

*Status: Point in time view as at 13/08/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Counter-Terrorism and Border Security Act 2019, Cross Heading: Destruction and retention of fingerprints and samples etc: United Kingdom. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

#### BORDER SECURITY

##### **Modifications etc. (not altering text)**

- C1** Sch. 3 modified by S.I. 1993/1813, Sch. 4 para. 7 (as inserted (12.2.2019 for specified purposes; 13.8.2020 in so far as not already in force) by Counter Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(g), Sch. 3 para. 63(1) (with s. 25(9), Sch. 3 para. 63(2)); S.I. 2020/792, reg. 2(g))

### PART 2

#### DETENTION

##### *Destruction and retention of fingerprints and samples etc: United Kingdom*

- 43 (1) This paragraph applies to—
- fingerprints taken under paragraph 34,
  - a DNA profile derived from a DNA sample taken under paragraph 34,
  - relevant physical data taken or provided by virtue of paragraph 42, and
  - a DNA profile derived from a DNA sample taken by virtue of paragraph 42.
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 43 material”) must be destroyed if it appears to the responsible chief officer of police that the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful.
- (3) In any other case, paragraph 43 material must be destroyed unless it is retained under a power conferred by paragraph 44, 46 or 47.
- (4) Paragraph 43 material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other power which applies to it.
- (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 43 material, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
- (6) For the purposes of sub-paragraph (5), “a relevant search” is a search carried out for the purpose of checking the material against—
- other fingerprints or samples taken under paragraph 34 or a DNA profile derived from such a sample,
  - any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,

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- (c) fingerprints or samples taken under paragraph 10 or 12 of Schedule 8 to the Terrorism Act 2000 or a DNA profile derived from a sample taken under one of those paragraphs,
- (d) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003,
- (e) material to which section 18 of the Counter-Terrorism Act 2008 applies,
- (f) any of the fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or information derived from such samples,
- (g) 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
- (h) 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 (S.I. 1989/1341 (N.I. 12)) (checking of fingerprints and samples).

#### Commencement Information

- I1** Sch. 3 para. 43 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
- I2** Sch. 3 para. 43 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 44 (1) Paragraph 43 material may be retained indefinitely in the case of a detainee who—
- (a) has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or
  - (b) is so convicted before the end of the period within which the material may be retained by virtue of this paragraph.
- (2) In sub-paragraph (1)—
- (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—
    - (i) a recordable offence under the law of England and Wales if done there, or
    - (ii) a recordable offence under the law of Northern Ireland if done there, (and, in the application of sub-paragraph (1) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);
  - (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (1) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).
- (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
- (4) The retention period is—

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- (a) in the case of fingerprints or relevant physical data, the period of 6 months beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
- (b) in the case of a DNA profile, the period of 6 months 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).

#### Commencement Information

- I3** Sch. 3 para. 44 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
- I4** Sch. 3 para. 44 in force at 13.8.2020 in so far as not already in force except in relation to N.I. by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 45 (1) For the purposes of paragraph 44, a person is to be treated as having been convicted of an offence if—
- (a) in relation to a recordable offence in England and Wales or Northern Ireland—
    - (i) the person has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
    - (ii) the person has been found not guilty of the offence by reason of insanity,
    - (iii) the person has been found to be under a disability and to have done the act charged in respect of the offence, or
    - (iv) the person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
  - (b) in relation to an offence in Scotland punishable by imprisonment, the person has accepted or has been deemed to accept—
    - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,
    - (ii) a compensation offer under section 302A of that Act,
    - (iii) a combined offer under section 302B of that Act, or
    - (iv) a work offer under section 303ZA of that Act,
  - (c) in relation to an offence in Scotland punishable by imprisonment, the person has been acquitted on account of the person's insanity at the time of the offence or (as the case may be) by virtue of section 51A of the Criminal Procedure (Scotland) Act 1995,
  - (d) a finding in respect of the person has been made under section 55(2) of the Criminal Procedure (Scotland) Act 1995 in relation to an offence in Scotland punishable by imprisonment,
  - (e) the person, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid—
    - (i) the fixed penalty, or
    - (ii) (as the case may be) the sum which the person is liable to pay by virtue of section 131(5) of that Act, or
  - (f) in relation to an offence in Scotland punishable by imprisonment, the person has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.

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- (2) Paragraph 44 and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 or 101A of the Protection of Freedoms Act 2012.
- (4) For the purposes of paragraph 44—
- (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 previously been 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 was aged under 18.
- (5) In sub-paragraph (4) “qualifying offence” has—
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning 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 (S.I. 1989/1341 (N.I. 12)).
- (6) For the purposes of sub-paragraph (4)—
- (a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if—
    - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
    - (ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);
  - (b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—
    - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
    - (ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);
  - (c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—
    - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
    - (ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if done there (whether or not it constituted such an offence when the person was convicted);
  - (d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a

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qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).

- (7) For the purposes of paragraph 44 and this paragraph—
- (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
  - (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
    - (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
    - (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.
- (8) 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 purposes of calculating under paragraph 44 whether the person has been convicted of only one offence.
- (9) Nothing in paragraph 44 prevents the start of a new retention period in relation to paragraph 43 material if a person is detained again under Part 1 of this Schedule when an existing retention period (whether or not extended) is still in force in relation to that material.

#### Commencement Information

- I5** Sch. 3 para. 45 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)  
**I6** Sch. 3 para. 45 in force at 13.8.2020 in so far as not already in force except in relation to N.I. by [S.I. 2020/792, reg. 2\(g\)](#)

- 46 (1) Paragraph 43 material may be retained for as long as a national security determination made by a chief officer of police has effect in relation to it.
- (2) A national security determination is made if a chief officer of police determines that it is necessary for any paragraph 43 material to be retained for the purposes of national security.
- (3) A national security determination—
- (a) must be made in writing,
  - (b) has effect for a maximum of 5 years beginning with the date on which the determination is made, and
  - (c) may be renewed.
- (4) In this paragraph “chief officer of police” means—
- (a) a chief officer of police of a police force in England and Wales,
  - (b) the chief constable of the Police Service of Scotland, or
  - (c) the Chief Constable of the Police Service of Northern Ireland.

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#### Commencement Information

- I7** Sch. 3 para. 46 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)  
**I8** Sch. 3 para. 46 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 47 (1) This paragraph applies where paragraph 43 material is or includes a person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this paragraph in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if conditions 1 and 2 are met.
- (3) Condition 1 is met if the further fingerprints—
- (a) are paragraph 43 material,
  - (b) are taken or provided under or by virtue of—
    - (i) Part 5 of the Police and Criminal Evidence Act 1984,
    - (ii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
    - (iii) any provision, power or authority mentioned in section 18G(1) of the Criminal Procedure (Scotland) Act 1995,
    - (iv) paragraph 10 of Schedule 8 to the Terrorism Act 2000, or
    - (v) paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or
  - (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if—
- (a) in a case where the further fingerprints are material to which section 18 of the Counter-Terrorism Act 2008 applies, the original fingerprints and the further fingerprints are held under the law of the same part of the United Kingdom;
  - (b) in any other case, the original fingerprints and the further fingerprints were taken from or provided by the person in the same part of the United Kingdom.
- (5) Where a determination under this paragraph is made in respect of the further fingerprints—
- (a) the further fingerprints may be retained for as long as the original fingerprints are retained under any power conferred by paragraph 44 or 46, and
  - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (6) Sub-paragraph (5)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (7) A written record must be made of a determination under this paragraph.

#### Commencement Information

- I9** Sch. 3 para. 47 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)  
**I10** Sch. 3 para. 47 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

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- 48 (1) If fingerprints or relevant physical data are required by paragraph 43 to be destroyed, any copies of the fingerprints or relevant physical data held by a police force must also be destroyed.
- (2) If a DNA profile is required by that paragraph to be destroyed, no copy may be retained by a police force except in a form which does not include information which identifies the person to whom the DNA profile relates.

#### Commencement Information

**I11** Sch. 3 para. 48 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I12** Sch. 3 para. 48 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 49 (1) This paragraph applies to—
- (a) samples taken under paragraph 34, or
  - (b) samples taken by virtue of paragraph 42.
- (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that the taking of the sample was unlawful.
- (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this paragraph 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.
- (5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
- (7) In this paragraph “a relevant search” has the meaning given by paragraph 43(6).

#### Commencement Information

**I13** Sch. 3 para. 49 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I14** Sch. 3 para. 49 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 50 (1) Any material to which paragraph 43 or 49 applies must not be used other than—
- (a) in the interests of national security,
  - (b) for the purposes of a terrorist investigation, as defined by section 32 of the Terrorism Act 2000,
  - (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), a relevant search (within the meaning given by paragraph 43(6)) may be carried out in relation to material to which paragraph 43

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or 49 applies if the responsible chief officer of police considers the search to be desirable.

- (3) Material which is required by paragraph 43 or 49 to be destroyed 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 references 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.
- (5) Sub-paragraphs (1), (2) and (4) do not form part of the law of Scotland.

#### Commencement Information

**I15** Sch. 3 para. 50 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I16** Sch. 3 para. 50 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), reg. 2(g)

51 In paragraphs 43 to 50—

“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;

“fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984;

“paragraph 43 material” has the meaning given by paragraph 43(2);

“police force” means any of the following—

- (a) the metropolitan police force;
- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (c) the City of London police force;
- (d) the Police Service of Scotland;
- (e) the Scottish Police Authority;
- (f) the Police Service of Northern Ireland;
- (g) the Police Service of Northern Ireland Reserve;
- (h) the Ministry of Defence Police;
- (i) the Royal Navy Police;
- (j) the Royal Military Police;
- (k) the Royal Air Force Police;
- (l) the British Transport Police;

“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



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(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 (S.I. 1989/1341 (N.I. 12));

“relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995;

“responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the police area—

(a) in which the material concerned was taken, or

(b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

“responsible chief officer of police” means, in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken or provided, the chief constable of the Police Service of Scotland;

“responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland.

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**Commencement Information**

**I17** Sch. 3 para. 51 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I18** Sch. 3 para. 51 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

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