

Criminal Justice Bill

[AS INTRODUCED]

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TO

Amend the law relating to sex offender notification, sexual offences prevention orders and human trafficking and to provide for the destruction, retention, use and other regulation of certain fingerprints and DNA samples and profiles.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Sex offenders

Review of indefinite offender notification requirements

1.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.

(2) In section 82 (the notification period) at the end insert—

5 “(7) Schedule 3A (which provides for the review and discharge of indefinite notification requirements) has effect.”.

(3) After Schedule 3 insert the Schedule set out in Schedule 1 to this Act.

Ending notification requirements for acts which are no longer offences

2.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.

10 (2) In section 93 (abolished homosexual offences)—

(a) for the heading substitute “**Acts which are no longer offences**”;

(b) for “abolished homosexual offences” substitute “acts which are no longer offences”.

15 (3) In Schedule 4 (procedure for ending notification requirements for abolished homosexual offences) for the heading and paragraph 1 substitute—

“PROCEDURE FOR ENDING NOTIFICATION REQUIREMENTS
FOR ACTS WHICH ARE NO LONGER OFFENCES

Scope of Schedule

1. This Schedule applies where a relevant offender is subject to the notification requirements of this Part as a result of a conviction, finding or caution in respect of an offence under— 5

(a) section 61 of the Offences against the Person Act 1861 or Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery);

(b) section 5 of the Criminal Law Amendment Act 1885 (carnal knowledge of girl under 17); or 10

(c) section 11 of that Act (gross indecency between men).”.

(4) In Schedule 4 in paragraph 2 for sub-paragraph (1) substitute—

“(1) The relevant offender may apply to the Department of Justice for a decision as to whether it appears that, at the time of the offence, the other party to the act of buggery, carnal knowledge or gross indecency consented to the act and— 15

(a) that other party was aged 16 or over, or

(b) where an offender is subject to the notification requirements of this Part as a result of a conviction, the offender was convicted or sentenced on the basis that the offender honestly believed that other party was aged 16 or over.”. 20

(5) In Schedule 4 in paragraph 6 in sub-paragraph (2) after “buggery” (twice) insert “, carnal knowledge” and after that sub-paragraph insert—

“(3) Sub-paragraphs (1) and (2) apply, with appropriate modifications, to an offence under Part 2 of the Serious Crime Act 2007 as they apply to the offence of incitement.”. 25

Offences committed in an EEA State other than the United Kingdom

3.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.

(2) After section 96 insert— 30

“Offences committed in an EEA State other than the United Kingdom

Offences committed in an EEA State other than the United Kingdom

96A.—(1) This section applies to a person (“P”) if the following 3 conditions are met with respect to P.

(2) The first condition is that under the law in force in an EEA State other than the United Kingdom— 35

(a) P has been convicted of a relevant offence (whether or not P has been punished for it),

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that P is not guilty by reason of insanity, 40

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that P is under a disability and did the act charged against P in respect of the offence, or

(d) P has been cautioned in respect of a relevant offence.

5 (3) The second condition is that—

(a) the first condition is met because of a conviction, finding or caution which occurred on or after 1st September 1997,

10 (b) the first condition is met because of a conviction or finding which occurred before that date, but P was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it, or

15 (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date P was, in respect of the offence or finding, subject under the law in force in the State concerned to detention, supervision or any other disposal equivalent to any of those mentioned in section 81(3) (read with sections 81(6) and 131).

20 (4) The third condition is that the period set out in section 82 (as modified by subsections (6) and (7) below) in respect of the relevant offence has not expired.

(5) Where this section applies to P, P is subject to the notification requirements of this Part for the notification period set out in section 82; but the application of this Part to P in respect of the conviction, finding or caution is subject to the modifications set out below.

25 (6) The “relevant date” means—

(a) in the case where P is within subsection (2)(a), the date of the conviction;

(b) in the case where P is within subsection (2)(b) or (c), the date of the finding;

30 (c) in the case where P is within subsection (2)(d), the date of the caution.

(7) In section 82—

35 (a) references, except in the Table, to a person (or relevant offender) within any provision of section 80 are to be read as references to P;

(b) the reference in the Table to section 80(1)(d) is to be read as a reference to subsection (2)(d);

40 (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to P in respect of an offence or finding by reference to which this section applies to P;

(d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.

(8) In sections 83 and 85 references to the commencement of this Part are to be read as references to the commencement of section 3 of the Criminal Justice Act (Northern Ireland) 2012.

(9) Section 83 has effect as if after subsection (1) there were inserted—

“(1A) In the case of a person who is not ordinarily resident in Northern Ireland, in calculating the period of 3 days mentioned in subsection (1) there is to be disregarded a period of 7 days (or two or more periods in any period of 12 months taken together which amount to 7 days) after that person’s entry into Northern Ireland.”.

(10) Section 83(4) has effect as if—

(a) for the words “Where a notification order is made” there were substituted “Where a relevant offender is subject to the notification requirements of this Part by virtue of section 96A”; and

(b) in paragraph (a) for the words “the order was made” there were substituted “he became a person to whom section 96A applies”.

(11) In this section “relevant offence” means an act which—

(a) constituted an offence under the law in force in the State concerned, and

(b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) if it had been done in any part of the United Kingdom;

and for the purposes of this subsection an act punishable under the law in force in an EEA State other than the United Kingdom constitutes an offence under that law however it is described in that law.”.

(3) In section 97(2) (conditions for application for notification order) for “outside the United Kingdom” substitute “which is not an EEA State”.

(4) The amendment made by subsection (3) does not affect the validity or effect of any order made under section 97 of the Sexual Offences Act 2003 before the coming into operation of this section or the application of Part 2 of that Act to any person in respect of whom such an order was so made.

(5) In section 133(1) (general interpretation) in the definition of “relevant date” after “sections” insert “96A(6),”.

Sexual offences prevention orders

4.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.

(2) Section 107 (effect of sexual offences prevention orders)—

(a) in subsection (1)(a) after “order” insert “or requires the defendant to do anything described in the order (or both)”; and

(b) in subsection (2) after “prohibitions” insert “or requirements”.

(3) In section 108(5) (renewal or variation of order) after “prohibitions” (wherever occurring) insert “or requirements”.

(4) In section 109 (interim orders)—

- (a) in subsection (3) at the end insert “or requiring the defendant to do anything described in the order (or both)”;
- (b) in subsection (5) for “Section 107(3)” substitute “Section 107(2)”.

(5) In section 113 (offences) after subsection (1) insert—

5 “(1A) A person commits an offence if, without reasonable excuse, he fails to do anything which he is required to do by a sexual offences prevention order or an interim sexual offences prevention order.”.

Trafficking people for exploitation

Trafficking people for sexual exploitation

10 **5.**—(1) After section 58 of the Sexual Offences Act 2003 insert—

“Trafficking outside the UK for sexual exploitation

58A.—(1) A person to whom this section applies commits an offence if—

- (a) the person intentionally arranges or facilitates—
 - 15 (i) the arrival in, or entry into, a country other than the United Kingdom of another person (B),
 - (ii) the departure of B from a country other than the United Kingdom, or
 - 20 (iii) the travel of B within a country other than the United Kingdom, and
 - (b) that person either—
 - (i) intends to do anything to or in respect of B, after B’s arrival, entry or departure or (as the case may be) during or after the journey but in any part of the world, which if done will involve the commission of a relevant offence, or
 - 25 (ii) believes that another person is likely to do something to or in respect of B, after B’s arrival, entry or departure or (as the case may be) during or after the journey but in any part of the world, which if done will involve the commission of a relevant offence.
- (2) This section applies to—
- (a) a British citizen,
 - (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom,
 - 35 (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar,
 - (d) a person who at the time of the offence was habitually resident in Northern Ireland, and
 - 40 (e) a body incorporated under the law of a part of the United Kingdom.

- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.”. 5
- (2) In section 60(1) of that Act (“relevant offence”) omit paragraph (c).
- (3) In the Criminal Justice (Northern Ireland) Order 2008—
 - (a) in Schedule 1 (serious offences) in paragraph 28 after the entry relating to section 58 insert—
“section 58A (trafficking outside the UK for sexual exploitation), or”; 10
 - (b) in Part 2 of Schedule 2 (sentencing of dangerous offenders: specified sexual offences), in paragraph 13 after the entry relating to section 58 insert—
“section 58A (trafficking outside the UK for sexual exploitation),”.

Trafficking people for other exploitation 15

6.—(1) Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation) is amended as follows.

(2) In subsection (2) omit the words “in respect of whom he believes that an offence under subsection (1) may have been committed”.

(3) After subsection (3) insert— 20

“(3A) A person to whom this subsection applies commits an offence if—

- (a) in relation to an individual (“the passenger”), that person arranges or facilitates—
 - (i) the arrival in, or entry into, a country other than the United Kingdom of the passenger, 25
 - (ii) travel by the passenger within a country other than the United Kingdom, or
 - (iii) the departure of the passenger from a country other than the United Kingdom, and 30
- (b) that person—
 - (i) intends to exploit the passenger, or
 - (ii) believes that another person is likely to exploit the passenger, wherever the exploitation is to occur.”.

(4) In subsection (4) for paragraph (b) substitute— 35

- “(b) he is encouraged, required or expected to do anything—
- (i) as a result of which he or another person would commit an offence under section 32 or 33 of the Human Tissue Act 2004 as it extends to Northern Ireland; or
 - (ii) which, were it done in Northern Ireland, would constitute an offence within sub-paragraph (i),”.
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(5) After subsection (4) insert—

“(4A) Subsections (1) to (3A) apply to anything done whether inside or outside the United Kingdom.

(4B) Subsection (3A) applies to—

- 5 (a) a British citizen,
(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom,
10 (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar,
(d) a person who at the time of the offence was habitually resident in Northern Ireland, and
(e) a body incorporated under the law of a part of the United Kingdom.”.

15 *Retention of fingerprints, DNA profiles, etc.*

Retention of fingerprints, DNA profiles, etc.

7.—(1) After Article 63A of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert the Articles set out in Schedule 2.

20 (2) The statutory provisions set out in Schedule 3 have effect subject to the minor and consequential amendments specified in that Schedule.

(3) The Department of Justice must by order make such transitional, transitory or saving provision as that Department considers appropriate in connection with the coming into operation of this section and the repeals in Part 2 of Schedule 4.

25 (4) That Department must, in particular, provide for the destruction or retention of PACE material taken, or (in the case of a DNA profile) derived from a sample taken, before the commencement day in connection with the investigation of an offence.

(5) An order under subsection (3) is subject to negative resolution.

(6) In this section—

30 “the commencement day” means the day on which this section comes into operation;

35 “PACE material” means material that would have been material to which Article 63B or 63M of the Police and Criminal Evidence (Northern Ireland) Order 1989 applied if those provisions had been in operation when it was taken or derived.

Supplementary

Repeals

8. The statutory provisions set out in Schedule 4 are repealed to the extent specified in the second column of that Schedule.

Commencement and transitional, etc. provisions

9.—(1) This section and sections 2 and 10 come into operation on the day after Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department of Justice may by order appoint. 5

(3) An order under subsection (2) may contain such transitional or saving provisions as the Department of Justice thinks appropriate.

(4) Subsection (3) does not apply in relation to an order bringing section 7 or the repeals in Part 2 of Schedule 4 into operation (as to which see section 7(3)).

Short title

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10. This Act may be cited as the Criminal Justice Act (Northern Ireland) 2012.

SCHEDULES

SCHEDULE 1

Section 1.

SCHEDULE 3A TO THE SEXUAL OFFENCES ACT 2003, AS INSERTED

“SCHEDULE 3A

5 REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS

Introductory

1. —(1) This Schedule applies to a person who, on or after the date on which section 1 of the Criminal Justice Act (Northern Ireland) 2012 comes into operation, is subject to the notification requirements for an indefinite period.

(2) A person to whom this Schedule applies is referred to in this Schedule as “an offender”.

(3) In this Schedule—

“risk of sexual harm” means a risk of physical or psychological harm to the public or any particular members of the public caused by an offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

“the notification requirements” means the notification requirements of Part 2 of this Act;

“relevant event”, in relation to an offender, is a conviction, finding or notification order which made the offender subject to the notification requirements for an indefinite period.

Initial review: applications

2. —(1) Except as provided by sub-paragraph (2), an offender may, at any time after the end of the initial review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

(a) the offender is also subject to a sexual offences prevention order or an interim sexual offences prevention order; or

(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) Subject to sub-paragraph (4), the initial review period is—

(a) in the case of an offender under the age of 18 at the date of the relevant event, 8 years beginning with the date of initial notification;

(b) in the case of any other offender, 15 years beginning with the date of initial notification.

- (4) In calculating the initial review period—
- (a) in a case where an offender is subject to the notification requirements for an indefinite period as a result of two or more relevant events, the calculation is to be made by reference to the later or latest of those events; 5
 - (b) in any case, there is to be disregarded any period during which the offender is, in connection with a relevant event—
 - (i) remanded in, or committed to, custody by an order of a court;
 - (ii) in custody serving a sentence of imprisonment or detention; or
 - (iii) detained in a hospital. 10
- (5) The date of initial notification is—
- (a) in the case of an offender who is subject to the notification requirements for an indefinite period by virtue of section 81, the date by which the offender was required to give notification under section 2(1) of the Sex Offenders Act 1997; 15
 - (b) in the case of any other offender, the date by which the offender is required to give notification under section 83(1) (or would be so required but for the fact that the offender falls within an exception in section 83(2) or (4)).
- (6) An application under this paragraph must be in writing and must include— 20
- (a) the name, address and date of birth of the offender;
 - (b) the name and address of the offender at the date of each relevant event (if different);
 - (c) the date of each relevant event, and (where a relevant event is a conviction or finding) the court by or before which the conviction or finding occurred; 25
 - (d) any information which the offender wishes to be taken into account by the Chief Constable in determining the application.
- (7) The Chief Constable must, within 14 days of the receipt of an application under this paragraph, give an acknowledgement of the receipt of the application to the offender. 30
- (8) The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate. 35

Initial review: determination of application

- 3.—(1) On an application under paragraph 2 the Chief Constable shall discharge the notification requirements unless the Chief Constable is satisfied—
- (a) that the offender poses a risk of sexual harm; and 40
 - (b) that the risk is such as to justify the notification requirements continuing in the interests of the prevention or investigation of crime or the protection of the public.

(2) In deciding whether that is the case, the Chief Constable must take into account—

- (a) the seriousness of the offence or offences—
 - (i) of which the offender was convicted,
 - 5 (ii) of which the offender was found not guilty by reason of insanity,
 - (iii) in respect of which the offender was found to be under a disability and to have done the act charged, or
 - 10 (iv) in respect of which (being relevant offences within the meaning of section 99) the notification order was made, and which made the offender subject to the notification requirements for an indefinite period;
- (b) the period of time which has elapsed since the offender committed the offence or offences;
- 15 (c) whether the offender has committed any offence under section 3 of the Sex Offenders Act 1997 or under section 91 of this Act;
- (d) the age of the offender at the time of the decision;
- (e) the age of the offender at the time any offence referred to in subparagraph (a) was committed;
- 20 (f) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the offender at the time any such offence was committed;
- (g) any convictions or findings made by a court (including a court in England and Wales or Scotland or a country outside the United Kingdom) in respect of the offender for any other offence listed in Schedule 3;
- 25 (h) any caution which the offender has received for an offence (including an offence in England and Wales or Scotland or a country outside the United Kingdom) which is listed in Schedule 3;
- 30 (i) any convictions or findings made by a court (including a court in England and Wales, Scotland or a country outside the United Kingdom) in respect of the offender for any offence listed in Schedule 5 where the behaviour of the offender since the date of the conviction or finding indicates a risk of sexual harm;
- 35 (j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the offender but have not concluded;
- (k) any assessment of the risk of sexual harm posed by the offender which has been made by any of the agencies mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008 (risk assessment and management);
- 40 (l) any information presented by or on behalf of the offender;
- 45 (m) any other information relating to the risk of sexual harm posed by the offender; and

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(n) any other matter which the Chief Constable considers to be appropriate.

(3) In sub-paragraph (2) a reference to a conviction, finding or caution for an offence listed in Schedule 3 or 5 committed in a country outside the United Kingdom is a reference to a conviction, finding or caution in respect of an act which— 5

(a) constituted an offence under the law in force in the country concerned; and

(b) would have constituted an offence listed in Schedule 3 or (as the case may be) Schedule 5 if it had been done in any part of the United Kingdom. 10

(4) The functions of the Chief Constable under this paragraph may not be delegated by the Chief Constable except to a police officer not below the rank of superintendent.

Initial review: notice of decision 15

4.—(1) The Chief Constable must, within 12 weeks of the date on which an application under paragraph 2 is received, comply with this paragraph.

(2) If the Chief Constable discharges the notification requirements—

(a) the Chief Constable must serve notice of that fact on the offender, and 20

(b) the offender ceases to be subject to the notification requirements on the date of service of the notice.

(3) If the Chief Constable decides not to discharge the notification requirements— 25

(a) the Chief Constable must serve notice of that decision on the offender; and

(b) the notice must—

(i) state the reasons for the decision; and

(ii) state the effect of paragraphs 5 and 6. 30

Initial review: application to Crown Court

5.—(1) Where—

(a) the Chief Constable fails to comply with paragraph 4 within the period specified in paragraph 4(1), or

(b) the Chief Constable serves a notice under paragraph 4(3), 35

the offender may apply to the Crown Court for an order discharging the offender from the notification requirements.

(2) An application under this paragraph must be made within the period of 21 days beginning—

(a) in the case of an application under sub-paragraph (1)(a), on the expiry of the period mentioned in paragraph 4(1); 40

(b) in the case of an application under sub-paragraph (1)(b), with the date of service of the notice under paragraph 4(3).

5 (3) Paragraph 3 applies in relation to an application under this paragraph as it applies to an application under paragraph 2, but as if references to the Chief Constable were references to the Crown Court.

(4) The Chief Constable and the offender may appear or be represented at any hearing in respect of an application under this paragraph.

10 (5) If on an application under this paragraph the Crown Court makes an order discharging the offender from the notification requirements, the appropriate officer of the Crown Court must send a copy of the order to the offender and the Chief Constable.

15 (6) If on an application under this paragraph the Crown Court refuses to make an order discharging the offender, the appropriate officer of the Crown Court must send notice of that refusal to the offender and the Chief Constable.

Further reviews

20 6.—(1) Except as provided by sub-paragraph (2), where a notice is served on an offender under paragraph 4(3) or 5(6), the offender may, at any time after the end of the further review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

- 25 (a) the offender is also subject to a sexual offences prevention order or an interim sexual offences prevention order; or
(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) The further review period is—

- 30 (a) in the case of an offender under the age of 18 at the date of the relevant event, the period of 4 years beginning with the date of service of the notice (or the last notice) served on the offender under paragraph 4(3) or 5(6);
(b) in the case of any other offender, the period of 8 years beginning with that date.

35 (4) Paragraphs 2(6) to (8), 3, 4 and 5 apply with appropriate modifications in relation to an application under this paragraph as they apply in relation to an application under paragraph 2; and a reference in this Schedule to a provision of paragraph 4 or 5 includes a reference to that provision as applied by this sub-paragraph.

Guidance

40 7.—(1) The Department of Justice must issue guidance as to—

- (a) the making of applications under paragraph 2 or 6; and
(b) the determination by the Chief Constable of such applications.

(2) The Department of Justice may, from time to time, revise the guidance issued under sub-paragraph (1).

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(3) The Department of Justice must arrange for any guidance issued or revised under this paragraph to be published in such manner as it considers appropriate.

Discharge in Great Britain

8.—(1) An offender who is, under corresponding legislation, discharged from the notification requirements by a court, person or body in England and Wales or Scotland is, by virtue of the discharge, also discharged from the notification requirements as they apply in Northern Ireland. 5

(2) In sub-paragraph (1) “corresponding legislation” means legislation which makes provision corresponding to that made by this Schedule for an offender who is subject to the notification requirements (as they apply in England and Wales or, as the case may be, Scotland) for an indefinite period to be discharged from those notification requirements.”. 10

Section 7.

SCHEDULE 2

15

ARTICLES 63B TO 63O OF THE POLICE AND CRIMINAL EVIDENCE
(NORTHERN IRELAND) ORDER 1989, AS INSERTED

“Destruction of fingerprints and DNA profiles: basic rule

63B.—(1) This Article applies to—

(a) fingerprints— 20

- (i) taken from a person under any power conferred by this Part, or
- (ii) 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

(b) a DNA profile derived from a DNA sample taken as mentioned in sub-paragraph (a)(i) or (ii). 25

(2) Fingerprints and DNA profiles to which this Article applies (“Article 63B material”) must be destroyed unless the material is retained under any power conferred by Articles 63C to 63J (including those Articles as applied by Article 63K). 30

(3) In addition, Article 63B material must be destroyed if—

(a) it is not being retained under the power conferred by Article 63C; and

(b) it appears to the Chief Constable that—

(i) the taking of the fingerprints or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or 35

(ii) the fingerprints were 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. 40

(4) Article 63B material which ceases to be retained under a power mentioned in paragraph (2) may continue to be retained under any other such power which applies to it.

5 (5) Nothing in this Article prevents a speculative search, in relation to Article 63B material, from being carried out within such time as may reasonably be required for the search if the Chief Constable considers the search to be desirable.

Retention of Article 63B material pending investigation or proceedings

10 63C.—(1) This Article applies to Article 63B 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.

15 (2) The material may be retained until the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against any person for the offence, until the conclusion of those proceedings .

Retention of Article 63B material: persons arrested for or charged with a qualifying offence

20 63D.—(1) This Article applies to Article 63B 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.

25 (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.

30 (3) Otherwise, material falling within paragraph (4) or (5) may be retained until the end of the retention period specified in paragraph (6).

(4) Material falls within this paragraph 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 paragraph 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,
- (c) any prescribed circumstances apply, and

- (d) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under paragraph (13) 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, 5
 - (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). 10
- (7) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the retention period.
- (8) An application for an order under paragraph (7) must be made within the period of 3 months ending on the last day of the retention period. 15
- (9) An order under paragraph (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. 20
- (10) The following persons may appeal to the county court against an order under paragraph (7), or a refusal to make such an order—
- (a) the Chief Constable;
 - (b) the person from whom the material was taken. 25
- (11) The Department of Justice must appoint a Commissioner to be known as the Northern Ireland Commissioner for the Retention of Biometric Material.
- (12) The Commissioner is to hold office in accordance with the terms of the Commissioner's appointment; and the Department of Justice may— 30
- (a) pay in respect of the Commissioner any expenses, remuneration or allowances that the Department may determine; and
 - (b) after consultation with the Commissioner, provide the Commissioner with such staff, accommodation, equipment and other facilities as the Department considers necessary for the carrying out of the Commissioner's functions. 35
- (13) The Commissioner may, on an application made by the Chief Constable, consent to the retention of material which falls within paragraph (5)(a), (b) and (c) if the Commissioner considers that it is appropriate to retain the material; and an order under paragraph (5)(c) may, in particular, make provision about the procedure to be followed in relation to any application to the Commissioner under this paragraph. 40
- (14) In this Article—

“custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008;

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

- 5 (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
- 10 (b) for which the person was not given a custodial sentence of 5 years or more;

“prescribed” means prescribed by order made by the Department of Justice.

Retention of Article 63B material: persons arrested for or charged with a minor offence

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63E.—(1) This Article applies to Article 63B 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
- 20
- (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.
- 25

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

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(3) In this Article “excluded offence” has the meaning given by Article 63D(14).

Retention of Article 63B material: persons convicted of a recordable offence

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63F.—(1) Subject to paragraph (3), this Article applies to—

- (a) Article 63B 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
- 40

(b) material taken under Article 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 Article does not apply to Article 63B material to which Article 63H applies.

5

Retention of Article 63B material: persons convicted of an offence outside Northern Ireland

63G.—(1) This Article applies to material falling within paragraph (2) relating to a person who is convicted of an offence under the law of any country or territory outside Northern Ireland.

10

(2) Material falls within this paragraph if it is—

(a) fingerprints taken from the person under Article 61(6D) (power to take fingerprints without consent in relation to offences outside Northern Ireland), or

(b) a DNA profile derived from a DNA sample taken from the person under Article 62(2A) or 63(3D) (powers to take intimate and non-intimate samples in relation to offences outside Northern Ireland).

15

(3) The material may be retained indefinitely.

Retention of Article 63B material: exception for persons under 18 convicted of first minor offence

20

63H.—(1) This Article applies to Article 63B 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

25

(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 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.

30

(3) Where the person is given a 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 custodial sentence in respect of the offence, the material may be retained until—

35

(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

40

(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 “custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008; and for the purposes of paragraph (2) “the term of the sentence” is—

(a) in the case of a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998, the period for which the person is detained under the order,

(b) in the case of a custody care order under Article 44A of that Order, the period for which the person is kept in secure accommodation under the order.

Retention of Article 63B material given voluntarily

63I.—(1) This Article applies to the following Article 63B 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 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 63B material with consent

63J.—(1) This Article applies to the following material—

(a) fingerprints (other than fingerprints taken under Article 61(6A)) to which Article 63B applies; and

(b) a DNA profile to which Article 63B 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 63B material obtained for one purpose and used for another

63K.—(1) Paragraph (2) applies if Article 63B 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. 5

(2) Articles 63C to 63J and Articles 63L and 63N have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from a sample taken) in connection with the investigation of the offence in respect of which the person is arrested or charged. 10

Destruction of copies

63L.—(1) If fingerprints are required by Article 63B 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 Article 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. 15

Destruction of samples

63M.—(1) This Article applies to samples—

- (a) taken from a person under any power conferred by this Part, or 20
- (b) 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.

(2) 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 25
- (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(3) 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. 30

(4) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order to retain a sample to which this Article applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3) if—

- (a) the sample was taken from a person in connection with the investigation of a qualifying offence, and 35
- (b) the Chief Constable considers that the condition in paragraph (5) is met.

(5) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of— 40

- (a) disclosure to, or use by, a defendant, or

(b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely .

5 (6) An application under paragraph (4) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3).

10 (7) If, on an application made by the Chief Constable under paragraph (4), the District Judge (Magistrates' Courts) is satisfied that the condition in paragraph (5) is met, the District Judge may make an order under this paragraph which—

(a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3), and

15 (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.

(8) An application for an order under paragraph (7) (other than an application for renewal)—

20 (a) may be made without notice of the application having been given to the person from whom the sample was taken, and

(b) may be heard and determined in private in the absence of that person.

25 (9) A sample retained by virtue of an order under paragraph (7) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(10) A sample that ceases to be retained by virtue of an order under paragraph (7) must be destroyed.

30 (11) 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 the Chief Constable considers the search to be desirable.

Use of retained material

63N.—(1) Any material to which Article 63B or 63M applies must not be used other than—

35 (a) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or

(b) for purposes related to the identification of a deceased person or of the person to whom the material relates.

40 (2) Material which is required by Article 63B or 63M 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.

(3) 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 Northern Ireland or of any country or territory outside Northern Ireland), or
 - (ii) is, or corresponds to, any conduct which, if it all took place in Northern Ireland, 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 Northern Ireland of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Northern Ireland.

Exclusion for certain regimes

63O.—(1) Articles 63B to 63N do not apply to material to which paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 (destruction, retention and use of material taken from terrorist suspects) apply.

(2) Any reference in those Articles to a person being arrested for, or charged with, an offence does not include a reference to a person—

- (a) being arrested under section 41 of that Act, or
- (b) being charged with an offence following an arrest under that section.

(3) Sections 63B to 63N do not apply to material to which paragraph 8 of Schedule 4 to the International Criminal Court Act 2001 (requirement to destroy material) applies.

(4) Sections 63B to 63N do not apply to material to which paragraph 6 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (requirement to destroy material) applies.

(5) Articles 63B to 63L and 63N do not apply to material which is, or may become, disclosable under—

- (a) the Criminal Procedure and Investigations Act 1996; or
- (b) 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.

(6) Articles 63B to 63N do not apply to material which—

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

(7) Nothing in Articles 63B to 63N affects any power conferred by—

- (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take reasonable steps to identify a person detained), or

(b) section 20 of the Immigration and Asylum Act 1999 (disclosure of police information to the Secretary of State for use for immigration purposes).”.

SCHEDULE 3

5 AMENDMENTS: FINGERPRINTS, DNA PROFILES, ETC.

The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

1.—(1) Article 53 (interpretation of Part 6) is amended as follows.

(2) In paragraph (1) at the appropriate places in alphabetical order insert—

10 ““Article 63B material” means fingerprints or DNA profiles to which Article 63B applies;

“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;”.

(3) After paragraph (3) insert—

15 “(3A) In paragraph (3) the reference to the destruction of a sample does not include a reference to the destruction of a sample under Article 63M (requirement to destroy samples).

20 (3B) Any reference in Articles 63D, 63E, 63K or 63O to a person being charged with an offence includes a reference to a person being informed that the person will be reported for an offence.”.

2. In Article 53A(2) (list of “qualifying offences” for the purposes of Part 6) in sub-paragraph (h) (offences under the Theft Act (Northern Ireland) 1969) for “section 9” substitute “section 8, 9”.

3. After Article 53A insert—

25 **“Persons convicted of an offence**

53B.—(1) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to—

30 (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 found not guilty of the offence by reason of insanity, or

(c) a person who has been found to be under a disability and to have done the act charged in respect of the offence.

35 (2) This Part, so far as it relates to persons convicted of an offence, has effect despite anything in the Rehabilitation of Offenders (Northern Ireland) Order 1978.

40 (3) 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 63D, 63E and 63I whether the person has been convicted of only one offence.

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(4) See also Article 53(4) (which deals with findings equivalent to those mentioned in paragraph (1)(b) or (c) by courts which exercise jurisdiction under the laws of countries or territories outside Northern Ireland).”

4. In Article 63 (non-intimate samples), in paragraph (3A)(c)(i) (as amended by section 8 of the Crime and Security Act 2010) for “64ZA” substitute “63M”. 5

5. In Article 89(2) (orders subject to negative resolution) after “60A” insert “, 63D(5)(c)”.

The Counter-Terrorism Act 2008 (c. 28)

6. In section 18(8)(b) for “63A and 64” substitute “and 63A to 63O”.

The Protection of Freedoms Act 2012 (c. 9) 10

7.—(1) In Part 6 of Schedule 1 paragraph 7 is amended as follows.

(2) In sub-paragraph (1) for “Article 64” (in both places) substitute “Article 63B”.

(3) In sub-paragraph (2) for paragraphs (a) and (b) substitute “the material may be retained”. 15

Section 8.

SCHEDULE 4

REPEALS

PART 1

HUMAN TRAFFICKING

Short Title	Extent of repeal	
The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	In section 4(2) the words “in respect of whom he believes that an offence under subsection (1) may have been committed”.	20
	Section 5(1).	25
The Sexual Offences Act 2003 (c. 42)	Section 60(1)(c).	
The Human Tissue Act 2004 (c. 30)	In Schedule 6, paragraph 7.	
The UK Borders Act 2007 (c. 30)	Section 31(2).	30
The Criminal Justice (Northern Ireland) Order 2008 (NI 1)	In Schedule 1, in paragraph 28, in the entry relating to section 58, the word “or” at the end of the entry.	

PART 2

FINGERPRINTS, DNA PROFILES, ETC.

	Short Title	Extent of repeal
5	The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)	Article 64.
10	The Police (Amendment) (Northern Ireland) Order 1995 (NI 17)	Article 13.
	The Criminal Justice and Police Act 2001 (c. 16)	Section 83. Section 138(10).
15	The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (NI 2)	Article 35.
	The Counter-Terrorism Act 2008 (c. 28)	Section 15(4) to (6).
20	The Crime and Security Act 2010 (c. 17)	Section 15. Section 22. Section 58(5).