



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 1

REGULATION OF BIOMETRIC DATA

CHAPTER 1

DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC.

Modification of rule for particular circumstances

2 Material retained pending investigation or proceedings

After section 63D of the Police and Criminal Evidence Act 1984 (for which see section 1) insert—

“63E Retention of section 63D material pending investigation or proceedings

- (1) This section applies to section 63D material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved.
- (2) The material may be retained until the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against the person for the offence, until the conclusion of those proceedings.”

3 Persons arrested for or charged with a qualifying offence

After section 63E of the Police and Criminal Evidence Act 1984 (for which see section 2) insert—

Status: This is the original version (as it was originally enacted).

“63F Retention of section 63D material: persons arrested for or charged with a qualifying offence

- (1) This section applies to section 63D material which—
 - (a) relates to a person who is arrested for, or charged with, a qualifying offence but is not convicted of that offence, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this section, the material may be retained indefinitely.
- (3) Otherwise, material falling within subsection (4) or (5) may be retained until the end of the retention period specified in subsection (6).
- (4) Material falls within this subsection if it—
 - (a) relates to a person who is charged with a qualifying offence but is not convicted of that offence, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (5) Material falls within this subsection if—
 - (a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence,
 - (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, and
 - (c) the Commissioner for the Retention and Use of Biometric Material has consented under section 63G to the retention of the material.
- (6) The retention period is—
 - (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and
 - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (7) The responsible chief officer of police or a specified chief officer of police may apply to a District Judge (Magistrates’ Courts) for an order extending the retention period.
- (8) An application for an order under subsection (7) must be made within the period of 3 months ending on the last day of the retention period.
- (9) An order under subsection (7) may extend the retention period by a period which—
 - (a) begins with the end of the retention period, and
 - (b) ends with the end of the period of 2 years beginning with the end of the retention period.
- (10) The following persons may appeal to the Crown Court against an order under subsection (7), or a refusal to make such an order—

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- (a) the responsible chief officer of police;
- (b) a specified chief officer of police;
- (c) the person from whom the material was taken.

(11) In this section—

“excluded offence”, in relation to a person, means a recordable offence—

(a) which—

- (i) is not a qualifying offence,
- (ii) is the only recordable offence of which the person has been convicted, and
- (iii) was committed when the person was aged under 18, and

(b) for which the person was not given a relevant custodial sentence of 5 years or more,

“relevant custodial sentence” has the meaning given by section 63K(6),

“a specified chief officer of police” means—

- (a) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
- (b) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer’s police area.

63G Retention of section 63D material by virtue of section 63F(5): consent of Commissioner

- (1) The responsible chief officer of police may apply under subsection (2) or (3) to the Commissioner for the Retention and Use of Biometric Material for consent to the retention of section 63D material which falls within section 63F(5)(a) and (b).
- (2) The responsible chief officer of police may make an application under this subsection if the responsible chief officer of police considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—
 - (a) under the age of 18,
 - (b) a vulnerable adult, or
 - (c) associated with the person to whom the material relates.
- (3) The responsible chief officer of police may make an application under this subsection if the responsible chief officer of police considers that—
 - (a) the material is not material to which subsection (2) relates, but
 - (b) the retention of the material is necessary to assist in the prevention or detection of crime.
- (4) The Commissioner may, on an application under this section, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.
- (5) But where notice is given under subsection (6) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider

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any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

- (6) The responsible chief officer of police must give to the person to whom the material relates notice of—
- (a) an application under this section, and
 - (b) the right to make representations.
- (7) A notice under subsection (6) may, in particular, be given to a person by—
- (a) leaving it at the person’s usual or last known address (whether residential or otherwise),
 - (b) sending it to the person by post at that address, or
 - (c) sending it to the person by email or other electronic means.
- (8) The requirement in subsection (6) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the responsible chief officer of police.
- (9) An application or notice under this section must be in writing.
- (10) In this section—
- “victim” includes intended victim,
- “vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise,
- and the reference in subsection (2)(c) to a person being associated with another person is to be read in accordance with section 62(3) to (7) of the Family Law Act 1996.”

4 **Persons arrested for or charged with a minor offence**

After section 63G of the Police and Criminal Evidence Act 1984 (for which see section 3) insert—

“63H Retention of section 63D material: persons arrested for or charged with a minor offence

- (1) This section applies to section 63D material which—
- (a) relates to a person who—
 - (i) is arrested for or charged with a recordable offence other than a qualifying offence,
 - (ii) if arrested for or charged with more than one offence arising out of a single course of action, is not also arrested for or charged with a qualifying offence, and
 - (iii) is not convicted of the offence or offences in respect of which the person is arrested or charged, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged.

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(2) If the person has previously been convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely.

(3) In this section “excluded offence” has the meaning given by section 63F(11).”

5 Persons convicted of a recordable offence

After section 63H of the Police and Criminal Evidence Act 1984 (for which see section 4) insert—

“63I Retention of material: persons convicted of a recordable offence

- (1) This section applies, subject to subsection (3), to—
- (a) section 63D material which—
 - (i) relates to a person who is convicted of a recordable offence, and
 - (ii) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, or
 - (b) material taken under section 61(6) or 63(3B) which relates to a person who is convicted of a recordable offence.
- (2) The material may be retained indefinitely.
- (3) This section does not apply to section 63D material to which section 63K applies.”

6 Persons convicted of an offence outside England and Wales

After section 63I of the Police and Criminal Evidence Act 1984 (for which see section 5) insert—

“63J Retention of material: persons convicted of an offence outside England and Wales

- (1) This section applies to material falling within subsection (2) relating to a person who is convicted of an offence under the law of any country or territory outside England and Wales.
- (2) Material falls within this subsection if it is—
- (a) fingerprints taken from the person under section 61(6D) (power to take fingerprints without consent in relation to offences outside England and Wales), or
 - (b) a DNA profile derived from a DNA sample taken from the person under section 62(2A) or 63(3E) (powers to take intimate and non-intimate samples in relation to offences outside England and Wales).
- (3) The material may be retained indefinitely.”

7 **Persons under 18 convicted of first minor offence**

After section 63J of the Police and Criminal Evidence Act 1984 (for which see section 6) insert—

“63K Retention of section 63D material: exception for persons under 18 convicted of first minor offence

- (1) This section applies to section 63D material which—
 - (a) relates to a person who—
 - (i) is convicted of a recordable offence other than a qualifying offence,
 - (ii) has not previously been convicted of a recordable offence, and
 - (iii) is aged under 18 at the time of the offence, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) Where the person is given a relevant custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of the period consisting of the term of the sentence plus 5 years.
- (3) Where the person is given a relevant custodial sentence of 5 years or more in respect of the offence, the material may be retained indefinitely.
- (4) Where the person is given a sentence other than a relevant custodial sentence in respect of the offence, the material may be retained until—
 - (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and
 - (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
 - (i) the date on which the DNA sample from which the profile was derived was taken, or
 - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.
- (5) But if, before the end of the period within which material may be retained by virtue of this section, the person is again convicted of a recordable offence, the material may be retained indefinitely.
- (6) In this section, “relevant custodial sentence” means any of the following—
 - (a) a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;
 - (b) a sentence of a period of detention and training (excluding any period of supervision) which a person is liable to serve under an order under section 211 of the Armed Forces Act 2006 or a secure training order.”

8 **Persons given a penalty notice**

After section 63K of the Police and Criminal Evidence Act 1984 (for which see section 7) insert—

Status: This is the original version (as it was originally enacted).

“63L Retention of section 63D material: persons given a penalty notice

- (1) This section applies to section 63D material which—
 - (a) relates to a person who is given a penalty notice under section 2 of the Criminal Justice and Police Act 2001 and in respect of whom no proceedings are brought for the offence to which the notice relates, and
 - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.
- (2) The material may be retained—
 - (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
 - (b) in the case of a DNA profile, for a period of 2 years beginning with—
 - (i) the date on which the DNA sample from which the profile was derived was taken, or
 - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.”

9 Material retained for purposes of national security

After section 63L of the Police and Criminal Evidence Act 1984 (for which see section 8) insert—

“63M Retention of section 63D material for purposes of national security

- (1) Section 63D material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it.
- (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any section 63D material to be retained for the purposes of national security.
- (3) A national security determination—
 - (a) must be made in writing,
 - (b) has effect for a maximum of 2 years beginning with the date on which it is made, and
 - (c) may be renewed.”

10 Material given voluntarily

After section 63M of the Police and Criminal Evidence Act 1984 (for which see section 9) insert—

“63N Retention of section 63D material given voluntarily

- (1) This section applies to the following section 63D material—
 - (a) fingerprints taken with the consent of the person from whom they were taken, and

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- (b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.
- (2) Material to which this section applies may be retained until it has fulfilled the purpose for which it was taken or derived.
- (3) Material to which this section applies which relates to—
 - (a) a person who is convicted of a recordable offence, or
 - (b) a person who has previously been convicted of a recordable offence (other than a person who has only one exempt conviction),
 may be retained indefinitely.
- (4) For the purposes of subsection (3)(b), a conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person is aged under 18.”

11 **Material retained with consent**

After section 63N of the Police and Criminal Evidence Act 1984 (for which see section 10) insert—

“63O Retention of section 63D material with consent

- (1) This section applies to the following material—
 - (a) fingerprints (other than fingerprints taken under section 61(6A)) to which section 63D applies, and
 - (b) a DNA profile to which section 63D applies.
- (2) If the person to whom the material relates consents to material to which this section applies being retained, the material may be retained for as long as that person consents to it being retained.
- (3) Consent given under this section—
 - (a) must be in writing, and
 - (b) can be withdrawn at any time.”

12 **Material obtained for one purpose and used for another**

After section 63O of the Police and Criminal Evidence Act 1984 (for which see section 11) insert—

“63P Section 63D material obtained for one purpose and used for another

- (1) Subsection (2) applies if section 63D material which is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence leads to the person to whom the material relates being arrested for or charged with, or convicted of, an offence other than the offence under investigation.
- (2) Sections 63E to 63O and sections 63Q and 63T have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.”

13 Destruction of copies

After section 63P of the Police and Criminal Evidence Act 1984 (for which see section 12) insert—

“63Q Destruction of copies of section 63D material

- (1) If fingerprints are required by section 63D to be destroyed, any copies of the fingerprints held by the police must also be destroyed.
- (2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates.”