



Crime and Security Act 2010

2010 CHAPTER 17

Retention, destruction and use of fingerprints and samples etc

18 Material subject to the Terrorism Act 2000 (Scotland)

(1) Schedule 8 to the Terrorism Act 2000 is amended as follows.

(2) In paragraph 20—

(a) for sub-paragraph (3) there is substituted—

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

(3A) Sub-paragraph (3) applies to the following material—

- (a) relevant physical data or samples taken by virtue of this paragraph, and
- (b) a DNA profile derived from a DNA sample so taken.

(3B) Sub-paragraph (3)—

- (a) in the case to which sub-paragraph (1) relates, has effect despite any provision to the contrary in the Act referred to in that sub-paragraph,
- (b) in any case, is subject to paragraphs 20A to 20E.

(3C) In this paragraph and paragraphs 20A to 20I—

“DNA profile” means any information derived from a DNA sample,

“DNA sample” means any material that has come from a human body and consists of or includes human cells.”;

(b) sub-paragraph (4) is repealed.

(3) After paragraph 20 there is inserted—

“20A (1) A DNA sample to which paragraph 20(3) applies must be destroyed—

- (a) as soon as a DNA profile has been derived from the sample, or

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- (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 20(3) applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- 20B
- (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) relevant physical data to which paragraph 20(3) applies, or
 - (b) a DNA profile to which that paragraph applies.
 - (3) The material must be destroyed—
 - (a) in the case of relevant physical data, before the end of the period of 6 years beginning with the date on which it was 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, before the material is required to be destroyed by virtue of this paragraph, the person is convicted of—
 - (a) an offence in Scotland which is punishable by imprisonment, or
 - (b) a recordable offence in England and Wales or Northern Ireland.
- 20C
- (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) relevant physical data to which paragraph 20(3) applies, or
 - (b) a DNA profile to which that paragraph applies.
 - (3) The material must be destroyed—
 - (a) in the case of relevant physical data, before the end of the period of 3 years beginning with the date on which the material was 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

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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, before the material is required to be destroyed by virtue of this paragraph, the person is convicted of—
- (a) an offence in Scotland which is punishable by imprisonment, or
 - (b) a recordable offence in England and Wales or Northern Ireland.
- 20D (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) relevant physical data to which paragraph 20(3) applies, or
 - (b) a DNA profile to which that paragraph applies.
- (3) The material must be destroyed—
- (a) in the case of relevant physical data, before the end of the period of 3 years beginning with the date on which the material was 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).

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- (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 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, before the material is required to be destroyed by virtue of this paragraph, the person is convicted of—
- (a) an offence in Scotland which is punishable by imprisonment, or
 - (b) a recordable offence in England and Wales or Northern Ireland.
- 20E (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) relevant physical data to which paragraph 20(3) applies, or
 - (b) a DNA profile to which that paragraph applies.
- (3) The material must be destroyed—
- (a) in the case of relevant physical data, before the end of the period of 6 years beginning with the date on which the material was 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, before the material is required to be destroyed by virtue of this paragraph, the person is convicted of—
- (a) an offence in Scotland which is punishable by imprisonment, or
 - (b) a recordable offence in England and Wales or Northern Ireland.
- 20F (1) For the purposes of paragraphs 20B to 20E—
- (a) a person has no previous convictions if the person has not previously been convicted—
 - (i) in Scotland of an offence which is punishable by imprisonment, or
 - (ii) in England and Wales or Northern Ireland of a recordable offence; and
 - (b) if a person has been previously so 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) For the purposes of paragraphs 20B to 20E, “qualifying offence” and “recordable offence” have the meanings given by paragraphs 14F(2) and 15(4) respectively.
- (3) For the purposes of paragraphs 20B to 20E, a person is to be treated as having been convicted of an offence in England and Wales or Northern Ireland if he has been given a caution, or has been warned or reprimanded, as mentioned in paragraph 14F(3).
- (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 20I(2) that the chief constable considers necessary or desirable, material to which any of paragraphs 20B to 20E applies must be destroyed immediately if it appears to the chief constable that—
- (a) the arrest under section 41 was unlawful,
 - (b) the taking of the material concerned was unlawful,

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- (c) the arrest under section 41 was based on mistaken identity, or
 - (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) The reference in sub-paragraph (5) to the chief constable is a reference to the chief constable of the police force—
 - (a) of which the constable who took (or directed the taking of) the material was a member, or
 - (b) in the case of a DNA profile, of which the constable who took (or directed the taking of) the sample from which the profile was derived was a member.
- 20G (1) If the chief constable determines that it is necessary for relevant physical data or a DNA profile to which paragraph 20(3) applies to be retained for the purposes of national security—
 - (a) the material is not required to be destroyed in accordance with paragraphs 20B to 20E, and
 - (b) paragraph 20I(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) The reference in sub-paragraph (1) to the chief constable is a reference to the chief constable of the police force—
 - (a) of which the constable who took (or directed the taking of) the material was a member, or
 - (b) in the case of a DNA profile, of which the constable who took (or directed the taking of) the sample from which the profile was derived was a member.
- 20H (1) If material is required to be destroyed by virtue of any of paragraphs 20B to 20E, any copies of the material 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 chief constable to be notified when any of the following material is destroyed under any of paragraphs 20A to 20E—
 - (a) material taken in Scotland, or
 - (b) a DNA profile derived from such material.
- (4) The chief constable or a person authorised by the chief constable (or on the chief constable's behalf) must within three months of the request issue the person with a certificate recording the destruction.
- (5) The references in sub-paragraphs (3) and (4) to the chief constable are references to the chief constable of the police force—
 - (a) of which the constable who took (or directed the taking of) the material was a member, or

- (b) in the case of a DNA profile, of which the constable who took (or directed the taking of) the sample from which the profile was derived was a member.
- 20I (1) Any material to which paragraph 20(3) 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 material to which paragraph 20(3) applies,
 - (b) material to which paragraph 14 applies,
 - (c) material to which section 18 of the Counter-Terrorism Act 2008 applies,
 - (d) any of the relevant physical data, samples and information to which section 20 of the Criminal Procedure (Scotland) Act 1995 applies, and
 - (e) any of the fingerprints, samples and information mentioned in—
 - (i) section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984, or
 - (ii) Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (3) Material which is required to be destroyed by virtue of any of paragraphs 20A to 20E and 20H 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,
 - (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.”

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(4) Paragraph 21 (as inserted by section 17(3) of the Counter-Terrorism Act 2008) is repealed.