



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 1

#### REGULATION OF BIOMETRIC DATA

### CHAPTER 1

#### DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

##### *Modification of rule for particular circumstances*

### 3 Persons arrested for or charged with a qualifying offence

After section 63E of the Police and Criminal Evidence Act 1984 (for which see section 2) insert—

#### **“63F Retention of section 63D material: persons arrested for or charged with a qualifying offence**

- (1) This section applies to section 63D material which—
  - (a) relates to a person who is arrested for, or charged with, a qualifying offence but is not convicted of that offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this section, the material may be retained indefinitely.
- (3) Otherwise, material falling within subsection (4) or (5) may be retained until the end of the retention period specified in subsection (6).
- (4) Material falls within this subsection if it—

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- (a) relates to a person who is charged with a qualifying offence but is not convicted of that offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (5) Material falls within this subsection if—
- (a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence,
  - (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, and
  - (c) the Commissioner for the Retention and Use of Biometric Material has consented under section 63G to the retention of the material.
- (6) The retention period is—
- (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
  - (b) in the case of a DNA profile, 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).
- (7) The responsible chief officer of police or a specified chief officer of police may apply to a District Judge (Magistrates' Courts) for an order extending the retention period.
- (8) An application for an order under subsection (7) must be made within the period of 3 months ending on the last day of the retention period.
- (9) An order under subsection (7) may extend the retention period by a period which—
- (a) begins with the end of the retention period, and
  - (b) ends with the end of the period of 2 years beginning with the end of the retention period.
- (10) The following persons may appeal to the Crown Court against an order under subsection (7), or a refusal to make such an order—
- (a) the responsible chief officer of police;
  - (b) a specified chief officer of police;
  - (c) the person from whom the material was taken.
- (11) In this section—
- “excluded offence”, in relation to a person, means a recordable offence—
- (a) which—
    - (i) is not a qualifying offence,
    - (ii) is the only recordable offence of which the person has been convicted, and
    - (iii) was committed when the person was aged under 18, and
  - (b) for which the person was not given a relevant custodial sentence of 5 years or more,
- “relevant custodial sentence” has the meaning given by section 63K(6),

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“a specified chief officer of police” means—

- (a) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
- (b) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer’s police area.

**63G Retention of section 63D material by virtue of section 63F(5): consent of Commissioner**

- (1) The responsible chief officer of police may apply under subsection (2) or (3) to the Commissioner for the Retention and Use of Biometric Material for consent to the retention of section 63D material which falls within section 63F(5)(a) and (b).
- (2) The responsible chief officer of police may make an application under this subsection if the responsible chief officer of police considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—
  - (a) under the age of 18,
  - (b) a vulnerable adult, or
  - (c) associated with the person to whom the material relates.
- (3) The responsible chief officer of police may make an application under this subsection if the responsible chief officer of police considers that—
  - (a) the material is not material to which subsection (2) relates, but
  - (b) the retention of the material is necessary to assist in the prevention or detection of crime.
- (4) The Commissioner may, on an application under this section, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.
- (5) But where notice is given under subsection (6) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.
- (6) The responsible chief officer of police must give to the person to whom the material relates notice of—
  - (a) an application under this section, and
  - (b) the right to make representations.
- (7) A notice under subsection (6) may, in particular, be given to a person by—
  - (a) leaving it at the person’s usual or last known address (whether residential or otherwise),
  - (b) sending it to the person by post at that address, or
  - (c) sending it to the person by email or other electronic means.
- (8) The requirement in subsection (6) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the responsible chief officer of police.

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- (9) An application or notice under this section must be in writing.
- (10) In this section—
- “victim” includes intended victim,
  - “vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise,
- and the reference in subsection (2)(c) to a person being associated with another person is to be read in accordance with section 62(3) to (7) of the Family Law Act 1996.”