
STATUTORY INSTRUMENTS

2013 No. 2554

DEFENCE

**The Police and Criminal Evidence Act 1984
(Armed Forces) (Amendment) Order 2013**

<i>Made</i>	- - - -	<i>6th October 2013</i>
<i>Laid before Parliament</i>		<i>10th October 2013</i>
<i>Coming into force</i>	- -	<i>31st October 2013</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 113(1) of the Police and Criminal Evidence Act 1984(1):

Citation and commencement

1.—(1) This Order may be cited as the Police and Criminal Evidence Act 1984 (Armed Forces) (Amendment) Order 2013 and comes into force on 31st October 2013.

(2) In this Order, “the 2009 Order” means the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009(2).

Amendments to the 2009 Order

2.—(1) The 2009 Order is amended as follows.

(2) In paragraph (1) of article 2 (interpretation)—

(a) after the definition of “appropriate consent” insert—

““article 15A material” means fingerprints or DNA profiles to which article 15A of this Order applies;”;

(b) after the definition of “custody” insert—

““DNA profile” means any information derived from a DNA sample;

“DNA sample” means any material that has come from a human body and consists of or includes human cells;”;

(c) after the definition of “the 2006 Order” insert—

““qualifying offence” means—

(1) 1984 c. 60; section 113(1) was substituted by the Armed Forces Act 2006 (c. 52), Schedule 16, paragraph 105(1) and (2).
(2) S.I. 2009/1922, amended by S.I. 2011/2282, 2012/2505.

- (a) an offence within the meaning of section 65A of the 1984 Act; or
 - (b) a qualifying service offence;
“qualifying service offence” means—
 - (a) an offence under section 42 of the Act for which the corresponding offence under the law of England and Wales is an offence within the meaning of section 65A of the 1984 Act;
 - (b) an offence under section 11(1) of the Act (using violence against a superior officer);
 - (c) an offence under section 39 of the Act of attempting to commit an offence within sub-paragraph (b); or
 - (d) an offence under section 40 of the Act of encouraging or assisting the commission of an offence within sub-paragraph (b);“recordable offence” means—
 - (a) an offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000⁽³⁾; or
 - (b) a recordable service offence;”;
 - (d) after the definition of “service police establishment” insert—
““service police force” means—
 - (a) the Royal Navy Police;
 - (b) the Royal Military Police; or
 - (c) The Royal Air Force Police;”;
 - (e) after the definition of “sufficient” and “insufficient” insert—
““terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000⁽⁴⁾.”.
- (3) At the end of article 2 insert—
- “(4) In paragraph (3), the reference to the destruction of a sample does not include a reference to the destruction of a sample under article 15K (requirement to destroy samples).
 - (5) References in this Order to a person who is convicted of an offence include references to—
 - (a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted;
 - (b) a person who has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998⁽⁵⁾ for the offence;
 - (c) a person who has been found not guilty by reason of insanity; or
 - (d) a person who has been found to be under a disability and to have done the act charged in respect of the offence.
 - (6) This Order, so far as it relates to persons convicted of an offence, has effect despite anything in the Rehabilitation of Offenders Act 1974⁽⁶⁾.

⁽³⁾ S.I. 2000/1139.

⁽⁴⁾ 2000 c. 11.

⁽⁵⁾ 1998 c. 37.

⁽⁶⁾ 1974 c. 53.

(7) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012(7).

(8) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under articles 15C, 15D and 15G whether the person has been convicted of only one offence.”.

(4) For article 15 (destruction of fingerprints and samples) substitute—

“Inclusion of DNA profiles on National DNA Database

15.—(1) This article applies to a DNA profile which is derived from a DNA sample and which is retained under any power conferred by any of articles 15B to 15F (including those articles as applied by article 15I).

(2) A DNA profile to which this article applies must be recorded on the National DNA Database.

Destruction of fingerprints and DNA profiles

15A.—(1) This article applies to—

(a) fingerprints—

(i) taken from a person under any power conferred by this Order; or

(ii) taken by a service policeman, with the consent of the person from whom they were taken, in connection with the investigation of a service offence; and

(b) a DNA profile derived from a DNA sample taken as mentioned in sub-paragraph (a) (i) or (ii).

(2) Fingerprints and DNA profiles to which this article applies (“article 15A material”) must be destroyed if it appears to a Provost Marshal of a service police force that—

(a) the taking of the fingerprint or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful; or

(b) the fingerprint was taken, or, in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person’s arrest and the arrest was unlawful or based on mistaken identity.

(3) In any other case, article 15A material must be destroyed unless it is retained under any power conferred by articles 15B to 15H (including those articles as applied by article 15I).

(4) Article 15A material which ceases to be retained under a power mentioned in paragraph (3) may continue to be retained under any other such power which applies to it.

(5) Nothing in this article prevents a speculative search, in relation to article 15A material, from being carried out within such time as may reasonably be required for the search if a Provost Marshal of a service police force considers the search to be desirable.

Retention of article 15A material pending investigation or proceedings

15B.—(1) This article applies to article 15A material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of a service 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.

Retention of article 15A material: persons arrested for or charged with a qualifying service offence

15C.—(1) This article applies to article 15A material which—

- (a) relates to a person who is arrested for, or charged with, a qualifying service 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 article, the material may be retained indefinitely.

(3) Otherwise, material falling within paragraph (4) may be retained until the end of the retention period specified in paragraph (5).

(4) Material falls within this paragraph if it—

- (a) relates to a person who is charged with a qualifying service 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) 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).

(6) In this article—

“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 article 15F(6) of this Order.

Retention of article 15A material: persons arrested for or charged with a minor service offence

15D.—(1) This article applies to article 15A material which—

- (a) relates to a person who—
 - (i) is arrested for or charged with a recordable service offence other than a qualifying service 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 service 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.
- (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 article “excluded offence” has the meaning given by article 15C(6).

Retention of material: persons convicted of a recordable service offence

- 15E.**—(1) This article applies, subject to paragraph (3), to—
- (a) article 15A material which—
 - (i) relates to a person who is convicted of a recordable service 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 article 10(6) or 13(6) which relates to a person who is convicted of a recordable service offence.
- (2) The material may be retained indefinitely.
- (3) This article does not apply to article 15A material to which article 15F applies.

Retention of article 15A material: exception for persons under 18 convicted of first minor service offence

- 15F.**—(1) This article applies to article 15A material which—
- (a) relates to a person who—
 - (i) is convicted of a recordable service offence other than a qualifying service 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 article, the person is again convicted of a recordable offence, the material may be retained indefinitely.

(6) In this article, “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⁽⁸⁾;
- (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 Act or a secure training order.

Retention of article 15A material given voluntarily

15G.—(1) This article applies to the following article 15A material—

- (a) fingerprints taken with the consent of the person from whom they were taken; and
- (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 article applies may be retained until it has fulfilled the purpose for which it was taken or derived.

(3) Material to which this article applies which relates to—

- (a) a person who is convicted of a recordable service 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 paragraph (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.

Retention of article 15A material with consent

15H.—(1) This article applies to the following material—

- (a) fingerprints to which article 15A applies; and
- (b) a DNA profile to which article 15A applies.

(2) If the person to whom the material relates consents to material to which this article applies being retained, the material may be retained for as long as that person consents to it being retained.

(3) Consent given under this article—

- (a) must be in writing; and
- (b) can be withdrawn at any time.

Article 15A material obtained for one purpose and used for another

15I.—(1) Paragraph (2) applies if article 15A 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 a service offence leads to the person to whom the material relates being arrested for or charged with, or convicted of, a service offence other than the offence under investigation.

(2) Articles 15B to 15H and articles 15J and 15M 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 service offence in respect of which the person is arrested or charged.

Destruction of copies of article 15A material

15J.—(1) If fingerprints are required by article 15A to be destroyed, any copies of the fingerprints held by a service police force must also be destroyed.

(2) If a DNA profile is required by that article to be destroyed, no copy may be retained by a service police force except in a form which does not include information which identifies the person to whom the DNA profile relates.

Destruction of samples

15K.—(1) This article applies to samples—

- (a) taken from a person under any power conferred by this Order; or
- (b) taken by a service policeman, with the consent of the person from whom they were taken, in connection with the investigation of a service offence.

(2) Samples to which this article applies must be destroyed if it appears to a Provost Marshal of a service police force that—

- (a) the taking of the samples was unlawful; or
- (b) the samples were taken from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.

(3) Subject to this, the rule in paragraph (4) or (as the case may be) (5) applies.

(4) A DNA sample to which this article applies must be destroyed—

- (a) as soon as a DNA profile has been derived from the sample; or
- (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(5) Any other sample to which this article applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

(6) Nothing in this article prevents a speculative search, in relation to samples to which this article applies, from being carried out within such time as may reasonably be required for the search if a Provost Marshal of a service police force considers the search to be desirable.

Destruction of impressions of footwear

15L.—(1) This article applies to impressions of footwear—

- (a) taken from a person under any power conferred by this Order; or
- (b) taken by a service policeman, with the consent of the person from whom they were taken, in connection with the investigation of a service offence.

(2) Impressions of footwear to which this article applies must be destroyed unless they are retained under paragraph (3).

(3) Impressions of footwear may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

Use of retained material

15M.—(1) Any material to which article 15A, 15K or 15L applies must not be used other than—

- (a) in the interests of national security;
- (b) for the purposes of a terrorist investigation;
- (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; or
- (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required by article 15A, 15K or 15L to be destroyed must not at any time after it is required to be destroyed be used—

- (a) in evidence against the person to whom the material relates; or
- (b) for the purposes of the investigation of any offence.

(2) In this article—

- (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person;
- (b) the reference to crime includes a reference to any conduct which—
 - (i) constitutes one or more criminal offences (whether under the law of England and Wales or of any country or territory outside England and Wales); or
 - (ii) is, or corresponds to, any conduct which, if it all took place in England and Wales, would constitute one or more criminal offences; and
- (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside England and Wales of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside England and Wales.

Exclusions

15N.—(1) Articles 15A to 15M do not apply to material which is, or may become, disclosable under—

- (a) an order made in exercise of the powers conferred by section 78 of the Criminal Procedure and Investigations Act 1996⁽⁹⁾; or
- (b) a code of practice prepared under the provisions of an order made in exercise of the powers conferred by section 78 of that Act.

(2) A sample that—

- (a) falls within paragraph (1), and
- (b) but for that paragraph would be required to be destroyed under article 15K,

⁽⁹⁾ 1996 c. 25.

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(3) A sample that once fell within paragraph (1) but no longer does, and so becomes a sample to which article 15K applies, must be destroyed immediately if the time specified for its destruction under that article has already passed.

(4) Articles 15A to 15M do not apply to material which—

- (a) is taken from a person; but
- (b) relates to another person.”.

(5) Schedule 2 (Transitional provisions) is amended as follows.

(a) After paragraph 5 insert—

“**5A.** In this Order “qualifying service offence” includes an offence contrary to—

- (a) section 33(1)(a) of the Army Act 1955(**10**), section 33(1)(a) of the Air Force Act 1955(**11**), or section 11(a) of the Naval Discipline Act 1957(**12**) (insubordinate behaviour);
- (b) section 68 of the Army Act 1955, section 68 of the Air Force Act 1955, or section 40 of the Naval Discipline Act 1957 of attempting to commit an offence within sub-paragraph (a);
- (c) section 68A of the Army Act 1955, section 68A of the Air Force Act 1955, or section 41 of the Naval Discipline Act 1957 of aiding and abetting or inciting the commission of an offence within sub-paragraph (a);
- (d) section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is an offence within the meaning of section 65A of the 1984 Act.”.

(b) In paragraph 17 for sub-paragraph (5) substitute—

“(5) In respect of PACE material taken, or a DNA profile derived from such material, before 31st October 2013, articles 15A to 15N apply as if the period for which such material may be retained or used is—

- (a) a period expiring at the end of 31st October 2013, or
- (b) the period calculated in accordance with the relevant provisions of articles 15A to 15N,

whichever ends later.

(6) In sub-paragraph (5) “PACE material” means a fingerprint, impression of footwear or sample which has been taken from a person—

- (a) under the 1984 Act as applied by an order under section 113 of that Act in connection with the investigation of a service discipline Acts offence; or
- (b) under an order under section 113 of the 1984 Act in connection with the investigation of a service offence.”.

(10) 1955 c. 18.
(11) 1955 c. 19.
(12) 1957 c. 53.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

6th October 2013

Mark Francois
Minister of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

Chapter 1 of Part 1 of the Protection of Freedoms Act 2012 amends Part 5 of the Police and Criminal Evidence Act 1984 to replace the existing provisions governing the retention and destruction of fingerprints, footwear impressions and DNA samples and profiles taken by the civilian police in the course of a criminal investigation.

This Order makes equivalent provision, subject to modifications, in respect of the investigation of service offences under the Armed Forces Act 2006. It does so by amending the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 (“the 2009 Order”).

Article 2(4) substitutes article 15 of, and inserts new articles 15A to 15N into, the 2009 Order.

New article 15 requires a DNA profile derived from a DNA sample obtained from a person in connection with the investigation of a service offence and retained under any power conferred by the 2009 Order to be recorded on the National DNA Database.

New article 15A sets out the basic requirements for the destruction of fingerprints and DNA profiles (“article 15A material”) obtained from a person in connection with the investigation of a service offence.

New article 15B enables article 15A material obtained from a person in connection with the investigation of a service offence to be retained until the conclusion of the investigation by the service police or, where legal proceedings are instituted against the person, until the conclusion of those proceedings.

New article 15C provides for the further retention of article 15A material taken from persons who are arrested for or charged with certain serious offences but not subsequently convicted.

New article 15D provides for the further retention of article 15A material taken from persons who are arrested for or charged with certain less serious service offences but not subsequently convicted.

New article 15E provides for the further retention of article 15A material taken from persons who are convicted of recordable service offences. New article 15F makes an exception to new article 15E in relation to persons who are convicted of a first minor service offence, committed when they were under the age of 18.

New article 15G provides for the retention of article 15A material that has been given voluntarily.

New article 15H provides for the retention of article 15A material which would otherwise fall to be destroyed, if the person to whom the material relates consents.

Under new article 15I, where a person arrested for one service offence is subsequently arrested for, charged with or convicted of a second, unrelated service offence, the retention of that person’s article 15A material will be governed by the rules applicable to the second offence.

New article 15J provides that all copies of fingerprints and DNA profiles held by the service police must be destroyed when the obligation to destroy material set out in new article 15A applies.

New article 15K makes provision for the destruction of samples obtained from a person in connection with the investigation of a service offence.

New article 15L governs the retention and destruction of impressions of footwear obtained from a person in connection with the investigation of a service offence.

New article 15M restricts the use to which retained fingerprints, DNA and other samples, DNA profiles and footwear impressions may be put.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Paragraph (1) of new article 15N makes provision so that article 15A material and article 15K samples need not be destroyed where such material or samples may fall to be disclosed under an order made under section 78 of the Criminal Procedure and Investigations Act 1996 or an attendant Code of Practice.

Paragraph (4) of new article 15N makes provision so that article 15A material need not be destroyed where it relates to a person other than the person from whom it was taken. This would apply, for example, to material transferred in the course of a physical encounter, such as an assault, where one party's DNA or saliva is recovered from the other party.

Article 2(5)(a) inserts new paragraph 5A into Schedule 2 to the 2009 Order (Transitional provisions), so that the specified offences under former legislation governing the armed forces are "qualifying service offences" for the purposes of the Order.

Article 2(5)(b) amends paragraph 17 of Schedule 2 to the 2009 Order to provide for the destruction or retention of fingerprints, DNA and other samples, DNA profiles and footwear impressions taken before this Order comes into force ("legacy material"). The period for which legacy material may be retained and used is calculated in the same way as for material taken after this Order comes into force save that, where a period calculated in this way would end on a date before the end of 31st October 2013, article 2(5)(b) makes provision so that such material may be retained or used until the end of 31st October 2013.