with section 19C(2)(c) and (d) of the Criminal Procedure (Scotland) Act 1995, and
 - (b) the reference in subsection (6)(d) to use of material, or copies of material, in accordance with paragraphs 5 to 14 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 is to be read as a reference to use only for a purpose mentioned in paragraph 13(1)(a) or (b) of that Schedule to that Act.
- (9) The Commissioner also has functions under sections 63F(5)(c) and 63G (giving of consent in relation to the retention of certain section 63D material).
- (10) The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.
- (11) The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with—
- (a) such staff, and
 - (b) such accommodation, equipment and other facilities,
- as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.

21 Reports by Commissioner

- (1) The Commissioner must make a report to the Secretary of State about the carrying out of the Commissioner’s functions as soon as reasonably practicable after the end of—
- (a) the period of 9 months beginning when this section comes into force, and
 - (b) every subsequent 12 month period.
- (2) The Commissioner may also, at any time, make such report to the Secretary of State on any matter relating to the Commissioner’s functions as the Commissioner considers appropriate.
- (3) The Secretary of State may at any time require the Commissioner to report on any matter relating to the Commissioner’s functions.
- (4) On receiving a report from the Commissioner under this section, the Secretary of State must—
- (a) publish the report, and
 - (b) lay a copy of the published report before Parliament.
- (5) The Secretary of State may, after consultation with the Commissioner, exclude from publication any part of a report under this section if, in the opinion of the Secretary of State, the publication of that part would be contrary to the public interest or prejudicial to national security.