



Crime and Security Act 2010

2010 CHAPTER 17

Retention, destruction and use of fingerprints and samples etc

21 Other material

(1) Section 18 of the Counter-Terrorism Act 2008 (material not subject to existing statutory restrictions) is amended as follows.

(2) For subsection (2) there is substituted—

“(2) Subject to subsections (3A) to (3C), material to which this section applies that is held by a law enforcement authority in England and Wales or Northern Ireland may be retained by that authority after it has fulfilled the purpose for which it was obtained or acquired by the authority if the following condition is met.”

(2) In subsection (3)(c) for “subsection (2)” there is substituted “subsection (3J)”.

(4) After subsection (3) there is inserted—

“(3A) A DNA sample to which this section 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 obtained or acquired.

(3B) DNA profiles and fingerprints—

- (a) to which this section applies,
- (b) relating to a person who, at the time they were obtained or acquired by the authority retaining them—
 - (i) has no previous convictions or only one exempt conviction, and
 - (ii) is aged under 16, and
- (c) which are held in a form which includes information which identifies the person to whom they relate,

Status: This is the original version (as it was originally enacted).

must be destroyed before the end of the period of 3 years beginning with the date on which they were obtained or acquired by the authority.

(3C) DNA profiles and fingerprints—

- (a) to which this section applies,
- (b) relating to a person who, at the time they were obtained or acquired by the authority retaining them—
 - (i) has no previous convictions or only one exempt conviction, and
 - (ii) is aged 16 or over, and
- (c) which are held in a form which includes information which identifies the person to whom they relate,

must be destroyed before the end of the period of 6 years beginning with the date on which they were obtained or acquired by the authority.

(3D) If, before material is required to be destroyed by virtue of subsection (3B) or (3C), the person to whom the material relates is convicted of a recordable offence in England and Wales or Northern Ireland, that subsection ceases to have effect in relation to the material.

(3E) If the responsible officer determines that it is necessary for any material to which subsection (3B) or (3C) applies to be retained for the purposes of national security—

- (a) the material is not required to be destroyed in accordance with that subsection, and
- (b) subsection (4A) does not apply to the material,

for as long as the determination has effect.

(3F) A determination under subsection (3E) has effect for a maximum of two years beginning with the date on which the material would otherwise be required to be destroyed, but a determination may be renewed.

(3G) “Responsible officer” means—

- (a) in relation to material obtained or acquired by a police force in England and Wales, the chief officer of the police force;
- (b) in relation to material obtained or acquired by the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve, the Chief Constable of the Police Service of Northern Ireland;
- (c) in relation to material obtained or acquired by the Ministry of Defence Police, the Chief Constable of the Ministry of Defence Police;
- (d) in relation to material obtained or acquired by the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, the Provost Marshal for the police force which obtained or acquired the material;
- (e) in relation to material obtained or acquired by the British Transport Police, the Chief Constable of the British Transport Police;
- (f) in relation to material obtained or acquired by the Serious Organised Crime Agency, the Director General of the Serious Organised Crime Agency;
- (g) in relation to material obtained or acquired by the Commissioners for Her Majesty’s Revenue and Customs, any of those Commissioners.

- (3H) If fingerprints are required to be destroyed by virtue of subsection (3B) or (3C), any copies of the fingerprints must also be destroyed.
- (3I) If a DNA profile is required to be destroyed by virtue of subsection (3B) or (3C), no copy may be kept except in a form which does not include information which identifies the person to whom the DNA profile relates.
- (3J) Any material to which this section applies which is retained after it has fulfilled the purpose for which it was obtained or acquired must not be used other than—
- (a) in the interests of national security,
 - (b) for the purposes of a terrorist investigation,
 - (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.”
- (5) For subsection (4) there is substituted—
- “(4) Subject to subsection (3J), checks may be made against material to which this section applies and it may be disclosed to any person.
- (4A) Material which is required to be destroyed by virtue of this section 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.
- (4B) In this section—
- (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 reference to crime includes a reference to any conduct which—
 - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and
 - (c) 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.”
- (6) In subsection (5), at the end there is inserted—
- ““terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.”
- (7) In subsection (6)—
- (a) in paragraph (a), after “64” there is inserted “to 64ZN”;
 - (b) in paragraph (b), after “64” there is inserted “to 64ZN”;
 - (c) in paragraph (c), for “paragraph 14” there is substituted “paragraphs 14 to 14I”.

(8) After section 18 of that Act there is inserted—

“18A Section 18: supplementary provisions

- (1) In section 18 and this section, “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
 - (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.
- (2) For the purposes of subsections (3B) and (3C) of section 18—
 - (a) a person has no previous convictions if the person has not previously been convicted in England and Wales or Northern Ireland of a recordable offence, and
 - (b) if the person has been previously so convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence other than a qualifying offence, committed when the person is aged under 18.
- (3) In subsection (2), “qualifying offence” has—
 - (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by 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.
- (4) For the purposes of subsections (3B) and (3C) of section 18, a person is to be treated as having been convicted of an offence if the person—
 - (a) has been given a caution in respect of the offence which, at the time of the caution, he has admitted, or
 - (b) has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence.
- (5) For the purposes of those subsections, 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.”