

SCHEDULES

SCHEDULE 6

DETENTION UNDER SECTION 27

PART 4

DEALING WITH FINGERPRINTS AND SAMPLES ETC: UNITED KINGDOM

Samples: further provision

- 25 (1) **This paragraph** applies to—
- (a) samples taken under **paragraph 10** or **12**, or
 - (b) samples taken or provided by virtue of **paragraph 18**.
- (2) Samples to which **this paragraph** applies must be destroyed if it appears to the responsible chief officer of police that—
- (a) the sample was taken or required to be provided unlawfully, or
 - (b) the sample was taken from, or provided by, a person in connection with that person's arrest under **section 27** and the arrest was unlawful or based on mistaken identity.
- (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) The responsible chief officer of police may apply to a relevant court for an order to retain a sample to which **this paragraph** applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of **sub-paragraph (4)** or **(5)** if—
- (a) the sample was taken from a detained person in connection with the investigation of a qualifying offence, and
 - (b) the responsible chief officer of police considers that the condition in **sub-paragraph (7)** is met.
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
- (a) disclosure to, or use by, a defendant, or
 - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Paragraph 25. (See end of Document for details)

- (8) An application under [sub-paragraph \(6\)](#) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of [sub-paragraph \(4\)](#) or [\(5\)](#).
- (9) If, on an application made by the responsible chief officer of police under [sub-paragraph \(6\)](#), the relevant court is satisfied that the condition in [sub-paragraph \(7\)](#) is met, it may make an order under this sub-paragraph which—
- (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of [sub-paragraph \(4\)](#) or [\(5\)](#), and
 - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (10) An application for an order under [sub-paragraph \(9\)](#) (other than an application for renewal)—
- (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
 - (b) may be heard and determined in private in the absence of that person.
- (11) In Scotland, an application for an order under [sub-paragraph \(9\)](#) (including an application for renewal) is to be made by summary application.
- (12) A sample retained by virtue of an order under [sub-paragraph \(9\)](#) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (13) A sample must be destroyed if retention of the sample by virtue of an order under [sub-paragraph \(9\)](#) ceases to be allowed.
- (14) 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.
- (15) In [this paragraph](#)—
- “ancillary offence”, in relation to an offence, means any of the following—
- (a) being art and part in the commission of the offence;
 - (b) inciting a person to commit the offence;
 - (c) attempting or conspiring to commit the offence;
- “qualifying offence”—
- (a) in relation to the investigation of an offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984,
 - (b) in relation to the investigation of an offence committed in Scotland, means a relevant offence, an offence listed in section 33(3)(a), or an ancillary offence in relation to such an offence, and
 - (c) in relation to the investigation of an offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341 \(N.I. 12\)](#));

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“relevant court” means—

- (a) in England and Wales, a District Judge (Magistrates’ Courts),
- (b) in Scotland, the sheriff—
 - (i) in whose sheriffdom the person to whom the sample relates resides,
 - (ii) in whose sheriffdom that person is believed by the responsible chief officer of police to be, or
 - (iii) to whose sheriffdom that person is believed by the responsible chief officer of police to be intending to come, and
- (c) in Northern Ireland, a district judge (magistrates’ court) in Northern Ireland;

“relevant offence” has the same meaning as in section 19A of the Criminal Procedure (Scotland) Act 1995;

“relevant search” has the meaning given by [paragraph 19\(6\)](#).

Commencement Information

- I1** Sch. 6 para. 25 not in force at Royal Assent, see 100(1)
- I2** Sch. 6 para. 25 in force at 20.12.2023 by S.I. 2023/1272, [reg. 2\(a\)](#)

Changes to legislation:

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