

# 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.*

#### *Schedule 1: Amendments of regimes other than PACE*

#### **Part 1: Material subject to the Terrorism Act 2000**

113. Paragraph 14 of Schedule 8 to the Terrorism Act 2000 (“the 2000 Act”) as originally enacted provides for the retention of fingerprints and samples (and DNA profiles derived from samples) taken from persons detained under section 41 of or Schedule 7 to the 2000 Act (that is persons arrested as a suspected terrorist or persons detained under the ports and border control provisions in Schedule 7) without reference to a retention period. Paragraph 14 of Schedule 8 also sets out the purposes for which these fingerprints, samples and profiles may be used.
114. Paragraph 14 of Schedule 8 to the 2000 Act is repealed by Part 1 of Schedule 1 to this Act. *Paragraph 1(4)* inserts new paragraphs 20A to 20I into Schedule 8 of the 2000 Act, which make provision for a destruction and retention regime broadly equivalent to that set out in new sections 63D to 63T of PACE. It is a general feature that material must be destroyed unless it is retained under a power conferred under new paragraphs 20B to 20E; except in the case of samples which must be destroyed as soon as a DNA profile has been satisfactorily derived from the sample and in any event within six months of taking the sample (new paragraph 20G). New paragraphs 20(6) to 20(13) replicate the provisions in new sections 63R(6) to (12) of PACE (see paragraph 101 above) to provide that samples may be retained for a longer period than six months in certain circumstances. The time limits for retention depend on whether the person has previous convictions or one exempt conviction (that is, a conviction for a minor offence committed when they were under 18) and whether the person has been detained under section 41 (arrest on reasonable suspicion of being a terrorist) of, or under Schedule 7 (detention at ports and borders) to, the 2000 Act. Where, following detention under section 41 or Schedule 7, the person is convicted of a recordable offence in England and Wales or Northern Ireland or an offence punishable by imprisonment in Scotland (or where the person already has such a conviction in England and Wales or Northern Ireland, other than an exempt conviction), the material need not be destroyed and may be retained indefinitely.
115. As is the case in relation to section 63D material in PACE, where fingerprints or DNA profiles would otherwise need to be destroyed, if a chief officer of police (or chief constable in Northern Ireland) determines that it is necessary to retain that material for the purposes of national security, that material may be further retained for up to two years (new paragraph 20E). It is open to that chief officer to renew a national security

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

determination in respect of the same material to further extend the retention period by up to two years at a time.

116. New paragraph 20F replicates the effect of the new provisions in new section 63Q of PACE in relation to the destruction of copies of fingerprints and DNA profiles. New paragraph 20H largely replicates the provisions as originally enacted in paragraph 14 of Schedule 8 to the 2000 Act (as prospectively amended by section 16 of the Counter-Terrorism Act 2008 (“the 2008 Act”)) in relation to the uses to which retained material may be put; it may be used in the interests of national security, for the purposes of a terrorist investigation, for the investigation of crime or for identification-related purposes (*sub-paragraph (1)*). Where a responsible chief officer of police considers that a relevant search (that is, the checking of fingerprints or DNA profiles against other material held) is desirable, paragraph 20H(2) provides an express power to carry out such a search. Paragraph 20H(3) is also new, and provides that, once the new requirement to destroy material applies, the material cannot be used in evidence against the person to whom it relates or for the purposes of the investigation of any offence.
117. New paragraph 20I replicates the new section 63U(3) of PACE (see section 17) to provide that material taken from a person detained under section 41 of the 2000 Act need not be destroyed where it may fall to be disclosed under the Criminal Procedure and Investigations Act 1996 or its Code of Practice. Where material is retained in order to comply with that Act, it will be removed from the relevant database and held only in hard copy on the police case file, where it will be available for use only in connection with that particular case.
118. *Paragraph 1(5) to (8)* makes further consequential amendments to Schedule 8 to the 2000 Act.