
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional, transitory or saving provision in connection with the coming into force of Chapter 1 of Part 1 of the Protection of Freedoms Act 2012 (destruction, retention and use of biometric data).

Articles 2 to 5 provide for the destruction or retention of biometric material taken before those provisions came into force (“legacy material”). Subject to certain exceptions and transitional arrangements, legacy material is subject to the same regime for destruction, retention and use as material taken after Chapter 1 comes into force.

Article 4(a) has the effect that legacy material taken from people who have not been charged with an offence must be destroyed, and there is no process of applications to the Commissioner for the Retention and Use of Biometric Material for its retention.

Article 4(b) has the effect that applications to court to extend from 3 years to 5 years the retention period for fingerprints and DNA profiles will be available in relation to legacy material only where the retention period ends at least three months after the commencement date.

Article 5(a) has the effect that legacy samples need not be destroyed if they are, or may become, disclosable under the Criminal Procedure and Investigations Act 1996 or its attendant Code of Practice.

Article 5(b) has the effect that legacy samples need not be destroyed if they were taken consensually and are required for purposes related to the identification of a missing person.

Article 6 provides that material taken before the coming into force of Chapter 1 which has been identified as requiring consideration of whether it should be retained by virtue of a national security determination is not subject to destruction for a period of two years.

Articles 7 and 8 provide for the destruction or retention of material taken under regimes other than PACE before the coming into force of Chapter 1.

Article 9 makes transitory and saving provision which for a limited period has the effect that fingerprints and DNA profiles may be loaded onto their respective databases for 63 days, allowing for searches against those databases, before they are destroyed.