
STATUTORY INSTRUMENTS

2013 No. 1813

POLICE, ENGLAND AND WALES

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

<i>Made</i>	- - - -	<i>17th July 2013</i>
<i>Laid before Parliament</i>		<i>22nd July 2013</i>
<i>Coming into force</i>		
<i>Article 3</i>		<i>31st January 2014</i>
<i>Remainder</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(1).

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) Order 2013.

(2) This Order shall come into force on 31st October 2013 other than article 3 which shall come into force on 31st January 2014.

(3) In this Order—

- (a) “the Act” means the Protection of Freedoms Act 2012;
- (b) “law enforcement authority” has the meaning given by paragraphs (a) to (c) of the definition of that term in section 18E(1) of the Counter-Terrorism Act 2008(2).

Material taken before commencement

2. Subject to the provisions of this Order, the following provisions of the Act shall apply in respect of PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before 31st October 2013, as if the material were taken on or after that date—

- (a) sections 1 to 12;

(1) 2012 c. 9.

(2) 2008 c. 28; section 18E was inserted by paragraph 4 of Schedule 1 to the Protection of Freedoms Act 2012.

- (b) section 13 insofar as it inserts section 63Q(2) into the Police and Criminal Evidence Act 1984(3);
- (c) sections 14 to 18; and
- (d) section 22.

3. Subject to the provisions of this Order, section 13 of the Act insofar as it inserts section 63Q(1) into the Police and Criminal Evidence Act 1984 shall apply in respect of copies of fingerprints taken before 31st January 2014 as if the material were taken on or after that date.

4. In its application to PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before 31st October 2013, section 3 of the Act has effect as if—

- (a) the words “or (5)” in section 63F(3), and sections 63F(5) and 63G of the Police and Criminal Evidence Act 1984 were omitted, and
- (b) section 63F(7) to (10) applied only in a case where the retention period expired on or after 31st January 2014.

5. In its application to such material, section 14 of the Act has effect as if section 63R of the Police and Criminal Evidence Act 1984 did not apply—

- (a) to samples which are, or may become, disclosable under—
 - (i) the Criminal Procedure and Investigations Act 1996(4), or
 - (ii) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act; and
- (b) to samples which—
 - (i) were taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police, and
 - (ii) are or may be required for purposes related to the identification of a missing person.

6. In its application to PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before 31st October 2013 and identified by a law enforcement authority as material requiring consideration under section 63M of the Police and Criminal Evidence Act 1984(5), section 1 of the Act has effect as if section 63D(3) of PACE did not apply until 31st October 2015.

7. The following provisions of the Act shall apply from 31st October 2015 to material taken, held, or (in the case of a DNA profile) derived from a sample taken, under the Terrorism Act 2000(6), the Counter-Terrorism Act 2008 or the Terrorism Prevention and Investigation Measures Act 2011(7) before 31st October 2013—

- (a) paragraph 1(1) to (3) of Schedule 1 (amendment of regimes other than PACE);
- (b) paragraph 1(4) of Schedule 1 except for the purpose of the application of paragraph 20G of Schedule 8 to the Terrorism Act 2000 to samples which are, or may become, disclosable under—
 - (i) the Criminal Procedure and Investigations Act 1996, or
 - (ii) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act;
- (c) paragraph 1(5) to (8) of Schedule 1;
- (d) paragraphs 2 to 5 of Schedule 1.

(3) 1984 c. 60.

(4) 1996 c. 25; there are amendments to this Act but none is relevant.

(5) Section 63M was inserted by section 9 of the Protection of Freedoms Act 2012.

(6) 2000 c. 11.

(7) 2011 c. 23.

8. Paragraph 6 of Schedule 1 to the Act shall apply in respect of material taken, or (in the case of a DNA profile) derived from a sample taken, under the Criminal Procedure (Scotland) Act 1995⁽⁸⁾ or the Criminal Justice (Scotland) Act 2003⁽⁹⁾ before 31st October 2013 as if the material were taken on or after that date.

Transitory and saving provision

9. Until 30th September 2014, the requirement to destroy material imposed by section 63D(3) of the Police and Criminal Evidence Act 1984⁽¹⁰⁾ shall not prevent material first being recorded on the National DNA Database or on a database for the retention of fingerprints, and checked against material on that database for a period of up to 63 days from the day the material was taken.

17th July 2013

Taylor of Holbeach
Parliamentary Under Secretary of State
Home Office

⁽⁸⁾ 1995 c. 46.

⁽⁹⁾ 2003 asp 7.

⁽¹⁰⁾ Section 63D was inserted by section 1 of the Protection of Freedoms Act 2012.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional, transitory or saving provision in connection with the coming into force of Chapter 1 of Part 1 of the Protection of Freedoms Act 2012 (destruction, retention and use of biometric data).

Articles 2 to 5 provide for the destruction or retention of biometric material taken before those provisions came into force (“legacy material”). Subject to certain exceptions and transitional arrangements, legacy material is subject to the same regime for destruction, retention and use as material taken after Chapter 1 comes into force.

Article 4(a) has the effect that legacy material taken from people who have not been charged with an offence must be destroyed, and there is no process of applications to the Commissioner for the Retention and Use of Biometric Material for its retention.

Article 4(b) has the effect that applications to court to extend from 3 years to 5 years the retention period for fingerprints and DNA profiles will be available in relation to legacy material only where the retention period ends at least three months after the commencement date.

Article 5(a) has the effect that legacy samples need not be destroyed if they are, or may become, disclosable under the Criminal Procedure and Investigations Act 1996 or its attendant Code of Practice.

Article 5(b) has the effect that legacy samples need not be destroyed if they were taken consensually and are required for purposes related to the identification of a missing person.

Article 6 provides that material taken before the coming into force of Chapter 1 which has been identified as requiring consideration of whether it should be retained by virtue of a national security determination is not subject to destruction for a period of two years.

Articles 7 and 8 provide for the destruction or retention of material taken under regimes other than PACE before the coming into force of Chapter 1.

Article 9 makes transitory and saving provision which for a limited period has the effect that fingerprints and DNA profiles may be loaded onto their respective databases for 63 days, allowing for searches against those databases, before they are destroyed.