

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 20: Appointment and functions of Commissioner

128. *Subsection (1)* places a duty on the Secretary of State to appoint a Commissioner for the Retention and Use of Biometric Material (the Commissioner). *Subsection (10)* makes provision for the terms of the Commissioner's appointment and for the payment of allowances to the Commissioner and of his or her expenses. *Subsection (11)* enables the Secretary of State to provide staff, accommodation, equipment and other facilities to support the work of the Commissioner.
129. *Subsection (2)* confers on the Commissioner the function of keeping under review determinations made by chief officers of police and others that the fingerprints and DNA profiles of a person are required to be retained for national security purposes, and the use to which fingerprints and DNA profiles so retained are being put.
130. To enable the Commissioner to discharge this function, *subsection (3)* requires persons making national security determinations to notify the Commissioner in writing of the making of a determination, including a statement of the reasons why it was made, and to provide such other documents or information as the Commissioner may require in the exercise of his or her functions.
131. *Subsections (4) and (5)* enable the Commissioner, having reviewed a national security determination, to order the destruction of the fingerprints and DNA profile held pursuant to it where he or she is satisfied that a determination should not have been made. There is no appeal against such a ruling by the Commissioner save by way of judicial review. The Commissioner may not order the destruction of material that could otherwise be retained pursuant to any other statutory provision, for example under the provisions in new section 63F(5) and (9) of PACE (as inserted by section 3).
132. *Subsections (6) to (8)* confer on the Commissioner a general function of keeping under review the retention and use, by the police and others, of fingerprints and DNA profiles not subject to a national security determination, whether taken under PACE, the 2000 Act, the 2008 Act or the TPIM Act 2011.
133. *Subsection (9)* provides that the Commissioner also has the function of determining (in response to applications by the police) whether the fingerprints and DNA profiles of persons arrested for, but not charged with, a qualifying offence may be retained pursuant to the provisions in new section 63G of PACE (as inserted by section 3 of this Act).