



# Crime and Security Act 2010

## 2010 CHAPTER 17

### *Retention, destruction and use of fingerprints and samples etc*

#### **17 Material subject to the Terrorism Act 2000**

(1) Schedule 8 to the Terrorism Act 2000 (treatment of persons detained under section 41 or Schedule 7 of that Act) is amended as follows.

(2) For paragraph 14 there is substituted—

“14 (1) This paragraph applies to—

- (a) fingerprints or samples taken under paragraph 10 or 12, and
- (b) a DNA profile derived from a DNA sample so taken.

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

(3) This paragraph is subject to paragraphs 14A to 14E.

14A (1) A DNA sample to which paragraph 14 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 paragraph 14 applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

14B (1) This paragraph applies to material falling within sub-paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is detained under Schedule 7 or section 41, and
- (c) is aged 18 or over on the date he is detained.

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

- (a) fingerprints taken from the person under paragraph 10, or

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- (b) a DNA profile derived from a DNA sample taken from the person under paragraph 10 or 12.
- (3) The material must be destroyed—
  - (a) in the case of fingerprints, before the end of the period of 6 years beginning with the date on which the fingerprints 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 paragraph, the person is detained under Schedule 7 or section 41, the material may be further retained until the end of the period of 6 years beginning with the date the person is detained.
- (5) This paragraph ceases to have effect in relation to the material if the person is convicted of—
  - (a) a recordable offence in England and Wales or Northern Ireland, or
  - (b) an offence in Scotland which is punishable by imprisonment,
 before the material is required to be destroyed by virtue of this paragraph.
- 14C (1) This paragraph applies to material falling within sub-paragraph (2) relating to a person who—
  - (a) has no previous convictions or only one exempt conviction,
  - (b) is detained under Schedule 7, and
  - (c) is aged under 18 on the date he is detained.
- (2) Material falls within this sub-paragraph if it is—
  - (a) fingerprints taken from the person under paragraph 10, or
  - (b) a DNA profile derived from a DNA sample taken from the person under paragraph 10 or 12.
- (3) The material must be destroyed—
  - (a) in the case of fingerprints, before the end of the period of 3 years beginning with the date on which the fingerprints 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 paragraph, the person is detained under Schedule 7 or section 41—
  - (a) where the person is aged 18 or over on the date he is detained, the material may be further retained until the end of the period of 6 years beginning with the date he is detained,
  - (b) where—
    - (i) the person is detained under Schedule 7, and
    - (ii) the person is aged under 18 on the date he is detained,

- the material may be further retained until the end of the period of 3 years beginning with the date he is detained,
- (c) where—
- (i) the person is detained under section 41, and
  - (ii) the person is aged under 16 on the date he is detained,
- the material may be further retained until the end of the period of 3 years beginning with the date the person is detained,
- (d) where—
- (i) the person is detained under section 41, and
  - (ii) the person is aged 16 or 17 on the date he is detained,
- the material may be further retained until the end of the period of 6 years beginning with the date the person is detained.
- (5) This paragraph ceases to have effect in relation to the material if the person is convicted of—
- (a) a recordable offence in England and Wales or Northern Ireland, or
  - (b) an offence in Scotland which is punishable by imprisonment,
- before the material is required to be destroyed by virtue of this paragraph.
- 14D (1) This paragraph applies to material falling within sub-paragraph (2) relating to a person who—
- (a) has no previous convictions or only one exempt conviction,
  - (b) is detained under section 41, and
  - (c) is aged under 16 on the date he is detained.
- (2) Material falls within this sub-paragraph if it is—
- (a) fingerprints taken from the person under paragraph 10, or
  - (b) a DNA profile derived from a DNA sample taken from the person under paragraph 10 or 12.
- (3) The material must be destroyed—
- (a) in the case of fingerprints, before the end of the period of 3 years beginning with the date on which the fingerprints 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 paragraph, the person is detained under Schedule 7 or section 41—
- (a) where the person is aged 18 or over on the date he is detained, the material may be further retained until the end of the period of 6 years beginning with the date the person is detained,
  - (b) where—
    - (i) the person is detained under Schedule 7, and
    - (ii) the person is aged under 18 on the date he is detained,the material may be further retained until the end of the period of 3 years beginning with the date the person is detained,
  - (c) where—

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- (i) the person is detained under section 41, and
  - (ii) the person is aged under 16 on the date he is detained,

the material may be further retained until the end of the period of 3 years beginning with the date the person is detained,
- (d) where—
  - (i) the person is detained under section 41, and
  - (ii) the person is aged 16 or 17 on the date he is detained,

the material may be further retained until the end of the period of 6 years beginning with the date the person is detained.
- (5) This paragraph ceases to have effect in relation to the material if the person is convicted of—
  - (a) a recordable offence in England and Wales or Northern Ireland, or
  - (b) an offence in Scotland which is punishable by imprisonment,

before the material is required to be destroyed by virtue of this paragraph.
- 14E (1) This paragraph applies to material falling within sub-paragraph (2) relating to a person who—
  - (a) has no previous convictions or only one exempt conviction,
  - (b) is detained under section 41, and
  - (c) is aged 16 or 17 on the date he is detained.
- (2) Material falls within this sub-paragraph if it is—
  - (a) fingerprints taken from the person under paragraph 10, or
  - (b) a DNA profile derived from a DNA sample taken from the person under paragraph 10 or 12.
- (3) The material must be destroyed—
  - (a) in the case of fingerprints, before the end of the period of 6 years beginning with the date on which the fingerprints 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 paragraph, the person is detained under Schedule 7 or section 41—
  - (a) where the person is aged 18 or over on the date he is detained, the material may be further retained until the end of the period of 6 years beginning with the date the person is detained,
  - (b) where—
    - (i) the person is detained under Schedule 7, and
    - (ii) the person is aged under 18 on the date he is detained,

the material may be further retained until the end of the period of 3 years beginning with the date the person is detained,
  - (c) where—
    - (i) the person is detained under section 41, and
    - (ii) the person is aged 16 or 17 on the date he is detained,

the material may be further retained until the end of the period of 6 years beginning with the date the person is detained.

- (5) This paragraph ceases to have effect in relation to the material if the person is convicted of—
- (a) a recordable offence in England and Wales or Northern Ireland, or
  - (b) an offence in Scotland which is punishable by imprisonment,
- before the material is required to be destroyed by virtue of this paragraph.
- 14F (1) For the purposes of paragraphs 14B to 14E—
- (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.
- (2) In sub-paragraph (1), “qualifying offence” has—
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by given by section 65A of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (3) For the purposes of paragraphs 14B to 14E, a person is to be treated as having been convicted of an offence if—
- (a) 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, or
  - (b) he has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence.
- (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 paragraphs relating to an exempt, first or subsequent conviction.
- (5) Subject to the completion of any search by virtue of paragraph 14I(2) that the responsible chief officer of police considers necessary or desirable, material falling within any of paragraphs 14B to 14E must be destroyed immediately if it appears to the chief officer that—
- (a) the arrest under section 41 was unlawful,
  - (b) the taking of the fingerprints or DNA sample concerned was unlawful,
  - (c) the arrest under section 41 was based on mistaken identity, or

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- (d) other circumstances relating to the arrest under section 41 or the detention under Schedule 7 mean that it is appropriate to destroy the material.
- (6) “Responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from such a sample, the chief officer of police for the police area—
  - (a) in which the samples or fingerprints were taken, or
  - (b) in the case of a DNA profile, in which the samples from which the DNA profile was derived were taken.
- (7) “Responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from such a sample, the Chief Constable of the Police Service of Northern Ireland.
- 14G (1) If the responsible chief officer of police determines that it is necessary for fingerprints or a DNA profile to which paragraph 14 applies to be retained for the purposes of national security—
  - (a) the material is not required to be destroyed in accordance with paragraphs 14B to 14E, and
  - (b) paragraph 14I(3) does not apply to the material, for as long as the determination has effect.
- (2) A determination under sub-paragraph (1) has effect for a maximum of two years beginning with the date on which the material would otherwise be required to be destroyed, but a determination may be renewed.
- (3) “Responsible chief officer of police” means, in relation to fingerprints taken in England or Wales, or a DNA profile derived from a sample taken in England and Wales, the chief officer of police for the police area—
  - (a) in which the fingerprints were taken, or
  - (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken.
- (4) “Responsible chief officer of police” means, in relation to fingerprints taken in Northern Ireland, or a DNA profile derived from a sample taken in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.
- 14H (1) If fingerprints are required to be destroyed by virtue of any of paragraphs 14B to 14E, any copies of the fingerprints must also be destroyed.
- (2) If a DNA profile is required to be destroyed by virtue of any of those paragraphs, 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) Sub-paragraph (4) applies if a person makes a request to the responsible chief officer of police to be notified when any of the following material is destroyed under any of paragraphs 14A to 14E—
  - (a) fingerprints or a sample taken in England or Wales, or
  - (b) a DNA profile derived from such a sample.
- (4) The responsible chief officer of police or a person authorised by the chief officer or on the chief officer’s behalf must within 3 months of the request issue the person with a certificate recording the destruction.

- (5) For the purposes of this paragraph “responsible chief officer of police” means the chief officer of police for the police area—
    - (a) in which the fingerprints were or sample was taken, or
    - (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken.
  - (6) Sub-paragraph (7) applies if a person makes a request to the Chief Constable of the Police Service of Northern Ireland to be notified when any of the following material is destroyed under any of paragraphs 14A to 14E—
    - (a) fingerprints or a sample taken in Northern Ireland, or
    - (b) a DNA profile derived from such a sample.
  - (7) 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.
- 14I (1) Any material to which paragraph 14 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) Subject to sub-paragraph (1), the material may be checked against—
- (a) other fingerprints or samples taken under paragraph 10 or 12 or a DNA profile derived from such a sample,
  - (b) material to which paragraph 20(3) applies,
  - (c) material to which section 18 of the Counter-Terrorism Act 2008 applies,
  - (d) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and
  - (e) any of the fingerprints, samples and information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples).
- (3) Material which is required to be destroyed by virtue of any of paragraphs 14A to 14E, or paragraph 14H, 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.
- (4) In this paragraph—
- (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,



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- (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
  - (c) the reference 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) In paragraph 11(1)(a), for “paragraph 14(4)” there is substituted “paragraph 14I(2)”.
- (4) In paragraph 15(1)—
  - (a) for “paragraphs 10 to 14” there is substituted “paragraphs 10 to 14I”;
  - (b) after paragraph (a) there is inserted—
    - “(aa) DNA profile”,
    - (ab) “DNA sample”,.”.
- (5) After paragraph 15(1) there is inserted—
 

“(1A) In the application of section 65(2A) of the Police and Criminal Evidence Act 1984 for the purposes of sub-paragraph (1) of this paragraph, the reference to the destruction of a sample under section 64ZA of that Act is a reference to the destruction of a sample under paragraph 14A of this Schedule.”
- (6) In paragraph 15(2), for “paragraphs 10 to 14” there is substituted “paragraphs 10 to 14I”.
- (7) After paragraph 15(2) there is inserted—
 

“(2A) In the application of Article 53(3A) of the Police and Criminal Evidence (Northern Ireland) Order 1989 for the purposes of sub-paragraph (2) of this paragraph, the reference to the destruction of a sample under Article 64ZA of that Order is a reference to the destruction of a sample under paragraph 14A of this Schedule.”
- (8) After paragraph 15(3) there is inserted—
 

“(4) In paragraphs 14B to 14F, “recordable offence” has—

  - (a) 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) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.”