



# Criminal Justice Act (Northern Ireland) 2013

CHAPTER 7

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## CHAPTER 7

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**SCHEDULES:**

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# Criminal Justice Act (Northern Ireland) 2013

## 2013 CHAPTER 7

An Act to amend the law relating to sex offender notification, sexual offences prevention orders and human trafficking; to provide for the destruction, retention, use and other regulation of certain fingerprints and DNA samples and profiles; to provide for the release on licence of persons detained under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998; to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999; to abolish the common law offence of scandalising the judiciary; and to permit criminal proceedings on Sunday at certain times. [25th April 2013]

**B**E 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—

“(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.

#### **Notification requirements: absence from notified residence**

- 2.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.
- (2) After section 85 insert—

##### **“Notification requirements: absence from notified residence**

85A.—(1) This section applies to a relevant offender at any time if the last home address notified by him under section 83(1), 84(1) or 85(1) was an address in Northern Ireland such as is mentioned in section 83(7)(a) (sole or main residence).

(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days (“the relevant period”), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is—

- (a) the date on which the relevant offender will leave that home address;
- (b) such details as the relevant offender holds about—
  - (i) his travel arrangements during the relevant period;
  - (ii) his accommodation arrangements during that period;
  - (iii) his date of return to that home address.

(4) In this section—

“travel arrangements” include, in particular, details of the means of transport to be used and the dates of travel,

“accommodation arrangements” include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

(5) Where—

- (a) a relevant offender has given a notification under subsection (2), and
- (b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete,

the relevant offender must give a further notification under subsection (2).

(6) Where a relevant offender—

- (a) has notified a date of return to his home address, but
- (b) returns to his home address on a date other than that notified,

the relevant offender must notify the date of his actual return to the police within 3 days of his actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 86.

(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

- (a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 83(5)(g) notified to the police under section 83 or 85;
- (b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 84(1)(c).

(9) This section applies in relation to any relevant period which begins on or after the day after the coming into operation of section 2 of the Criminal Justice Act (Northern Ireland) 2013.”.

(3) In section 87(1) and (4) (method of notification) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

(4) In section 91 (offences)—

(a) in subsection (1)(a) after “85(1)” insert “, 85A(2) or (6)”;

(b) in subsection (1)(b) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”;

(c) in subsection (3) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

### **Ending notification requirements for acts which are no longer offences**

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

(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”.

(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—

(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

(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—

(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.”.

(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.”.

### **Offences committed in a country outside the United Kingdom**

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

(2) After section 96 insert—

*“Offences committed in a country outside the United Kingdom*

### **Offences committed in a country outside 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 a country outside the United Kingdom—

- (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,
- (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.

(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,
- (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
- (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 country 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).

(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—

- (a) in all cases, to the modifications set out below; and

- (b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 96AA.
- (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;
  - (c) in the case where P is within subsection (2)(d), the date of the caution.
- (7) In section 82—
- (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);
  - (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 4 of the Criminal Justice Act (Northern Ireland) 2013.
- (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 country 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 a country outside the United Kingdom constitutes an offence under that law however it is described in that law.

**Convictions, etc. in a country which is not a member of the Council of Europe**

96AA.—(1) The further provisions referred to in section 96A(5)(b) are as follows.

(2) Where P is charged with an offence under section 91(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).

(3) P shall cease to be subject to the notification requirements of this Part by virtue of section 96A if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).

(4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied—

- (a) that any investigations or proceedings leading to it were conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the United Kingdom; and
- (b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 96A(2).

(5) In this section—

“the relevant conviction, finding or caution” means the conviction, finding or caution by reason of which P is subject, by virtue of section 96A, to the notification requirements of this Part;

“the relevant court” means—

- (a) in a case to which subsection (2) applies, the court before which P is charged;
- (b) in a case to which subsection (3) applies, the High Court.”.

(3) Omit sections 97 to 101 (notification orders).

(4) Subsection (3) (and the related repeals in Part 1 of Schedule 4) do not affect the validity or effect of any order made under section 97 or 100 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” for “98” substitute “96A(6)”.

**Sexual offences prevention orders**

- 5.—(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)”; and
- (b) in subsection (5) for “Section 107(3)” substitute “Section 107(2)”.
- (5) In section 113 (offences) after subsection (1) insert—
- “(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**

- 6.—(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—
- (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
- (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
- (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,
- (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.

(3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.”.

(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”;

- (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**

7.—(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—

“(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,
  - (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
- (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—

“(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).”.

(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—

- (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,
- (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.”.

### **Trafficking offences to be triable only on indictment**

**8.**—(1) In section 57(2) of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation) omit paragraph (a).

(2) In section 58(2) of that Act (trafficking within the UK for sexual exploitation) omit paragraph (a).

(3) In section 59(2) of that Act (trafficking out of the UK for sexual exploitation) omit paragraph (a).

(4) In section 4(5) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation) omit paragraph (b).

(5) This section does not apply in relation to an offence committed before this section comes into operation.

*Retention of fingerprints, DNA profiles, etc.*

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

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

(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 3 of Schedule 4.

(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—

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

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

*Release on licence of child convicted of serious offence*

**Release on licence of child convicted of serious offence**

**10.**—(1) In Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (child convicted of serious offence) for “notwithstanding any other provisions of this Order” substitute “subject to Articles 46 to 46B”.

(2) In Article 45 of that Order after paragraph (2) insert—

“(2A) Where a court passes a sentence under paragraph (2), the court shall specify such part of the sentence as the court considers appropriate as the relevant part of the sentence for the purposes of Article 46 (release on licence).”.

(3) For Article 46 of that Order substitute—

**“Release on licence**

46.—(1) In this Article—

- (a) “P” means a person detained under Article 45(2);
- (b) “the Commissioners” means the Parole Commissioners for Northern Ireland;
- (c) “the Department” means the Department of Justice; and
- (d) references to the relevant part of P’s sentence are references to the part of P’s sentence specified as such under Article 45(2A).

(2) As soon as—

- (a) P has served the relevant part of P’s sentence, and
- (b) the Commissioners have directed P’s release under this Article,

the Department shall release P on licence.

(3) The Commissioners shall not give a direction under paragraph (2) with respect to P unless—

- (a) the Department has referred P’s case to the Commissioners; and
- (b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(4) P may require the Department to refer P's case to the Commissioners at any time—

- (a) after P has served the relevant part of P's sentence; and
- (b) where there has been a previous reference of P's case to the Commissioners under paragraph (3) or Article 46B(4), after the end of the period of 12 months beginning with the disposal of that reference.

(5) In determining for the purposes of this Article whether P has served the relevant part of P's sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Department otherwise directs.

(6) The Department may at any time release P on licence if it is satisfied that exceptional circumstances exist which justify P's release on compassionate grounds.

(7) Before releasing P under paragraph (6), the Department shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.

(8) Nothing in this Article requires the Department to release a person in respect of a sentence under Article 45(2) at any time when that person is liable to be detained in respect of any other sentence.

#### **Duration and conditions of licences under Article 46**

46A.—(1) Where a person is released on licence under Article 46, the licence shall, unless previously revoked under Article 46B, remain in force until the expiry of the period for which the person was sentenced to be detained.

(2) A person released on licence under Article 46 shall comply with such conditions as may for the time being be specified in the licence (which may include on release conditions as to supervision by a probation officer).

(3) The Department of Justice shall not, except in accordance with recommendations of the Parole Commissioners for Northern Ireland—

- (a) include a condition in a licence on release,
- (b) subsequently insert a condition in a licence, or
- (c) vary or cancel any condition in a licence.

#### **Recall of licensees**

46B.—(1) In this Article —

“P” means a person who has been released on licence under Article 46;

“the Commissioners” and “the Department” have the meanings given in Article 46(1).

(2) The Department may revoke P's licence and recall P to detention—

- (a) if recommended to do so by the Commissioners, or

(b) without such a recommendation, if it appears to the Department that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

(a) shall, on P's return to detention, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and

(b) may make representations in writing to the Department with respect to the recall.

(4) The Department shall refer P's case to the Commissioners.

(5) Where on a reference under paragraph (4) the Commissioners direct P's immediate release on licence under Article 46, the Department shall give effect to the direction.

(6) The Commissioners shall not give a direction under paragraph (5) unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(7) On the revocation of P's licence, P shall be liable to be detained in pursuance of P's sentence and, if at large, shall be treated as being unlawfully at large.”.

(4) In Article 46(3) of the Criminal Justice (Northern Ireland) Order 2008 (functions of Parole Commissioners for Northern Ireland) at the end add “or Articles 46 to 46B of the Criminal Justice (Children) (Northern Ireland) Order 1998.”

(5) Where—

(a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order, and

(b) the Department, after consultation with the Lord Chief Justice and the trial judge if available, certifies its opinion that, if the amendments made by this section had been in operation at the time when that person was sentenced, the court by which that person was sentenced would have specified as the relevant part of the sentence such part as is specified in the certificate,

Article 46 of the 1998 Order (as substituted) shall apply as if the relevant part of that person's sentence for the purposes of that Article were the part specified in the certificate.

(6) But subsection (5) does not apply (and subsection (7) applies instead) where that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.

(7) Where this subsection applies, paragraphs (3) to (6) of Article 46B of the 1998 Order have effect as if that person had been recalled to prison under paragraph (2) of that Article on commencement.

(8) Articles 46A and 46B of the 1998 Order apply to an existing licensee as they apply to a person who is released on licence under Article 46 of that Order (as substituted).

(9) In this section—

- “commencement” means the date on which this section comes into operation;
- “existing licensee” means a person who, before commencement, has been discharged on licence under Article 46 of the 1998 Order and whose licence is in force on commencement;
- “the 1998 Order” means the Criminal Justice (Children) (Northern Ireland) Order 1998.

*Examination of accused through intermediary*

**Examination of accused through intermediary**

**11.**—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) At the beginning of paragraph (2) insert “Subject to paragraph (2A),”.

(3) After paragraph (2) insert—

“(2A) A court may not give a direction under paragraph (3) unless—

- (a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court; and
- (b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn.”.

*Abolition of scandalising the judiciary as form of contempt of court*

**Abolition of scandalising the judiciary as form of contempt of court**

**12.**—(1) Scandalising the judiciary (also referred to as scandalising the court or scandalising judges) is abolished as a form of contempt of court under the common law.

(2) That abolition does not prevent proceedings for contempt of court being brought against a person for conduct that immediately before that abolition would have constituted both scandalising the judiciary and some other form of contempt of court.

*Criminal proceedings on Sunday*

**Criminal proceedings on Sunday**

**13.**—(1) Section 7 of the Sunday Observance Act (Ireland) 1695 (which prohibits the service or execution on a Sunday of any writ, process, warrant, order, judgment or decree, except in certain cases) and any rule of law preventing or restricting the holding of a court on a Sunday do not apply, at any time when this subsection is in operation, in relation to—

- (a) the holding of a magistrates’ court for the purpose of exercising any criminal jurisdiction; or

- (b) anything done in the course of, or in connection with, the exercise by a magistrates' court of any criminal jurisdiction.
- (2) Subsection (1)—
- (a) comes into operation on such day as the Department may by order appoint; and
  - (b) ceases to be in operation one month after that day.
- (3) The Department may by order made at any time when subsection (1) is not in operation provide for that subsection to come into operation again on such day as is appointed by the order.
- (4) Where subsection (1) comes into operation on a day appointed under subsection (3), it ceases to be in operation one month after that day.
- (5) An order under subsection (2) or (3) requires the approval of the First Minister and deputy First Minister acting jointly; and no such order shall be made unless—
- (a) the Chief Constable has requested the Department to make the order; and
  - (b) the Department, after consulting the Lord Chief Justice, is of the opinion that such exceptional circumstances exist as to justify the making of the order.

#### *Supplementary*

#### **Repeals**

**14.** 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**

**15.—**(1) Except as provided by subsection (2) and section 13, this Act comes into operation on the day after Royal Assent.

(2) The following provisions of this Act come into operation on such day or days as the Department may by order appoint—

- (a) section 1 and Schedule 1;
- (b) section 2;
- (c) sections 4 and 5;
- (d) section 9 and Schedules 2 and 3;
- (e) Parts 1 and 3 of Schedule 4 and section 14 so far as relating thereto.

(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 9 or the repeals in Part 3 of Schedule 4 into operation (as to which see section 9(3)).

#### **Short title**

**16.** This Act may be cited as the Criminal Justice Act (Northern Ireland) 2013.

SCHEDULES

SCHEDULE 1

Section 1.

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

“SCHEDULE 3A

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) 2013 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.

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- (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;
  - (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.
- (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;
  - (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—
- (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;
  - (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.
- (8) The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate.

*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
  - (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,
  - (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
  - (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;
- (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;
- (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;
- (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;
- (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;
- (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);
- (l) any information presented by or on behalf of the offender;
- (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—

(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.

(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*

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

(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—

(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.

*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),

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);

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

(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.

(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.

(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*

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—

- (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—

- (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.

(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*

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.

(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.”.

Section 9.

SCHEDULE 2

ARTICLES 63B TO 63R 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—
  - (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).

(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 63M (including those Articles as applied by Article 63N).

(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
  - (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.

(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) 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**

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.

(2) The material may be retained until the Chief Constable determines that the material is of no evidential value in relation to—

- (a) the investigation of the offence; or
- (b) proceedings against any person for the offence.

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

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.

(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) 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

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- (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,
  - (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).
- (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.
- (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.
- (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.
- (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—
- (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.
- (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.
- (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—

(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 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**

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

(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 63D(14).

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

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

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(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.

**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.

(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).

(3) The material may be retained indefinitely.

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

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

(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.

(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—

(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 “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: persons under 18 given a caution**

63I.—(1) This Article applies to Article 63B material which—

- (a) relates to a person who—
  - (i) is given a caution in respect of a recordable offence which, at the time of the caution, the person admitted; and
  - (ii) 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) 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.

#### **Retention of Article 63B material: persons completing diversionary youth conference**

63J.—(1) This Article applies to Article 63B material which—

- (a) relates to a person who has completed the diversionary youth conference process with respect to a recordable 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) 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

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- (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.
- (3) For the purposes of this Article, a person completes the diversionary youth conference process with respect to an offence if (and only if)—
  - (a) a diversionary youth conference under Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to that person and that offence, and
  - (b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, has determined not to institute proceedings against the person in respect of the offence or, as the case may be, not to continue proceedings already instituted against the person in respect of the offence.

**Retention of Article 63B material: persons given a penalty notice**

- 63K.—(1) This Article applies to Article 63B material which—
- (a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.
- (2) The material may be retained—
- (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
  - (b) in the case of a DNA profile, for a period of 2 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.

**Retention of Article 63B material given voluntarily**

- 63L.—(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**

63M.—(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**

63N.—(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.

(2) Articles 63C to 63M and Articles 63O and 63Q 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.

#### **Destruction of copies**

63O.—(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.

#### **Destruction of samples**

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

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

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- (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
  - (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.
- (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
  - (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—
  - (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.
- (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).
- (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
  - (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)—
  - (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.

(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.

(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**

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

- (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.

(2) Material which is required by Article 63B or 63P 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**

63R.—(1) Articles 63B to 63Q 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—

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

(3) Articles 63B to 63Q 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) Articles 63B to 63Q 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 63O and 63Q 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 63Q do not apply to material which—

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

(7) Nothing in Articles 63B to 63Q 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).”.

## Section 9.

## SCHEDULE 3

## 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—

““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 which—

(a) has been taken by the police from a person—

- (i) under a power conferred by Article 62 or 63; or
- (ii) with the consent of that person, in connection with the investigation of an offence by the police;

(b) consists of or includes human cells; and

(c) was taken for the purpose of deriving a DNA profile from it.”.

(3) After paragraph (3) insert—

“(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 63P (requirement to destroy samples).

(3B) Any reference in Articles 63D, 63E, 63N or 63R 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—

**“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—

- (a) a person who has been given a caution in respect of the offence—
  - (i) which was committed when that person was aged 18 or over, and
  - (ii) 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 unfit to be tried and to have done the act charged in respect of the offence.

(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.

(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 63L whether the person has been convicted of only one offence.

(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 “63P”.

5. In Article 89 (orders and regulations) after paragraph (2) insert—

“(2A) An order under Article 63D(5)(c) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”.

*The Counter-Terrorism Act 2008 (c. 28)*

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

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

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

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(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”.

Section 14.

## SCHEDULE 4

## REPEALS

## PART 1

## SEX OFFENDERS

Short Title	Extent of repeal
The Sexual Offences Act 2003 (c. 42)	Sections 97 to 101. In section 136(8) “101”.

## PART 2

## HUMAN TRAFFICKING

Short Title	Extent of repeal
The Sexual Offences Act 2003 (c. 42)	Section 57(2)(a). Section 58(2)(a). Section 59(2)(a). Section 60(1)(c).
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”. In section 4(5), paragraph (b) and the word “or” immediately before it. Section 5(1). Section 5(13).
The Human Tissue Act 2004 (c. 30)	In Schedule 6, paragraph 7.
The UK Borders Act 2007 (c. 30)	Section 31(2).

Short Title	Extent of repeal
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 3

## FINGERPRINTS, DNA PROFILES, ETC.

Short Title	Extent of repeal
The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)	Article 64.
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).
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).
The Crime and Security Act 2010 (c. 17)	Section 15. Section 22. Section 58(5).

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