



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 1

REGULATION OF BIOMETRIC DATA

CHAPTER 1

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

Other provisions

22 Guidance on making national security determinations

- (1) The Secretary of State must give guidance about making or renewing national security determinations under a provision mentioned in section 20(2)(a).
- (2) Any person authorised to make or renew any such national security determination must have regard to any guidance given under this section.
- (3) The Secretary of State may give different guidance for different purposes.
- (4) In the course of preparing the guidance, or revising guidance already given, the Secretary of State must consult the Commissioner for the Retention and Use of Biometric Material and the Lord Advocate.
- (5) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay before Parliament—
 - (a) the proposed guidance or proposed revisions, and
 - (b) a draft of an order providing for the guidance, or revisions to the guidance, to come into force.
- (6) The Secretary of State must make the order, and issue the guidance or (as the case may be) make the revisions to the guidance, if the draft of the order is approved by a resolution of each House of Parliament.

Status: Point in time view as at 17/06/2013. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Protection of Freedoms Act 2012, Cross Heading: Other provisions is up to date with all changes known to be in force on or before 20 June 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)

- (7) Guidance, or revisions to guidance, come into force in accordance with an order under this section.
- (8) Such an order—
- (a) is to be a statutory instrument, and
 - (b) may contain transitional, transitory or saving provision.
- (9) The Secretary of State must publish any guidance given or revised under this section.

Commencement Information

II S. 22 in force at 1.10.2012 by S.I. 2012/2234, art. 3(b)

VALID FROM 31/10/2013

23 Inclusion of DNA profiles on National DNA Database

After section 63A of the Police and Criminal Evidence Act 1984 insert—

“63AA Inclusion of DNA profiles on National DNA Database

- (1) This section applies to a DNA profile which is derived from a DNA sample and which is retained under any power conferred by any of sections 63E to 63L (including those sections as applied by section 63P).
- (2) A DNA profile to which this section applies must be recorded on the National DNA Database.”

VALID FROM 31/10/2013

24 National DNA Database Strategy Board

After section 63AA of the Police and Criminal Evidence Act 1984 (for which see section 23) insert—

“63AB National DNA Database Strategy Board

- (1) The Secretary of State must make arrangements for a National DNA Database Strategy Board to oversee the operation of the National DNA Database.
- (2) The National DNA Database Strategy Board must issue guidance about the destruction of DNA profiles which are, or may be, retained under this Part of this Act.
- (3) A chief officer of a police force in England and Wales must act in accordance with guidance issued under subsection (2).

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- (4) The National DNA Database Strategy Board may issue guidance about the circumstances in which applications may be made to the Commissioner for the Retention and Use of Biometric Material under section 63G.
- (5) Before issuing any such guidance, the National DNA Database Strategy Board must consult the Commissioner for the Retention and Use of Biometric Material.
- (6) The Secretary of State must publish the governance rules of the National DNA Database Strategy Board and lay a copy of the rules before Parliament.
- (7) The National DNA Database Strategy Board must make an annual report to the Secretary of State about the exercise of its functions.
- (8) The Secretary of State must publish the report and lay a copy of the published report before Parliament.
- (9) The Secretary of State may exclude from publication any part of the report if, in the opinion of the Secretary of State, the publication of that part would be contrary to the public interest or prejudicial to national security.”

VALID FROM 31/10/2013

25 Material taken before commencement

- (1) The Secretary of State must by order make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Chapter.
- (2) The Secretary of State must, in particular, provide for the destruction or retention of PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before the commencement day in connection with the investigation of an offence.
- (3) Such provision must, in particular, ensure—
 - (a) in the case of material taken or derived 3 years or more before the commencement day from a person who—
 - (i) was arrested for, or charged with, the offence, and
 - (ii) has not been convicted of the offence,the destruction of the material on the coming into force of the order if the offence was a qualifying offence,
 - (b) in the case of material taken or derived less than 3 years before the commencement day from a person who—
 - (i) was arrested for, or charged with, the offence, and
 - (ii) has not been convicted of the offence,the destruction of the material within the period of 3 years beginning with the day on which the material was taken or derived if the offence was a qualifying offence, and
 - (c) in the case of material taken or derived before the commencement day from a person who—
 - (i) was arrested for, or charged with, the offence, and
 - (ii) has not been convicted of the offence,

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the destruction of the material on the coming into force of the order if the offence was an offence other than a qualifying offence.

- (4) An order under this section may, in particular, provide for exceptions to provision of the kind mentioned in subsection (3).
- (5) Subsection (6) applies if an order under section 113(1) of the Police and Criminal Evidence Act 1984 (application of that Act to Armed Forces) makes provision equivalent to sections 63D to 63U of that Act.
- (6) The power to make an order under section 113(1) of the Act of 1984 includes the power to make provision of the kind that may be made by an order under this section; and the duties which apply to the Secretary of State under this section in relation to an order under this section apply accordingly in relation to an order under section 113(1) of that Act.
- (7) An order under this section is to be made by statutory instrument.
- (8) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section—
 - “the commencement day” means the day on which section 1 comes into force,
 - “PACE material” means material that would have been material to which section 63D or 63R of the Police and Criminal Evidence Act 1984 applied if those provisions had been in force when it was taken or derived.

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