

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 1: Regulation of biometric data**

#### *Chapter 1: Destruction, retention and use of fingerprints etc.*

#### *Section 14: Destruction of samples*

100. **Section 14** inserts new section 63R into PACE, which provides for the immediate destruction of samples if it appears to the responsible chief officer of police that the material was taken unlawfully, or where the material was taken from a person following an unlawful arrest or where the arrest was as a result of mistaken identity (that is, in the same circumstances as section 63D material (see new section 63D(2), as inserted by section 1). In addition, DNA samples must be destroyed as soon as a DNA profile has been satisfactorily derived from the sample (including the carrying out of the necessary quality and integrity checks) and, in any event, within six months of the taking of the sample. Any other sample, such as a blood or urine sample taken to test for alcohol or drugs, must similarly be destroyed within six months of it having been taken (new section 63R(5)).
101. New sections 63R(6) to (12) of PACE provide that samples may be retained for a longer period than six months in certain limited circumstances. Those circumstances are where it appears to the responsible chief officer of police that, in relation to a serious offence, it is necessary to ensure that key evidence (in the form of DNA samples) remains available for disclosure to the defendant or to respond to an evidential challenge by the defendant. In such cases, the decision to extend the permissible retention period would fall to a District Judge (Magistrates' Court) following an *ex parte* application made by the chief officer. If the application was approved, the district judge would authorise retention of the material for 12 months, which may be extended (on one or more occasions) following a further (*inter partes*) application by the responsible chief officer. Any material retained in this way would only be available for use in that case and the police would be under a duty to notify the person whose sample was to be retained, including any application for a subsequent order to retain and the outcome.
102. New section 63R(13) of PACE enables a person's DNA or other sample, which would otherwise fall to be destroyed, to be retained until a DNA profile has been derived from the sample and a speculative search of the relevant database has been carried out (that is, in the same circumstances as section 63D material (see new section 63D(5)).