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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice Act (Northern Ireland) 2013, SCHEDULE 2. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 2

Section 9.

ARTICLES 63B TO 63R OF THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989, AS INSERTED

“Destruction of fingerprints and DNA profiles: basic rule

63B.—(1) This Article applies to—

(a) fingerprints—

- (i) taken from a person under any power conferred by this Part, or
- (ii) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police, and

(b) a DNA profile derived from a DNA sample taken as mentioned in sub-paragraph (a)(i) or (ii).

(2) Fingerprints and DNA profiles to which this Article applies (“Article 63B material”) must be destroyed unless the material is retained under any power conferred by Articles 63C to 63M (including those Articles as applied by Article 63N).

(3) In addition, Article 63B material must be destroyed if—

(a) it is not being retained under the power conferred by Article 63C; and

(b) it appears to the Chief Constable that—

- (i) the taking of the fingerprints or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or

- (ii) the fingerprints were taken, or in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.

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(4) Article 63B material which ceases to be retained under a power mentioned in paragraph (2) may continue to be retained under any other such power which applies to it.

(5) Nothing in this Article prevents a speculative search, in relation to Article 63B material, from being carried out within such time as may reasonably be required for the search if the Chief Constable considers the search to be desirable.

Retention of Article 63B material pending investigation or proceedings

63C.—(1) This Article applies to Article 63B material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved.

(2) The material may be retained until the Chief Constable determines that the material is of no evidential value in relation to—

- (a) the investigation of the offence; or
- (b) proceedings against any person for the offence.

Retention of Article 63B material: persons arrested for or charged with a qualifying offence

63D.—(1) This Article applies to Article 63B material which—

- (a) relates to a person who is arrested for, or charged with, a qualifying offence, but is not convicted of that offence, and
- (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this Article, the material may be retained indefinitely.

(3) Otherwise, material falling within paragraph (4) or (5) may be retained until the end of the retention period specified in paragraph (6).

(4) Material falls within this paragraph if it—

- (a) relates to a person who is charged with a qualifying offence but is not convicted of that offence, and
- (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(5) Material falls within this paragraph if—

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- (a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence,
- (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence,
- (c) any prescribed circumstances apply, and
- (d) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under paragraph (13) to the retention of the material.

(6) 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,
- (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).

(7) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the retention period.

(8) An application for an order under paragraph (7) must be made within the period of 3 months ending on the last day of the retention period.

(9) An order under paragraph (7) may extend the retention period by a period which—

- (a) begins with the end of the retention period; and
- (b) ends with the end of the period of 2 years beginning with the end of the retention period.

(10) The following persons may appeal to the county court against an order under paragraph (7), or a refusal to make such an order—

- (a) the Chief Constable;
- (b) the person from whom the material was taken.

(11) The Department of Justice must appoint a Commissioner to be known as the Northern Ireland Commissioner for the Retention of Biometric Material.

(12) The Commissioner is to hold office in accordance with the terms of the Commissioner's appointment; and the Department of Justice may—

- (a) pay in respect of the Commissioner any expenses, remuneration or allowances that the Department may determine; and
- (b) after consultation with the Commissioner, provide the Commissioner with such staff, accommodation, equipment and other facilities as the Department considers necessary for the carrying out of the Commissioner's functions.

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(13) The Commissioner may, on an application made by the Chief Constable, consent to the retention of material which falls within paragraph (5)(a), (b) and (c) if the Commissioner considers that it is appropriate to retain the material; and an order under paragraph (5)(c) may, in particular, make provision about the procedure to be followed in relation to any application to the Commissioner under this paragraph.

(14) In this Article—

“custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008;

“excluded offence”, in relation to a person, means a recordable offence—

(a) which—

(i) is not a qualifying offence,

(ii) is the only recordable offence of which the person has been convicted, and

(iii) was committed when the person was aged under 18, and

(b) for which the person was not given a custodial sentence of 5 years or more;

“prescribed” means prescribed by order made by the Department of Justice.

Retention of Article 63B material: persons arrested for or charged with a minor offence

63E.—(1) This Article applies to Article 63B material which—

(a) relates to a person who—

(i) is arrested for or charged with a recordable offence other than a qualifying offence,

(ii) if arrested for or charged with more than one offence arising out of a single course of action, is not also arrested for or charged with a qualifying offence, and

(iii) is not convicted of the offence or offences in respect of which the person is arrested or charged; and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged.

(2) If the person has previously been convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely.

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(3) In this Article “excluded offence” has the meaning given by Article 63D(14).

Retention of Article 63B material: persons convicted of a recordable offence

63F.—(1) Subject to paragraph (3), this Article applies to—

(a) Article 63B material which—

- (i) relates to a person who is convicted of a recordable offence, and
- (ii) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, or

(b) material taken under Article 61(6) or 63(3B) which relates to a person who is convicted of a recordable offence.

(2) The material may be retained indefinitely.

(3) This Article does not apply to Article 63B material to which Article 63H applies.

Retention of Article 63B material: persons convicted of an offence outside Northern Ireland

63G.—(1) This Article applies to material falling within paragraph (2) relating to a person who is convicted of an offence under the law of any country or territory outside Northern Ireland.

(2) Material falls within this paragraph if it is—

- (a) fingerprints taken from the person under Article 61(6D) (power to take fingerprints without consent in relation to offences outside Northern Ireland), or
- (b) a DNA profile derived from a DNA sample taken from the person under Article 62(2A) or 63(3D) (powers to take intimate and nonintimate samples in relation to offences outside Northern Ireland).

(3) The material may be retained indefinitely.

Retention of Article 63B material: exception for persons under 18 convicted of first minor offence

63H.—(1) This Article applies to Article 63B material which—

(a) relates to a person who—

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- (i) is convicted of a recordable offence other than a qualifying offence,
 - (ii) has not previously been convicted of a recordable offence, and
 - (iii) is aged under 18 at the time of the offence, and
- (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) Where the person is given a custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
- (3) Where the person is given a custodial sentence of 5 years or more in respect of the offence, the material may be retained indefinitely.
- (4) Where the person is given a sentence other than a custodial sentence in respect of the offence, the material may be retained until—
- (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and
 - (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
 - (i) the date on which the DNA sample from which the profile was derived was taken, or
 - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.
- (5) But if, before the end of the period within which material may be retained by virtue of this Article, the person is again convicted of a recordable offence, the material may be retained indefinitely.
- (6) In this Article “custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008; and for the purposes of paragraph (2) “the term of the sentence” is—
- (a) in the case of a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998, the period for which the person is detained under the order,
 - (b) in the case of a custody care order under Article 44A of that Order, the period for which the person is kept in secure accommodation under the order.

Retention of Article 63B material: persons under 18 given a caution

- 63I.—(1)** This Article applies to Article 63B material which—
- (a) relates to a person who—

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- (i) is given a caution in respect of a recordable offence which, at the time of the caution, the person admitted; and
 - (ii) is aged under 18 at the time of the offence, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) The material may be retained until—
- (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and
 - (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
 - (i) the date on which the DNA sample from which the profile was derived was taken, or
 - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.

Retention of Article 63B material: persons completing diversionary youth conference

- 63J.**—(1) This Article applies to Article 63B material which—
- (a) relates to a person who has completed the diversionary youth conference process with respect to a recordable offence; and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) The material may be retained until—
- (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and
 - (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
 - (i) the date on which the DNA sample from which the profile was derived was taken, or
 - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.
- (3) For the purposes of this Article, a person completes the diversionary youth conference process with respect to an offence if (and only if)—
- (a) a diversionary youth conference under Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to that person and that offence, and
 - (b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, has determined not to institute

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proceedings against the person in respect of the offence or, as the case may be, not to continue proceedings already instituted against the person in respect of the offence.

Retention of Article 63B material: persons given a penalty notice

63K.—(1) This Article applies to Article 63B material which—

- (a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.
- (2) The material may be retained—
- (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
 - (b) in the case of a DNA profile, for a period of 2 years beginning with—
 - (i) the date on which the DNA sample from which the profile was derived was taken, or
 - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.

Retention of Article 63B material given voluntarily

63L.—(1) This Article applies to the following Article 63B material—

- (a) fingerprints taken with the consent of the person from whom they were taken, and
- (b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.

(2) Material to which this Article applies may be retained until it has fulfilled the purpose for which it was taken or derived.

(3) Material to which this Article applies which relates to—

- (a) a person who is convicted of a recordable offence, or
- (b) a person who has previously been convicted of a recordable offence (other than a person who has only one exempt conviction),

may be retained indefinitely.

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(4) For the purposes of paragraph (3)(b) a 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.

Retention of Article 63B material with consent

63M.—(1) This Article applies to the following material—

- (a) fingerprints (other than fingerprints taken under Article 61(6A)) to which Article 63B applies; and
- (b) a DNA profile to which Article 63B applies.

(2) If the person to whom the material relates consents to material to which this Article applies being retained, the material may be retained for as long as that person consents to it being retained.

(3) Consent given under this Article—

- (a) must be in writing; and
- (b) can be withdrawn at any time.

Article 63B material obtained for one purpose and used for another

63N.—(1) Paragraph (2) applies if Article 63B material which is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence leads to the person to whom the material relates being arrested for or charged with, or convicted of, an offence other than the offence under investigation.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from a sample taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.

Destruction of copies

63O.—(1) If fingerprints are required by Article 63B to be destroyed, any copies of the fingerprints held by the police must also be destroyed.

(2) If a DNA profile is required by that Article to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates.

Destruction of samples

63P.—(1) This Article applies to samples—

- (a) taken from a person under any power conferred by this Part, or

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- (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.
- (2) A DNA sample to which this Article 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.
- (3) Any other sample to which this Article applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (4) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order to retain a sample to which this Article applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3) if—
 - (a) the sample was taken from a person in connection with the investigation of a qualifying offence, and
 - (b) the Chief Constable considers that the condition in paragraph (5) is met.
- (5) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
 - (a) disclosure to, or use by, a defendant, or
 - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (6) An application under paragraph (4) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3).
- (7) If, on an application made by the Chief Constable under paragraph (4), the District Judge (Magistrates' Courts) is satisfied that the condition in paragraph (5) is met, the District Judge may make an order under this paragraph which—
 - (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3), and
 - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (8) An application for an order under paragraph (7) (other than an application for renewal)—

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(a) may be made without notice of the application having been given to the person from whom the sample was taken, and

(b) may be heard and determined in private in the absence of that person.

(9) A sample retained by virtue of an order under paragraph (7) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(10) A sample that ceases to be retained by virtue of an order under paragraph (7) must be destroyed.

(11) Nothing in this Article prevents a speculative search, in relation to samples to which this Article applies, from being carried out within such time as may reasonably be required for the search if the Chief Constable considers the search to be desirable.

Use of retained material

63Q.—(1) Any material to which Article 63B or 63P applies must not be used other than—

- (a) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
- (b) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required by Article 63B or 63P 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.

(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 Northern Ireland or of any country or territory outside Northern Ireland), or
 - (ii) is, or corresponds to, any conduct which, if it all took place in Northern Ireland, 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 Northern Ireland of any crime or suspected crime and to a prosecution brought

in respect of any crime in a country or territory outside Northern Ireland.

Exclusion for certain regimes

63R.—(1) Articles 63B to 63Q do not apply to material to which paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 (destruction, retention and use of material taken from terrorist suspects) apply.

(2) 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 that Act, or
- (b) being charged with an offence following an arrest under that section.

(3) Articles 63B to 63Q do not apply to material to which paragraph 8 of Schedule 4 to the International Criminal Court Act 2001 (requirement to destroy material) applies.

(4) Articles 63B to 63Q do not apply to material to which paragraph 6 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (requirement to destroy material) applies.

(5) Articles 63B to 63O and 63Q do not apply to material which is, or may become, disclosable under—

- (a) the Criminal Procedure and Investigations Act 1996; or
- (b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.

(6) Articles 63B to 63Q do not apply to material which—

- (a) is taken from a person, but
- (b) relates to another person.

(7) Nothing in Articles 63B to 63Q 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).”.

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