

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.

Schedule 1: Amendments of regimes other than PACE

Part 7: Corresponding Northern Ireland provision for excepted or reserved matters etc.

127. **Part 7** confers two order-making powers on the Secretary of State to amend the Police and Criminal Evidence (Northern Ireland) Order 1989 in respect of the retention and destruction of fingerprints and DNA for excepted or reserved purposes, that is, where retention is in the interests of national security or for the purposes of a terrorist investigation, and in respect of a transferred matter where that matter is ancillary to a reserved or excepted matter. The Police and Criminal Evidence (Northern Ireland) Order 1989 makes provision for the taking, retention and destruction of fingerprints and DNA by police in Northern Ireland for transferred purposes and closely reflects the provisions in Part 5 of PACE which operates in England and Wales. The order making powers conferred on the Secretary of State by *paragraph 8(2)* and *(3)* are required as the Northern Ireland Assembly is expected to legislate in the near future, following public consultation, in relation to the taking and retention of fingerprints and DNA for transferred purposes (in response to the ECtHR judgment in the case of *S and Marper v UK* [2008] ECHR 1581). It is only when this legislation is enacted that the Secretary of State can make certain further provision in relation to excepted and reserved matters. By virtue of *paragraph 8(6)* and *(7)*, an order made under this paragraph is subject to the affirmative resolution procedure if it amends or repeals primary legislation but is otherwise subject to the negative resolution procedure.