
STATUTORY INSTRUMENTS

2020 No. 973

NATIONAL SECURITY

The Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No. 2) Regulations 2020

<i>Made</i>	- - - -	<i>at 2.54 p.m. on 10th September 2020</i>
<i>Laid before Parliament</i>		<i>at 4.00 p.m. on 10th September 2020</i>
<i>Coming into force</i>	- -	<i>1st October 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 24(2), (4) and (8) of the Coronavirus Act 2020⁽¹⁾.

The Secretary of State, in accordance with section 24(3) of that Act, considers that coronavirus is having, or is likely to have, an adverse effect on the capacity of persons responsible for making national security determinations to consider whether to make, or renew, national security determinations and that it is in the interests of national security to retain the fingerprints or DNA profiles as provided for in these Regulations.

The Secretary of State has consulted the Commissioner for the Retention and Use of Biometric Material in accordance with section 24(6) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No. 2) Regulations 2020 and come into force on 1st October 2020.

(2) In these Regulations, “the first retention Regulations” means the Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020⁽²⁾.

Extension of the effect of a national security determination

2.—(1) Paragraph (3) applies in respect of fingerprints or DNA profiles that satisfy the condition in paragraph (2).

(1) 2020 c. 7.
(2) S.I. 2020/391.

(2) The condition is that the fingerprints or DNA profiles are retained in accordance with a national security determination that will (ignoring the effect of these Regulations) cease to have effect on a date during the period that starts with 1st October 2020 and ends with 24th March 2021.

(3) The retention of the fingerprints or DNA profiles under the national security determination may continue for a further period of six months starting with the date on which the national security determination would otherwise have ceased to have effect.

(4) In paragraphs (2) and (3), references to the date on which a national security determination ceases to have effect include the date on which a national security determination whose effect has been extended in accordance with regulation 2 of the first retention Regulations (extension of the effect of a national security determination) ceases to have effect.

Extension of a current statutory retention period

3.—(1) Paragraph (4) applies in respect of fingerprints or DNA profiles that satisfy the conditions in paragraphs (2) and (3).

(2) The first condition is that the fingerprints or DNA profiles are retained—

(a) under any of the following provisions—

(i) paragraph 20B(3) or paragraph 20C(3) of Schedule 8 to the Terrorism Act 2000 (retention of paragraph 20A material)(3);

(ii) section 18A(1) of the Counter-Terrorism Act 2008 (retention of section 18 material)(4);

(iii) paragraph 8(2) of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (retention of paragraph 6 material)(5), or

(b) under section 63F(3) of the Police and Criminal Evidence Act 1984 (retention of section 63D material)(6) if the fingerprints or DNA profiles satisfy the national security retention condition (see regulation 5).

(3) The second condition is that the final day of the period for which the fingerprints or DNA profiles may be retained (“the retention period”) will (ignoring the effect of these Regulations) fall on a date during the period that starts with 1st October 2020 and ends with 24th March 2021.

(4) The retention of the fingerprints or DNA profiles may continue for a further period of six months starting with the date on which the final day of the retention period would otherwise have fallen.

(5) In paragraphs (3) and (4), references to the retention period include a retention period as extended in accordance with regulation 3 of the first retention Regulations (extension of a current statutory retention period).

Retention in advance of a requirement to destroy

4.—(1) Paragraph (4) applies in respect of fingerprints or DNA profiles that satisfy the conditions in paragraphs (2) and (3).

(2) The first condition is that the fingerprints or DNA profiles satisfy the national security retention condition (see regulation 5).

(3) 2000 c. 11. Paragraphs 20B and 20C of Schedule 8 were inserted by section 19 of, and paragraph 1(4) of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9).

(4) 2008 c. 28. Section 18A was inserted by section 19 of, and paragraph 4 of Schedule 1 to, the Protection of Freedoms Act 2012.

(5) 2011 c. 23.

(6) 1984 c. 60. Section 63F was inserted by section 3 of the Protection of Freedoms Act 2012.

(3) The second condition is that the fingerprints or DNA profiles must (ignoring the effect of these Regulations) be destroyed under any of the following provisions on a date during the period that starts with 1st October 2020 and ends with 24th March 2021—

- (a) section 18(3) of the Criminal Procedure (Scotland) Act 1995 (destruction of relevant physical data)(7);
- (b) Article 64(3), 64ZB(2), 64ZC(3), 64ZD(3), 64ZE(3), 64ZF(3), 64ZG(3) or 64ZH(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (destruction of fingerprints and samples)(8).

(4) The fingerprints or DNA profiles may be retained for a further period of six months starting with the date on which the requirement to destroy the fingerprints or DNA profiles would otherwise have arisen.

(5) In the case of fingerprints or DNA profiles retained for a further period in accordance with regulation 4 of the first retention Regulations (retention in advance of a requirement to destroy), the relevant date for the purposes of paragraph (3) of this regulation is the day after the final day of that further period.

National security retention condition

5.—(1) For the purposes of regulations 3(2)(b) and 4(2), fingerprints or DNA profiles satisfy the national security retention condition if, prior to these Regulations coming into force, the controller of the fingerprints or DNA profiles has been notified by a constable or a member of the civilian staff of a police force that the fingerprints or DNA profiles may be relevant to the interests of national security.

(2) For the purposes of paragraph (1) notification may be given in any form.

(3) In this regulation—

- (a) “controller” is to be construed in accordance with Part 3 of the Data Protection Act 2018(9); and
- (b) “police force” means a police force in England and Wales, the Police Service of Scotland or the Police Service of Northern Ireland.

James Brokenshire
Minister of State
Home Office

At 2.54 p.m. on 10th September 2020

(7) 1995 c. 46. Section 18(3) was subject to relevant amendment by section 19 of, and paragraph 6 of Schedule 1 to, the Protection of Freedoms Act 2012.

(8) S.I. 1341/1989 (N.I. 12). Articles 64ZB-64ZH were inserted by section 15(2) of the Crime and Security Act 2010 (c. 17).

(9) 2018 c. 12.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for extension of the time limits that apply to the retention of certain fingerprints or DNA profiles. The Regulations apply in respect of fingerprints or DNA profiles that are retained under certain counter-terrorism provisions, or that may otherwise be relevant to the interests of national security.

These Regulations are the second set of Regulations made using the powers conferred by section 24 of the Coronavirus Act 2020 (c. 7). The Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020 (S.I. 2020/391) (“the first retention Regulations”) provided for an extension of the retention time limits for six months.

These Regulations apply only to fingerprints or DNA profiles that would (ignoring the effect of these Regulations) fall to be destroyed in the period that starts with 1st October 2020 and ends with 24th March 2021. The period ends with 24th March 2021 in order to satisfy the condition found in section 24(5) of the Coronavirus Act 2020.

Regulation 2 makes provision in respect of fingerprints or DNA profiles that are retained in accordance with a national security determination. Paragraph (3) provides for the continued retention of fingerprints or DNA profiles under the national security determination for a further period of six months. Paragraph (4) confirms that regulation 2 applies to a national security determination the effect of which was extended in accordance with regulation 2 of the first retention Regulations (extension of the effect of a national security determination).

Regulation 3 makes provision in respect of fingerprints or DNA profiles that are retained under a statutory retention period. Paragraph (4) provides that the fingerprints or DNA profiles may be retained under that retention period for a further period of six months. Paragraph (5) confirms that regulation 3 applies to a retention period that was extended in accordance with regulation 3 of the first retention Regulations (extension of a current statutory retention period).

Regulation 4 makes provision in respect of fingerprints or DNA profiles that are currently retained and in respect of which a requirement to destroy would arise under certain provisions. Paragraph (4) provides that the fingerprints or DNA profiles may be retained for a further period of six months. Paragraph (5) confirms that regulation 4 applies to fingerprints and DNA profiles that have been retained for a further period in accordance with regulation 4 of the first retention Regulations (retention in advance of a requirement to destroy).

Regulation 5 provides the meaning of the national security retention condition, which is used in regulations 3 and 4. It provides that fingerprints or DNA profiles are retained in the interests of national security if a constable or a civilian staff member of a police force has notified the controller of the fingerprints and DNA profiles that they may be relevant to the interests of national security.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.