

CRIME AND SECURITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Retention, destruction and use of fingerprints and samples etc

Section 17: Material subject to the Terrorism Act 2000

59. Paragraph 14 of Schedule 8 to the Terrorism Act 2000 currently provides for the retention of fingerprints and samples (and DNA profiles derived from samples) taken from persons detained under section 41 of or Schedule 7 to the Terrorism Act 2000 (that is persons arrested as a suspected terrorist or persons detained under the ports and borders provisions in Schedule 7). Paragraph 14 of Schedule 8 to the 2000 Act sets out the purposes for which these fingerprints, samples and profiles may be used while they are retained, but permits retention without reference to a retention period.
60. **Section 17** substitutes for paragraph 14 new paragraphs 14 to 14I, making provision for a destruction and retention regime broadly equivalent to that in the amendments to PACE. New paragraph 14A makes provision for the destruction of samples, which must be destroyed within 6 months of being taken, or in the case of a DNA sample, as soon as a profile has been derived from it. Paragraphs 14B to 14E provide for retention periods broadly equivalent to those provided in PACE as amended by section 14. The time limits for retention depend on the age of the person, whether the person has previous convictions and whether the person is detained under section 41 (arrest on suspicion of terrorism) or under Schedule 7 (detention at ports and borders). But where the person is convicted of a recordable offence in England and Wales or Northern Ireland or an offence punishable by imprisonment in Scotland (or where the person already has such a conviction in England and Wales or Northern Ireland, other than a conviction for a minor offence committed when they were under 18), the material need not be destroyed.
61. As in relation to the PACE provisions, where fingerprints or DNA profiles would otherwise need to be destroyed because of the expiry of a time limit set out in the new provisions, if a chief officer of police (or chief constable in Northern Ireland) determines that it is necessary to retain that material for the purposes of national security, those fingerprints or DNA profiles may be further retained for up to two years (new paragraph 14G). It is open to that chief officer to make further determinations to retain the material, which have effect for a maximum of two years.
62. Paragraph 14I largely replicates the existing provision in paragraph 14 (as prospectively amended by section 16 of the Counter-Terrorism Act 2008) in relation to the use to which retained material may be put: it may be used in the interests of national security, in a terrorist investigation, for the investigation of crime or for identification-related purposes (*sub-paragraphs (1) and (4)*). *Sub-paragraph (2)* replicates the existing provision in paragraph 14 about the material against which fingerprints and samples taken under the Terrorism Act 2000 may be checked. *Sub-paragraph (3)* is new, and provides that, once the new requirement to destroy material applies, the material cannot be used in evidence against the person to whom it relates or for the purposes of the investigation of any offence.