

**EXPLANATORY MEMORANDUM TO  
THE POLICE AND CRIMINAL EVIDENCE ACT (1984)  
(ARMED FORCES) (AMENDMENT) ORDER**

**2013 No. 2554**

**1.** This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 (“the 2009 Order”) (as amended by the Police and Criminal Evidence Act 1984 (Armed Forces) (Amendment) Order 2012 (“the 2012 Order’’)). The amendments make provision in respect of the retention and destruction of fingerprints, impressions of footwear, samples and DNA profiles taken by the Service police in the course of the investigation of Service offences.

2.2 The purpose of these amendments is to make provision in respect of the retention and destruction of such material by the Service police based on that made in the Police and Criminal Evidence Act 1984 (“the 1984 Act’’) (as amended by the provisions in Chapter 1 of Part 1 of the Protection of Freedoms Act 2012 (“the 2012 Act’’)) in respect of the retention and destruction of such material by the civilian police.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 There are no matters to draw to the attention of the Joint Committee on Statutory Instruments.

**4. Legislative Context**

4.1 Part 5 of the 1984 Act is primarily concerned with the questioning and treatment of persons by the civilian police. However, section 113 of the 1984 Act (as amended by the Armed Forces Act 2006) empowers the Secretary of State to make, in relation to the investigation of offences under Armed Forces legislation, provision which is equivalent to

Part 5 (subject to modifications). The Secretary of State may do so by order in relation to the investigation of Service offences, persons arrested and charged with Service offences, persons in Service custody and persons convicted of Service offences.

4.2 The 2009 Order was made in exercise of these powers. It makes provision with respect to matters including the taking of fingerprints, impressions of footwear and samples and the destruction of such material. The 2012 Order was also made in exercise of the powers conferred by section 113 of the 1984 Act. It amended the 2009 Order by increasing from three years to four years the time limits which apply under that Order to the retention of such material.

## **5. Territorial Extent and Application**

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to Service law wherever they are in the world. It also applies to “civilians subject to service discipline”, which means persons who are not subject to Service law but who satisfy the requirements of any paragraph of Part 1 of Schedule 15 to the Armed Forces Act 2006.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 In 2008, the European Court of Human Rights held in the case of *S and Marper v UK* that section 64 of the 1984 Act was in breach of article 8 of the European Convention on Human Rights. The Court objected to the fact that section 64 provides for the indefinite retention of fingerprints and DNA samples without conviction. Before the Government was able to make long-term provision in response to the Marper judgment it was necessary on 31 October 2009 to bring into force powers for the Service police in respect of the retention of such material, as an essential part of the new, comprehensive system of Service law under the Armed Forces Act 2006 (the 2006 Act also came into force on that date).

7.2 Article 15 of the 2009 Order (as amended by the 2012 Order) follows section 64 but provides that fingerprints, impressions of footwear or samples taken after commencement of the 2009 Order from a person in connection with the investigation of a Service offence may only be held for up to four years from when they are taken, unless within that period the person is convicted of the Service offence. Under paragraph 17 of Schedule 2 to that Order (as amended by the 2012 Order), where fingerprints, impressions of footwear or samples were taken before commencement of the Order, the four-year period runs from that date. The aim of these provisions was to make interim provision which would be compliant with the Convention and would allow the Service police to retain such material until Part 5 of the 1984 Act was amended and a further Armed Forces order produced to make generally equivalent provision in respect of the Service police.

7.3 Chapter 1 of Part 1 of the 2012 Act replaces the existing framework, set out in Part 5 of the 1984 Act, whereby such material taken from a person arrested for, charged with, or convicted of, a recordable offence may be retained indefinitely. The 2012 Act received Royal Assent on 1 May 2012. Article 2 of the Protection of Freedoms Act 2012 (Commencement No 7) Order 2013 (SI 2013/1814) provides for the commencement of most provisions of Chapter 1 of Part 1 of the 2012 Act on 31 October 2013.

7.4 This instrument makes amendments to the 2009 Order to make the periods for which the Service police may retain fingerprints, impressions of footwear, samples and DNA profiles generally equivalent to those which apply to the civilian police under the 1984 Act as amended by the 2012 Act. The amendments made by Article 2(5)(b) provide that such material taken before this instrument comes into force on 31 October 2013 is subject to the same regime for destruction, retention and use as such material taken after this instrument comes into force.

## **8. Consultation outcome**

8.1 The 2009 Order was the subject of rigorous consultation with the Services and the Service police. This instrument has been the subject of further consultation with the Services and the Service police.

## **9. Guidance**

9.1 The Service Police Code of Practice, issued by the Secretary of State under Section 113(3) of the 1984 Act, provides guidance and supplementary information to Armed Forces personnel (including the Service police) regarding the retention of fingerprints, DNA samples and impressions of footwear taken by the Service police in the course of the investigation of Service offences. This Code will be updated as necessary to explain the changes made by this instrument.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This instrument will be kept under close review including in response to any work of the Home Office towards further amending Part 5 of the Police and Criminal Evidence Act 1984.

## **13. Contact**

13.1 Tracy Sexton at the Ministry of Defence, telephone 0207 218 0564 or email CLS-Sec1@mod.uk, can answer any queries regarding the instrument.