

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Regulation of biometric data

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

Section 18: Interpretation and minor amendments of PACE

108. *Subsection (2)* adds definitions of a “DNA profile”, “DNA sample”, “responsible chief officer of police”, “section 63D material” and “terrorist investigation” into the list of definitions in section 65(1) of PACE.
109. *Subsection (3)* inserts new subsections (2A) and (2B) into section 65 of PACE. New section 65(2A) ensures that destruction of a DNA sample under section 14 of the Act does not give the police grounds to take a fresh sample, while new section 65(2B) provides that, in new sections 63F, 63H, 63P and 63U, the definition of persons who are ‘charged with an offence’ includes (where Part 4 of the Criminal Justice Act 2003 is not in force) those who are informed that they will be reported to a Magistrates’ Court for the issue of a summons to begin criminal proceedings.
110. *Subsection (4)* adds the offences of robbery and assault with intent to rob under section 8 of the Theft Act 1968 to the definition of qualifying offences in section 65A(2) of PACE.
111. *Subsection (5)* inserts new section 65B into PACE, which provides that, for the purpose of the rules set out in new sections 63D to 63U of PACE (as inserted by sections 1 to 17) governing the retention of fingerprints and DNA profiles, a person who has been given a caution (or, in the case of a person under 18, a warning or reprimand) is to be treated in the same way as a person who has been convicted of an offence. In addition, those individuals found not guilty by reason of insanity or otherwise to have committed the offence while under a disability will also be treated as having been convicted of an offence for the purpose of the retention rules as set out in those sections of PACE. New section 65B(2) provides that the retention rules in Part 5 of PACE, as amended, are to apply irrespective of the provisions of the Rehabilitation of Offences Act 1974 (under that Act certain offences are treated as being spent, and therefore to be disregarded for most purposes, after the expiry of specified rehabilitation periods). However, by virtue of new section 65B(3), a person is not to be regarded as having been convicted of or cautioned for an offence under section 12 (buggery) or 13 (gross indecency between men) of the Sexual Offences Act 1956 (“the 1956 Act”) (and similar offences) if that conviction or caution is disregarded under the provisions in Chapter 4 of Part 5 of this Act. Accordingly, if a person was arrested for an offence and that person had no previous conviction save for a disregarded conviction, his fingerprints and DNA profile taken following the arrest could not be retained indefinitely as would be the case if the

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

previous conviction or caution for an offence under section 12 or 13 of the 1956 Act had not been disregarded.