

2013 No. 2580

POLICE, ENGLAND AND WALES

**The Protection of Freedoms Act 2012 (Destruction, Retention
and Use of Biometric Data) (Transitional, Transitory and Saving
Provisions) (Amendment) Order 2013**

<i>Made</i> - - - -	<i>7th 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 25 of the Protection of Freedoms Act 2012(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) (Amendment) Order 2013.

(2) This Order shall come into force on 31st October 2013.

Amendment of the Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) Order 2013

2. The Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) Order 2013(b) is amended as follows.

3. After article 2 insert the following article—

“**2A.** Notwithstanding the insertion by section 1 of the Act of section 63D(2)(a) of the Police and Criminal Evidence Act 1984(c), any fingerprints which were taken, and any DNA profile which was derived from a sample taken, before 31st October 2013 may be retained if they were taken from a person who—

- (a) was convicted of a recordable offence (other than an excluded offence within the meaning of section 63F(11) of that Act); and
- (b) at the time the fingerprints or sample were taken, gave purported consent to them being taken.”

4. After article 5 insert the following article—

(a) 2012 c. 9.
(b) S.I. 2013/1813.
(c) Section 63D was inserted by section 1 of the Protection of Freedoms Act 2012.

“5A. In its application to PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before 31st October 2013 from a person who was liable to have material taken from him under section 63(3B) of the Police and Criminal Evidence Act 1984(a), section 18(3) of the Act has effect as if it did not insert subsection (2A) into section 65 of the Police and Criminal Evidence Act 1984.”.

Home Office
7th October 2013

Taylor of Holbeach
Parliamentary Under-Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) Order 2013 which makes provision in connection with the coming into force of Chapter 1 of Part 1 of the Protection of Freedoms Act 2012.

Article 3 inserts a new article into that order to provide that fingerprints and DNA profiles that were taken on the basis of purported consent before the coming into force of Chapter 1 of Part 1 of that Act (“legacy material”), from a person who was convicted of an offence, can be retained even if the taking of the fingerprint or DNA sample from which the DNA profile was derived was unlawful.

Article 4 inserts a new article which has effect in relation to legacy material taken from a person who was convicted of an offence and either a non-intimate sample was not taken from that person, or such a sample was taken but was not suitable for analysis or it proved insufficient. In such a case the power to take a sample if the previous sample proves insufficient as a result of its destruction can be exercised even if that previous sample was destroyed pursuant to a statutory requirement.

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(a) Section 63(3B) was inserted by section 2(7) of the Crime and Security Act 2010 (c. 17).

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