

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

ANNEX B:

DNA Profile Retention Periods: Comparison between current rules under PACE, the rules applicable in Scotland, and the rules that would apply under the provisions in the 2010 Act and in Chapter 1 of Part 1 of this Act

<i>Occurrence</i>	<i>Current System (E&W)</i>	<i>Crime & Security Act 2010 – E&W</i>	<i>Scottish System</i>	<i>Changes under this Act</i>
ADULT – Conviction – All Crimes	Indefinite	Indefinite	Indefinite	Indefinite
ADULT – Charged but not Convicted – Serious Crime	Indefinite ¹	6 Years	3 Years + possible 2-year extension(s) by Court	3 Years + possible single 2-Year extension by Court
ADULT – Arrested but not Charged or Convicted – Serious Crime	Indefinite ¹	6 Years	None	Only where authorised by the Commissioner – 3 Years + possible single 2-year extension by Court
ADULT – Non Conviction – Minor Crime	Indefinite ¹	6 Years	None	None ¹
UNDER 18s – Conviction – Serious Crime	Indefinite	Indefinite	Indefinite	Indefinite
UNDER 18s – Conviction – Minor Crime	Indefinite	1st Conviction – 5 Years; 2nd – Indefinite	Indefinite	1st Conviction – 5 Years (plus length of any custodial sentence); 2nd Conviction – indefinite
UNDER 18s – Charged but	Indefinite ¹	3 Years	3 Years + possible 2-year	3 Years + possible single 2-
* Destruction of DNA profiles and biological samples is available under ‘exceptional circumstances’. This requires an application to the Chief Constable of the relevant police force; removal from the database is then at his/her discretion in accordance with guidelines issued by the Association of Chief Police Officers.				
† In all cases, a speculative search of the DNA and fingerprint databases may be conducted before destruction.				
§ On the basis of arrest – no specific provision for PNDs.				

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<i>Occurrence</i>	<i>Current System (E&W)</i>	<i>Crime & Security Act 2010 – E&W</i>	<i>Scottish System</i>	<i>Changes under this Act</i>
not Convicted – Serious Crime			extension(s) by Court	Year extension by Court
UNDER 18s – Arrested but not Charged or Convicted – Serious Crime	Indefinite ¹	3 Years	None	Only where authorised by the Commissioner – 3 Years + possible single 2-year extension by Court
UNDER 18s – Non Conviction – Minor Crime	Indefinite ¹	3 Years	None	None ¹
Penalty Notice for Disorder	Indefinite ¹	6 Years ¹	2 Years	2 Years
Terrorist suspects	Indefinite ¹	6 Years plus renewable 2-year period(s) on national security grounds	Not covered (reserved matters)	3 Years plus renewable 2-year period(s) on national security grounds (Commissioner will review all determinations)
Biological DNA Samples	Indefinite ¹	Within six months of sample being taken	As per destruction of profiles	Within six months of sample being taken
* Destruction of DNA profiles and biological samples is available under ‘exceptional circumstances’. This requires an application to the Chief Constable of the relevant police force; removal from the database is then at his/her discretion in accordance with guidelines issued by the Association of Chief Police Officers.				
† In all cases, a speculative search of the DNA and fingerprint databases may be conducted before destruction.				
§ On the basis of arrest – no specific provision for PNDs.				

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