
STATUTORY INSTRUMENTS

1989 No. 1341

The Police and Criminal Evidence (Northern Ireland) Order 1989

PART VI

QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Interpretation of Part VI

53^{F1}. In this Part—

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

Definitions rep. by 2002 c. 29

[^{F2}“extradition arrest power” means any of the following—

- (a) a Part 1 warrant (within the meaning given by the Extradition Act 2003) in respect of which a certificate under section 2 of that Act has been issued;
- (b) section 5 of that Act;
- (c) a warrant issued under section 71 of that Act;
- (d) a provisional warrant (within the meaning given by that Act).]

“fingerprints” includes palm prints;

[^{F3}“intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person's body orifice other than the mouth;]

[^{F4}“intimate search” means a search which consists of the physical examination of a person's body orifices other than the mouth;]

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983^{F5};

[^{F3}“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;

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- (c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) a footprint or a similar impression of any part of a person's body other than a part of his hand;]

[^{F3}“registered dentist” has the same meaning as in the Dentists Act 1984;

^{F6}“speculative search”, in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in Article 63A(1);

“sufficient” and “insufficient”, in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.]

F7 . . . F1

- F1 prosp. insertion by 2003 c. 6
- F2 2003 c. 41
- F3 1995 NI 17
- F4 1995 NI 17
- F5 1983 c. 54
- F6 prosp. insertion by 2003 c. 6 (as amended by SI 2004/1771)
- F7 2002 c. 29

VALID FROM 01/06/2021

[^{F8}Qualifying offence” etc

53A.—(1) In this Part, “qualifying offence” means—

- (a) an offence specified in paragraph (2), or
 - (b) an ancillary offence relating to such an offence.
- (2) The offences referred to in paragraph (1)(a) are—
- (a) murder;
 - (b) manslaughter;
 - (c) false imprisonment;
 - (d) kidnapping;
 - (e) an offence under section 4, 16, 18, 20 to 24 or 47 of the Offences Against the Person Act 1861;
 - (f) an offence under section 2 or 3 of the Explosive Substances Act 1883;
 - (g) an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.));
 - (h) an offence under section 9 or 10 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.));
 - (i) an offence under Article 3 of the Criminal Damage (Northern Ireland) Order 1977 (S.I. 1977/426 (N.I. 4)) required to be charged as arson;
 - (j) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I.1978/1047 (N.I. 17));

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- (k) an offence under Article 172B of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) involving an accident which caused a person's death;
 - (l) an offence under section 1 of the Aviation Security Act 1982;
 - (m) an offence under Article 4 of the Child Abduction (Northern Ireland) Order 1985 (S.I. 1985/1638 (N.I. 17));
 - (n) an offence under section 9 of the Aviation and Maritime Security Act 1990;
 - (o) an offence under sections 57 to 59 of the Sexual Offences Act 2003;
 - (p) an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004;
 - (q) an offence under Article 58, 59 or 60 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3));
 - (r) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;
 - (s) an offence under any of Articles 5 to 26, 32, 33, 37 to 40, 43 to 54, 62, 63, 65 to 71, 73 and 74 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)).
 - [an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.”.]
- (3) The Secretary of State may by order amend paragraph (2) (subject to Article 89).

[
^{F10}(3A) The power to make an order under paragraph (3) is exercisable by the Department of Justice (and not by the Secretary of State) so far as the power may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]

- (4) In paragraph (1)(b) “ancillary offence”, in relation to an offence, means—
 - (a) aiding, abetting, counselling or procuring the commission of the offence;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence (including, in relation to times before the commencement of that Part, an offence of incitement);
 - (c) attempting or conspiring to commit the offence.]

F8 Art. 53A inserted (1.6.2021 for specified purposes) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 13(1), 59(1)**; [S.R. 2021/135](#), art. 2; [S.I. 2021/621](#), art. 2

F9 Art. 53A(2)(t) added (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), **Sch. 4 para. 3** (but this amendment cannot take effect until the commencement of [S.I. 1989/1341](#), art. 53A)

F10 Art. 53A(3A) inserted by [2010 c. 17, s. 13\(1\)](#) (as inserted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **22(2)(a)** (with arts. 24-28))

Abolition of certain powers of constables to search persons

54.—(1) ^{F11}. . . , there shall cease to have effect any statutory provision made before the date of the coming into operation of this Order in so far as it authorises—

- (a) any search by a constable of a person in police detention at a police station; or
- (b) an intimate search of a person by a constable;

and any rule of common law which authorises a search such as is mentioned in sub#paragraph (a) or (b) is abolished.

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Para. (2) rep. by 2000 c. 11

F11 2000 c. 11

Searches of detained persons

55.—^{F12}(1) The custody officer at a police station shall ascertain^{F13} . . . everything which a person has with him when he is—

- (a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or
- (b) arrested at the station or detained there under Article 38(3).

[^{F13}(2) The custody officer may record or cause to be recorded all or any of the things which he ascertains under paragraph (1).

(2A) In the case of an arrested person, any such record may be made as part of his custody record.]

(3) Subject to paragraph (4), a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.

(4) Clothes and personal effects may only be seized if the custody officer—

- (a) believes that the person from whom they are seized may use them—
 - (i) to cause physical injury to himself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist him to escape; or
- (b) has reasonable grounds for believing that they may be evidence relating to an offence.

(5) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(6) Subject to paragraph (10), a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under paragraph (1) and to the extent that the custody officer considers necessary for that purpose.

(7) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in paragraph (4)(a).

(8) Subject to paragraph (9), a constable may seize and retain, or cause to be seized and retained, anything found on such a search.

(9) A constable may only seize clothes and personal effects in the circumstances specified in paragraph (4).

(10) An intimate search may not be conducted under this Article.

(11) A search under this Article shall be carried out by a constable.

(12) The constable carrying out a search shall be of the same sex as the person searched.

F12 mod. by SI 2003/3107

F13 2004 NI 9

Modifications etc. (not altering text)

- C1** Art. 55 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C2** Art. 55 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

[^{F14}Searches and examination to ascertain identity

55A.—(1) If an officer of at least the rank of inspector authorises it, a person who is detained in a police station may be searched or examined, or both—

- (a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or
- (b) for the purpose of facilitating the ascertainment of his identity.

(2) An officer may only give an authorisation under paragraph (1) for the purpose mentioned in sub-paragraph (a) of that paragraph if—

- (a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
- (b) it is not practicable to obtain such consent.

(3) An officer may only give an authorisation under paragraph (1) in a case in which paragraph (2) does not apply if—

- (a) the person in question has refused to identify himself; or
- (b) the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(4) An officer may give an authorisation under paragraph (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Any identifying mark found on a search or examination under this Article may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or examination may be carried out under this Article, or a photograph may be taken under this Article, the only persons entitled to carry out the search or examination, or to take the photograph, are—^{F15} constables.]

(7) A person may not under this Article carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this Article.

(9) A photograph taken under this Article—

- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
- (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In paragraph (9)—

- (a) 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

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(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

(b) 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.

(11) In this Article—

(a) references to ascertaining a person's identity include references to showing that he is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this Article "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this Article if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

[
^{F16}(13) Nothing in this Article applies to a person arrested under an extradition arrest power.]]

F14 2001 c. 24

F15 2003 c. 6

F16 2003 c. 41

Modifications etc. (not altering text)

C3 Art. 55A applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

Intimate searches

56.—^{F17}(1) Subject to the following provisions of this Article, if an officer of at least the rank of superintendent has reasonable grounds for believing—

(a) that a person who has been arrested and is in police detention may have concealed on him anything which—

(i) he could use to cause physical injury to himself or others; and

(ii) he might so use while he is in police detention or in the custody of a court; or

(b) that such a person—

(i) may have a Class A drug concealed on him; and

(ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) An officer may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) An officer may give an authorisation under paragraph (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.

^{F18}(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by paragraph (4), an intimate search shall be by way of examination by a suitably qualified person unless an officer of at least the rank of superintendent considers that this is not practicable.

^{F19}(6) An intimate search which is not carried out as mentioned in paragraph (5) shall be carried out by a constable.

(7) A constable may not carry out an intimate search of a person of the opposite sex.

(8) No intimate search may be carried out except—

- (a) at a police station;
- (b) at a hospital;
- (c) at a medical practitioner's surgery; or
- (d) at some other place used for medical purposes.

(9) An intimate search which is only a drug offence search may not be carried out at a police station.

(10) If an intimate search of a person is carried out, the custody record relating to him shall state—

- (a) which parts of his body were searched; and
- (b) why they were searched.

^{F18}(11) The information required to be recorded by ^{F20} paragraph (10) shall be recorded as soon as practicable after the completion of the search.

(12) The custody officer at a police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained—

- (a) if he believes that the person from whom it is seized may use it—
 - (i) to cause physical injury to himself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist him to escape; or
- (b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this Article, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

^{F18}(14) Every annual report under ^{F21} section 58(1) of the Police (Northern Ireland) Act 2000 shall contain information about searches under this Article which have been carried out during the period to which the report relates.

(15) The information about such searches shall include—

- (a) the total number of searches;
- (b) the number of searches conducted by way of examination by a suitably qualified person;
- (c) the number of searches not so conducted but conducted in the presence of such a person; and
- (d) the result of the searches carried out.

(16) The information shall also include, as separate items—

- (a) the total number of drug offence searches; and
- (b) the result of those searches.

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(17) In this Article—

“the appropriate criminal intent” means an intent to commit an offence under—

- (a) section 5(3) of the Misuse of Drugs Act 1971^{F22} (possession of controlled drug with intent to supply to another); or
- (b) section 68(2) of the Customs and Excise Management Act 1979^{F23} (exportation etc. with intent to evade a prohibition or restriction);

“Class A drug” has the meaning assigned to it by section 2(1)(b) of the Misuse of Drugs Act 1971;

“drug offence search” means an intimate search for a Class A drug which an officer has authorised by virtue of paragraph (1)(b); and

“suitably qualified person” means—

- (a) a medical practitioner; or
- (b) a nurse registered as such under section 10(1) of the Nurses, Midwives and Health Visitors Act 1979^{F24}.

F17 mod. by SI 2003/3107

F18 prosp. insertion by 2005 c. 17

F19 prosp. insertion by 2003 c. 6

F20 prosp. subst. by 2005 c. 17

F21 2000 c. 32

F22 1971 c. 38

F23 1979 c. 2

F24 1979 c. 36

VALID FROM 01/04/2007

X-rays and ultrasound scans

[^{F25}**56A.**—(1) If an officer of at least the rank of superintendent has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—

- (a) may have swallowed a Class A drug, and
- (b) was in possession of it with the appropriate criminal intent before his arrest,

the officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).

(2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, a constable must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it, and
- (b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

- (a) a hospital,
- (b) a registered medical practitioner's surgery, or

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- (c) some other place used for medical purposes.
- (5) The custody record of the person must also state—
- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out,
 - (b) the grounds for giving the authorisation, and
 - (c) the fact that the appropriate consent was given.
- (6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).
- (7) Every annual report under section 58 of the Police (Northern Ireland) Act 2000 must contain information about x-rays which have been taken and ultrasound scans which have been carried out under this Article during the period to which it relates.
- (8) The information about such x-rays and ultrasound scans must be presented separately and must include—
- (a) the total number of x-rays;
 - (b) the total number of ultrasound scans;
 - (c) the results of the x-rays;
 - (d) the results of the ultrasound scans.
- (9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—
- (a) the court, in determining whether to commit the accused for trial or whether there is a case to answer,
 - (b) a judge, in deciding whether to grant an application made by the accused under—
 - (i) Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (application for dismissal of charges where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order), or
 - (ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order), and
 - (c) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.
- (10) In this Article “the appropriate criminal intent”, “Class A drug” and “suitably qualified person” have the same meanings as in Article 56 above.]

F25 Art. 56A inserted (1.4.2007) by [Drugs Act 2005 \(c. 17\)](#), ss. 6, 24(3); S.I. 2007/562, **art. 2(1)(b)**

Modifications etc. (not altering text)

- C4** Art. 56A extended by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), Sch. 2 para. 20D(b) (as inserted (22.4.2007) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(3), 4, **Sch. 2 para. 2**)
- C5** Art. 56A extended by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), Sch. 4 para. 23C(b) (as inserted (prosp.) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(2), 6(2), **Sch. 4 para. 5**)

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Right to have someone informed when arrested

57.—^{F26}(1) Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this Article, that he has been arrested and is being detained there.

(2) Delay is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of superintendent authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by paragraph (1) within 36 hours from the relevant time, as defined in Article 42(2).

(4) An officer may give an authorisation under paragraph (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) [^{F27}Subject to paragraph (5A)] an officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

[^{F28}(5A) An officer may also authorise delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(5B) For the purposes of paragraph (5A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002.]

(6) If a delay is authorised—

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his custody record.

(7) The duties imposed by paragraph (6) shall be performed as soon as is practicable.

(8) The rights conferred by this Article on a person detained at a police station or other premises are exercisable whenever he is transferred from one place to another; and this Article applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(9) There may be no further delay in permitting the exercise of the right conferred by paragraph (1) once the reason for authorising delay ceases to subsist.

(10) Nothing in this Article applies to a person arrested or detained under the terrorism provisions.

F26 mod. by SI 2003/3107

F27 1990 NI 17

F28 2002 c. 29

Access to legal advice

59.—^{F29}(1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

(2) Subject to paragraph (3), a request under paragraph (1) and the time at which it was made shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this Article.

(5) In any case he must be permitted to consult a solicitor within 36 hours from the relevant time, as defined in Article 42(2).

(6) Delay in compliance with a request is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of superintendent authorises it.

(7) An officer may give an authorisation under paragraph (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) [^{F30}Subject to paragraph (8A)] an officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by paragraph (1) at the time when the person detained desires to exercise it—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

[^{F31}(8A) An officer may also authorise delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by paragraph (1).

(8B) For the purposes of paragraph (8A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002.]

(9) If the delay is authorised—

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his custody record.

(10) The duties imposed by paragraph (9) shall be performed as soon as practicable.

(11) There shall be no further delay in permitting the exercise of the right conferred by paragraph (1) once the reason for authorising delay ceases to subsist.

(12) Nothing in this Article applies to a person arrested or detained under the terrorism provisions.

F29 mod. by SI 2003/3107

F30 1990 NI 17

F31 2002 c. 29

Status: Point in time view as at 19/02/2006. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: The Police and Criminal Evidence (Northern Ireland) Order 1989, PART VI is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Tape#recording of interviews

60.—^[F32F32](1) Subject to Article 66(12), it shall be the duty of the Secretary of State—

- (a) to issue a code of practice in connection with the tape#recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and
- (b) to make an order (subject to Article 89) requiring the tape#recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the code as it has effect for the time being.

Para. (2) rep. by 2000 c. 11

F32 1998 c. 9

^[F33]Video recording of interviews

60A. It shall be the duty of the Secretary of State—

- (a) to issue a code of practice in connection with the video-recording with sound of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations;
- (b) to make an order (subject to Article 89) requiring the video-recording with sound of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the code as it has effect for the time being.]

F33 2000 c. 32

Fingerprinting

61.—(1) Except as provided by this Article no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a police station.

^[F34](3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.]

Para. (5) rep. by 2004 NI 9

(6) Any person's fingerprints may be taken without the appropriate consent if he has been convicted of a recordable offence.

(7) In a case where by virtue of^{F34} paragraph (3), (4) or (6)] a person's fingerprints are taken without the appropriate consent—

- (a) he shall be told the reason before his fingerprints are taken; and
- (b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

^{F35}(7A) If a person's fingerprints are taken at a police station, whether with or without the appropriate consent—

- (a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.]

(8) If he is detained at a police station when the fingerprints are taken, the reason for taking them^{F35} and, in the case falling within paragraph (7A), the fact referred to in sub-paragraph (b) of that paragraph] shall be recorded on his custody record.

^{F36}(8A) The fingerprints of a person detained at a police station may be taken without the appropriate consent by a constable.]

(9) Nothing in this Article—

- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971^{F37}, section 141 of the Immigration and Asylum Act 1999 or regulations made under section 144 of that Act]; or

^{F38}(b) applies to a person arrested or detained under the terrorism provisions]

^{F39}(10) Nothing in this Article applies to a person arrested under an extradition arrest power.]

- F34** 2004 NI 9
- F35** 1995 NI 17
- F36** 2003 c. 6
- F37** 1999 c. 33
- F38** 2000 c. 11
- F39** 2003 c. 41

VALID FROM 01/03/2007

^{F40}**Impressions of footwear**

61A.—(1) Except as provided by this Article, no impression of a person's footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person's footwear must be in writing if it is given at a time when he is at a police station.

(3) Where a person is detained at a police station, an impression of his footwear may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence, or has been charged with a recordable offence, or informed that he will be reported for a recordable offence; and
- (b) he has not had an impression taken of his footwear in the course of the investigation of the offence by the police.

Status: Point in time view as at 19/02/2006. This version of this part contains provisions that are not valid for this point in time.

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(4) Where a person mentioned in sub-paragraph (a) of paragraph (3) has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that paragraph if the impression of his footwear taken previously is—

- (a) incomplete; or
- (b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at a police station, whether with or without the appropriate consent—

- (a) before it is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the impression has been taken, and if he is detained at a police station, the record shall be made on his custody record.

(6) In a case where, by virtue of paragraph (3), an impression of a person's footwear is taken without the appropriate consent—

- (a) he shall be told the reason before it is taken; and
- (b) the reason shall be recorded on his custody record as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person detained at a police station without the appropriate consent shall be exercisable by any constable.

(8) Nothing in this Article applies to any person—

- (a) arrested or detained under the terrorism provisions;
- (b) arrested under an extradition arrest power.]

F40 Art. 61A inserted (1.3.2007) by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), **31**

Modifications etc. (not altering text)

C6 Art. 61A extended by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), Sch. 2 para. 20A (as inserted (22.4.2007) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(3), 4, **Sch. 2 para. 2**)

C7 Art. 61A applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

Intimate samples

62.—(1) An intimate sample may be taken from a person in police detention only—

- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
- (b) if the appropriate consent is given.

[^{F41}(1A) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
- (b) if the appropriate consent is given.]

(2) An officer may only give an authorisation^[F41] under paragraph (1) or (1A)] if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a^[F41] recordable offence]; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(3) An officer may give an authorisation under paragraph (1)^[F41] or (1A)] orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) The appropriate consent must be given in writing.

(5) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(6) The duty imposed by paragraph (5)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(7) If an intimate sample is taken from a person—

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded as soon as is practicable after the sample is taken.

^[F41](7A) If an intimate sample is taken from a person at a police station—

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.]

(8) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by paragraph (7)^[F41] or (7A)] shall be recorded in his custody record.

^{F42}(9) An intimate sample, other than a sample of urine^[F41] or a dental impression], may only be taken from a person by a medical practitioner^[F41] and a dental impression may only be taken by a registered dentist].

(10) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining—
 - (i) whether to commit that person for trial; or
 - (ii) whether there is a case to answer; and

^[F43](aa) a judge, in deciding whether to grant an application made by the accused under paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order); and]

- (b) the court or jury, in determining whether that person is guilty of the offence charged,

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may draw such inferences from the refusal as appear proper; and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material.

[^{F44}(11) Nothing in this Article affects Articles 13 to 21 of the Road Traffic (Northern Ireland) Order 1995[^{F45} or Articles 18 and 19 of the Road Traffic Offenders (Northern Ireland) Order 1996].]

[^{F46}(12) Nothing in this Article applies to a person arrested or detained under the terrorism provisions; and paragraph (1A) shall not apply where the non-intimate samples mentioned in that paragraph were taken under paragraph 10 of Schedule 8 to the Terrorism Act 2000.]

F41	1995 NI 17
F42	prosp. subst. by 2003 c.6
F43	1995 NI 3
F44	1995 NI 18
F45	1996 NI 10
F46	2000 c. 11

Other samples

63.—(1) Except as provided by this Article, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

[^{F47}(2A) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he is in police detention in consequence of his arrest for a recordable offence; and
- (b) either he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or he has had such a sample taken but it proved insufficient.]

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he^{F47} . . . [^{F48} is being held in custody by the police on the authority of a court]; and
- (b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.

[^{F49}(3A) A non-intimate sample may be taken from a person[^{F47} (whether or not he is in police detention or held in custody by the police on the authority of a court)] without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(3B) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable offence.]

(4) An officer may only give an authorisation under paragraph (3) if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a^{F49} recordable offence]; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under paragraph (3) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(6) Where—

(a) an authorisation has been given; and

(b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation, an officer shall inform the person from whom the sample is to be taken—

(i) of the giving of the authorisation; and

(ii) of the grounds for giving it.

(7) The duty imposed by paragraph (6)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If a non-intimate sample is taken from a person by virtue of paragraph (3)—

(a) the authorisation by virtue of which it was taken; and

(b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

[^{F49}(8A) In a case where by virtue of [^{F47} paragraph (2A), (3A)] or (3B) a sample is taken from a person without the appropriate consent—

(a) he shall be told the reason before the sample is taken; and

(b) the reason shall be recorded as soon as practicable after the sample is taken.

(8B) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—

(a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.]

(9) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by paragraph (8)[^{F49}, (8A) or (8B)] shall be recorded in his custody record.

[^{F50}(9A) The power to take a non-intimate sample from a person without the appropriate consent is exercisable by a constable.]

[^{F49}(10) Paragraph (3B) shall not apply to persons convicted before the date on which that paragraph comes into operation.]

[^{F51}(11) Nothing in this Article applies to a person arrested or detained under the terrorism provisions]

[^{F52}(12) Nothing in this Article applies to a person arrested under an extradition arrest power.]

F47 2004 NI 9

F48 1991 NI 16

F49 1995 NI 17

F50 2003 c. 6

F51 2000 c. 11

F52 2003 c. 41

[^{F53}Fingerprints and samples: supplementary provisions

63A.—[

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^{F54}(1) Where a person has been arrested on suspicion of being involved in a recordable offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints or samples or the information derived from samples taken under any power conferred by this Part from the person may be checked against—

- (a) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of a police force (or police forces) falling within paragraph (1A) or are held in connection with or as the result of an investigation of an offence;
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in sub-paragraph (a).

(1A) Each of the following police forces falls within this paragraph—

- (a) the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve;
- (b) a police force within the meaning given by section 62 of the Police Act 1964;
- (c) a police force within the meaning given by section 50 of the Police (Scotland) Act 1967;
- (d) the States of Jersey Police Force;
- (e) the salaried police force of the Island of Guernsey;
- (f) the Isle of Man Constabulary.]

(2) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(3) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a custodial establishment.

(4) Any constable may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where—

- (a) the person has been charged with a recordable offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or
- (b) the person has been convicted of a recordable offence and either he has not has a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) The period allowed for requiring a person to attend a police station for the purpose specified in paragraph (4) is—

- (a) in the case of a person falling within sub-paragraph (a), one month beginning with the date of the charge or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;
- (b) in the case of a person falling within sub-paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(6) A requirement under paragraph (4)—

- (a) shall give the person at least 7 days within which he must so attend; and

(b) may direct him to attend at a specified time of day or between specified times of day.

(7) Any constable may arrest without a warrant a person who has failed to comply with a requirement under paragraph (4).

(8) In this Article “the appropriate officer” is—

(a) in the case of a person falling within paragraph (4)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;

(b) in the case of a person falling within paragraph (4)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.]

F53 1995 NI 17

F54 1996 c. 25

Destruction of fingerprints and samples

64.—^{F55}(1A) Where—

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) paragraph (3) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(1B) In paragraph (1A)—

(a) the reference to using a fingerprint includes a reference to allowing any check to be made against it under Article 63A(1) and to disclosing it to any person;

(b) the reference to using a sample includes a reference to allowing any check to be made under Article 63A(1) against it or against information derived from it and to disclosing it or any such information to any person;

(c) 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

(d) 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.]

(3) If—

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) that person is not suspected of having committed the offence,

they must^{F56} except as provided in^{F55} the following provisions of this Article]] be destroyed as soon as they have fulfilled the purpose for which they were taken.

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[^{F55}(3AA) Samples and fingerprints are not required to be destroyed under paragraph (3) if—

- (a) they were taken for the purposes of the investigation of an offence of which a person has been convicted; and
- (b) a sample or, as the case may be, fingerprint was also taken from the convicted person for the purposes of that investigation.

(3AB) Subject to paragraph (3AC), where a person is entitled under paragraph (3) to the destruction of any fingerprint or sample taken from him (or would be but for paragraph (3AA)), neither the fingerprint nor the sample, nor any information derived from the sample, shall be used—

- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or
- (b) for the purposes of the investigation of any offence;

and paragraph (1B) applies for the purposes of this paragraph as it applies for the purposes of paragraph (1A).

(3AC) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention—

- (a) that sample need not be destroyed under paragraph (3); and
- (b) paragraph (3AB) shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it;

and a consent given for the purposes of this paragraph shall not be capable of being withdrawn.

(3AD) For the purposes of paragraph (3AC) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.]
Para. (4) rep. by 2001 c. 16

(5) If fingerprints are destroyed—

- (a) any copies of the fingerprints shall also be destroyed; and
- (b) a person authorised by the Chief Constable to control access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.

(6) A person who asks to be allowed to witness the destruction of his fingerprints or copies of them shall have a right to witness it.

(7) If—

- (a) paragraph (5)(b) falls to be complied with; and
- (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him not later than the end of the period of 3 months beginning with the day on which he asks for it by the Chief Constable or a person authorised by him or on his behalf for the purposes of this Article.

(8) Nothing in this Article—

- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971^{F57}[^{F55} or section 20 of the Immigration and Asylum Act 1999 (c. 33) (disclosure of police information to the Secretary of State for use for immigration purposes)]; or
- (b) applies to a person arrested or detained under the terrorism provisions.

F55 2001 c. 16

F56 1995 NI 17

F57 1971 c. 77

PROSPECTIVE

[^{F58}Destruction of samples

64ZA.—(1) A DNA sample to which Article 64 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.

(2) Any other sample to which Article 64 applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

Destruction of data given voluntarily

64ZB.—(1) This Article applies to—

- (a) fingerprints or impressions of footwear taken in connection with the investigation of an offence with the consent of the person from whom they were taken, and
- (b) a DNA profile derived from a DNA sample taken in connection with the investigation of an offence with the consent of the person from whom the sample was taken.

(2) Material to which this Article applies must be destroyed as soon as it has fulfilled the purpose for which it was taken or derived, unless it is—

- (a) material relating to a person who is convicted of the offence,
- (b) material relating to a person who has previously been convicted of a recordable offence, other than a person who has only one exempt conviction,
- (c) material in relation to which any of Articles 64ZC to 64ZH applies, or
- (d) material which is not required to be destroyed by virtue of consent given under Article 64ZL.

(3) If material to which this Article applies leads to the person to whom the material relates being arrested for or charged with an offence other than the offence under investigation—

- (a) the material is not required to be destroyed by virtue of this Article, and
- (b) Articles 64ZD to 64ZH have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from material taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

Modifications etc. (not altering text)

C8 Art. 64ZB(2) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

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C9 Art. 64ZB(2) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

Destruction of data relating to a person subject to a control order

64ZC.—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction, and
- (b) is subject to a control order.

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

- (a) fingerprints taken from the person, or
- (b) a DNA profile derived from a DNA sample taken from the person.

(3) The material must be destroyed before the end of the period of 2 years beginning with the date on which the person ceases to be subject to a control order.

(4) This Article ceases to have effect in relation to the material if the person is convicted—

- (a) in England and Wales or Northern Ireland of a recordable offence, or
- (b) in Scotland of an offence which is punishable by imprisonment,

before the material is required to be destroyed by virtue of this Article.

(5) For the purposes of paragraph (1)—

- (a) a person has no previous convictions if the person has not previously been convicted—
 - (i) in England and Wales or Northern Ireland of a recordable offence, or
 - (ii) in Scotland of an offence which is punishable by imprisonment, and
- (b) if the person has been previously convicted of a recordable offence in England and Wales or Northern Ireland, the 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.

(6) For the purposes of that paragraph—

- (a) a person is to be treated as having been convicted of an offence if—
 - (i) he has been given a caution in England and Wales or Northern Ireland in respect of the offence which, at the time of the caution, he has admitted, [^{F59}and]
 - ^{F60}(ii)

- (b) 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.

(7) In this Article—

- (a) “recordable offence” has, 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) “qualifying offence” has, in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of that Act.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), ss. **15(2)**, 59(1)

Status: Point in time view as at 19/02/2006. This version of this part contains provisions that are not valid for this point in time.

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- F59** Word in art. 64ZC(6)(a)(i) substituted (8.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 24 para. 12\(a\)](#) (with s. 135(4)); S.I. 2013/453, art. 4(f) (but this amendment cannot take effect until the commencement of S.I. 1989/1341, art. 64ZC)
- F60** Art. 64ZC(6)(a)(ii) omitted (8.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 24 para. 12\(b\)](#) (with s. 135(4)); S.I. 2013/453, art. 4(f) (but this amendment cannot take effect until the commencement of S.I. 1989/1341, art. 64ZC)

PROSPECTIVE

Destruction of data relating to persons not convicted

64ZD.—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
 - (b) is arrested for or charged with a recordable offence, and
 - (c) is aged 18 or over at the time of the alleged offence.
- (2) Material falls within this paragraph if it is—
- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
 - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken,
 - (b) in the case of a DNA profile, before the end of the period of 6 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).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if the person is convicted of a recordable offence before the material is required to be destroyed by virtue of this Article.

- F58** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\), ss. 15\(2\), 59\(1\)](#)

Modifications etc. (not altering text)

- C10** Art. 64ZD(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\), regs. 1, 4\(3\)\(b\)](#) (with reg. 5)
- C11** Art. 64ZD(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\), regs. 1\(1\), 4\(3\)\(b\)\(4\)](#)

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PROSPECTIVE

Destruction of data relating to persons under 18 not convicted: recordable offences other than qualifying offences

64ZE.—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is arrested for or charged with a recordable offence other than a qualifying offence, and
- (c) is aged under 18 at the time of the alleged offence.

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

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of 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).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(b) where—

- (i) the alleged offence is not a qualifying offence, and
- (ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(c) where—

- (i) the alleged offence is a qualifying offence, and
- (ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(d) where—

- (i) the alleged offence is a qualifying offence, and
- (ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(e) where—

- (i) the person is convicted of the offence,

- (ii) the offence is not a qualifying offence,
- (iii) the person is aged under 18 at the time of the offence, and
- (iv) the person has no previous convictions,

the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

(5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—

- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
- (b) is convicted of a qualifying offence, or
- (c) having a previous exempt conviction, is convicted of a recordable offence.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

Modifications etc. (not altering text)

C12 Art. 64ZE(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

C13 Art. 64ZE(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

Destruction of data relating to persons under 16 not convicted: qualifying offences

64ZF.—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is arrested for or charged with a qualifying offence, and
- (c) is aged under 16 at the time of the alleged offence.

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

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of 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).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

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- (b) where—
- (i) the alleged offence is not a qualifying offence, and
 - (ii) the person is aged under 18 at the time of the alleged offence,
- the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
- (c) where—
- (i) the alleged offence is a qualifying offence, and
 - (ii) the person is aged under 16 at the time of the alleged offence,
- the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
- (d) where—
- (i) the alleged offence is a qualifying offence, and
 - (ii) the person is aged 16 or 17 at the time of the alleged offence,
- the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
- (e) where—
- (i) the person is convicted of the offence,
 - (ii) the offence is not a qualifying offence,
 - (iii) the person is aged under 18 at the time of the offence, and
 - (iv) the person has no previous convictions,
- the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—
- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
 - (b) is convicted of a qualifying offence, or
 - (c) having a previous exempt conviction, is convicted of a recordable offence.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

Modifications etc. (not altering text)

C14 Art. 64ZF(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

C15 Art. 64ZF(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

Destruction of data relating to persons aged 16 or 17 not convicted: qualifying offences

64ZG.—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,

- (b) is arrested for or charged with a qualifying offence, and
 - (c) is aged 16 or 17 at the time of the alleged offence.
- (2) Material falls within this paragraph if it is—
- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
 - (b) a DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken,
 - (b) in the case of a DNA profile, before the end of the period of 6 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).
- (4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—
- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
 - (b) where—
 - (i) the alleged offence is not a qualifying offence, and
 - (ii) the person is aged under 18 at the time of the alleged offence,the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
 - (c) where—
 - (i) the alleged offence is a qualifying offence, and
 - (ii) the person is aged 16 or 17 at the time of the alleged offence,the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
 - (d) where—
 - (i) the person is convicted of the offence,
 - (ii) the offence is not a qualifying offence,
 - (iii) the person is aged under 18 at the time of the offence, and
 - (iv) the person has no previous convictions,the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—
- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
 - (b) is convicted of a qualifying offence, or
 - (c) having a previous exempt conviction, is convicted of a recordable offence.

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Modifications etc. (not altering text)

- C16** Art. 64ZG(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)
- C17** Art. 64ZG(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

Destruction of data relating to persons under 18 convicted of a recordable offence other than a qualifying offence

64ZH.—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions,
- (b) is convicted of a recordable offence other than a qualifying offence, and
- (c) is aged under 18 at the time of the offence.

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

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 5 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of the period of 5 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).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(b) where—

- (i) the alleged offence is not a qualifying offence, and
- (ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(c) where—

- (i) the alleged offence is a qualifying offence, and
- (ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(d) where—

- (i) the alleged offence is a qualifying offence, and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.

(5) This Article ceases to have effect in relation to the material if the person is convicted of a further recordable offence before the material is required to be destroyed by virtue of this Article.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

Modifications etc. (not altering text)

C18 Art. 64ZH(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

C19 Art. 64ZH(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

Articles 64ZB to 64ZH: supplementary provision

64ZI.—(1) Any reference in Article 64ZB or Articles 64ZD to 64ZH to a person being charged with an offence includes a reference to a person being informed that he will be reported for an offence.

(2) For the purposes of those Articles—

- (a) a person has no previous convictions if the person has not previously been convicted of a recordable offence, and
- (b) if the person has been previously 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 is aged under 18.

(3) For the purposes of those Articles, a person is to be treated as having been convicted of an offence if he has been given a caution in respect of the offence which, at the time of the caution, he has admitted.

(4) 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 purpose of any provision of those Articles relating to an exempt, first or subsequent conviction.

(5) Subject to the completion of any speculative search that the Chief Constable considers necessary or desirable, material falling within any of Articles 64ZD to 64ZH must be destroyed immediately if it appears to the Chief Constable that—

- (a) the arrest was unlawful,
- (b) the taking of the fingerprints, impressions of footwear or DNA sample concerned was unlawful,
- (c) the arrest was based on mistaken identity, or
- (d) other circumstances relating to the arrest or the alleged offence mean that it is appropriate to destroy the material.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

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PROSPECTIVE

Destruction of fingerprints taken under Article 61(6A)

64ZJ Fingerprints taken from a person by virtue of Article 61(6A) (taking fingerprints for the purposes of identification) must be destroyed as soon as they have fulfilled the purpose for which they were taken.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

Retention for purposes of national security

64ZK.—(1) Paragraph (2) applies if the Chief Constable determines that it is necessary for—

- (a) a DNA profile to which Article 64 applies, or
- (b) fingerprints to which Article 64 applies, other than fingerprints taken under Article 61(6A),

to be retained for the purposes of national security.

(2) Where this paragraph applies—

- (a) the material is not required to be destroyed in accordance with Articles 64ZB to 64ZH, and
- (b) Article 64ZN(2) does not apply to the material,

for as long as the determination has effect.

(3) A determination under paragraph (1) has effect for a maximum of 2 years beginning with the date on which the material would otherwise be required to be destroyed, but a determination may be renewed.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

Retention with consent

64ZL.—(1) If a person consents in writing to the retention of fingerprints, impressions of footwear or a DNA profile to which Article 64 applies, other than fingerprints taken under Article 61(6A)—

- (a) the material is not required to be destroyed in accordance with Articles 64ZB to 64ZH, and
- (b) Article 64ZN(2) does not apply to the material.

(2) It is immaterial for the purposes of paragraph (1) whether the consent is given at, before or after the time when the entitlement to the destruction of the material arises.

(3) Consent given under this Article can be withdrawn at any time.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

Destruction of copies, and notification of destruction

64ZM.—(1) If fingerprints or impressions of footwear are required to be destroyed by virtue of any of Articles 64ZB to 64ZJ, any copies of the fingerprints or impressions of footwear must also be destroyed.

(2) If a DNA profile is required to be destroyed by virtue of any of those Articles, no copy may be kept except in a form which does not include information which identifies the person to whom the DNA profile relates.

(3) If a person makes a request to the Chief Constable to be notified when anything relating to the person is destroyed under any of Articles 64ZA to 64ZJ, the Chief Constable or a person authorised by the Chief Constable or on the Chief Constable's behalf must within 3 months of the request issue the person with a certificate recording the destruction.

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

Use of retained material

64ZN.—(1) Any material to which Article 64 applies which is retained after it has fulfilled the purpose for which it was taken or derived 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
- (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required to be destroyed by virtue of any of Articles 64ZA to 64ZJ, or of Article 64ZM, 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 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

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- (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.]

F58 Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

[^{F61}Photographing of suspects etc.

- 64A.**—(1) A person who is detained at a police station may be photographed—
- (a) with the appropriate consent; or
 - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (2) A person proposing to take a photograph of any person under this Article—
- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
 - (b) if the requirement is not complied with, may remove the item or substance himself.
- (3) Where a photograph may be taken under this Article, the only persons entitled to take the photograph are—[^{F62} constables.]
- (4) A photograph taken under this Article—
- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
 - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (5) In paragraph (4)—
- (a) 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
 - (b) 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.
- (6) References in this Article to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

- [
^{F63}(7) Nothing in this Article applies to a person arrested under an extradition arrest power.]]

F61 2001 c. 24

F62 2003 c. 6

F63 2003 c. 41

Status:

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