

**Changes to Legislation:** as of 14 June 2024, there are changes to this Act which have not been implemented by the Revised Acts editorial team, see highlighted entries [here](#). Note that some amendments may not be in force until commenced by a commencement order or other provision.



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*Number 11 of 2014*

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**Criminal Justice (Forensic Evidence and DNA Database System) Act 2014**

**REVISED**

**Updated to 1 November 2023**

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This Revised Act is an administrative consolidation of the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Screening of Third Country Transactions Act 2023* (28/2023), enacted 31 October 2023, and all statutory instruments up to and including the *Criminal Justice (Miscellaneous Provisions) Act 2023 (Commencement) (No. 2) Order 2023* (S.I. No. 525 of 2023), made 31 October 2023, were considered in the preparation of this Revised Act.

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Number 11 of 2014

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**CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE SYSTEM) ACT 2014**

**REVISED**

**Updated to 1 November 2023**

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Adoption Act 2010 (No. 21)  
Children Act 2001 (No. 24)  
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)  
Coroners Act 1962 (No. 9)  
Courts (Supplemental Provisions) Act 1961 (No. 39)  
Criminal Justice (Drug Trafficking) Act 1996 (No. 29)  
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Data Protection Act 1988 (No. 25)  
Dentists Act 1985 (No. 9)  
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Garda Síochána Act 2005 (No. 20)  
Guardianship of Infants Act 1964 (No. 7)  
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Medical Practitioners Act 2007 (No. 25)  
Misuse of Drugs Act 1984 (No. 18)  
Nurses and Midwives Act 2011 (No. 41)  
Offences Against the State Act 1939 (No. 13)

[No. 11.] *Criminal Justice (Forensic Evidence  
and Dna Database System) Act 2014* [2014.]

Official Secrets Act 1963 (No. 1)

Prisons Act 1970 (No. 11)

Prisons Act 1972 (No. 7)

Probation of Offenders Act 1907 (7 Edw. 7, c. 17)

Sex Offenders Act 2001 (No. 18)

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*Number 11 of 2014*

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**CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE SYSTEM) ACT 2014**

**REVISED**

**Updated to 1 November 2023**

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An Act to amend the law to authorise the taking of bodily samples from persons suspected of certain criminal offences for forensic testing; to provide for the taking of certain bodily samples from persons who volunteer to have such samples taken from them for the purpose of the investigation of offences or incidents that may have involved the commission of offences; to provide for the establishment and operation by Forensic Science Ireland of the Department of Justice and Equality of a DNA Database System; to provide for the taking of certain bodily samples from persons suspected or convicted of certain criminal offences for the purpose of generating DNA profiles in respect of those persons to be entered in the investigation division of the DNA Database System; to provide for the taking of certain bodily samples from certain persons for elimination purposes and, where appropriate, the entry of their DNA profiles in the DNA Database System; to provide for the taking of bodily samples from persons, or samples from things, for the purpose of generating DNA profiles in respect of those persons or missing persons to be entered in the identification division of the DNA Database System; to provide for the purposes of that System; to provide, in certain circumstances, for the destruction of samples taken under this Act and the destruction, or removal from the DNA Database System, of any DNA profiles generated from those samples; to repeal the Criminal Justice (Forensic Evidence) Act 1990; to give effect to Council Decision 2008/615/JHA of 23 June 2008<sup>1</sup> and Council Decision 2008/616/JHA of 23 June 2008<sup>2</sup>, the Agreement between the European Union and Iceland and Norway on the application of those two Council Decisions<sup>3</sup> and an agreement between the State and another state insofar as those Council Decisions or agreements concern cooperation in relation to automated searching for or automated comparison of DNA data or automated searching for dactyloscopic data, as the case may be, and the exchange of such data and the reference data relating to them, by or between authorities which are responsible for the prevention, detection and investigation of criminal offences in the State and those other states or that other state, as the case may be; for that purpose to make provision for data protection and, in that regard, to amend the Data Protection Act 1988; to amend the Criminal Justice (Mutual Assistance) Act 2008; to amend the International Criminal Court Act 2006; to give effect to Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities; to amend the criminal law relating to the taking of fingerprints and palm prints from certain persons; to amend the Criminal Justice Act 1984 and other enactments to provide for the destruction of fingerprints, palm prints and photographs taken from or of certain persons in certain circumstances; and to provide for related matters.

[22nd June, 2014]

Be it enacted by the Oireachtas as follows:

<sup>1</sup> O.J. No. L210, 6.8.2008, p.1.

<sup>2</sup> O.J. No. L210, 6.8.2008, p.12.

<sup>3</sup> O.J. No. L353, 31.12.2009, p.3.

**Annotations****Modifications (not altering text):**

- C1** *Data Protection Act 1988* confirmed as applicable legislation for processing of personal data under Act (25.05.2018) by *Data Protection Act 2018 (7/2018)*, s. 8(1)(b), S.I. No. 174 of 2018.

**Application of Data Protection Act 1988**

8. (1) Subject to this section, the Act of 1988 shall, on and from the date on which this section comes into operation, cease to apply to the processing of personal data (within the meaning of that Act) other than—

- (a) the processing of such data for the purposes of safeguarding the security of the State, the defence of the State or the international relations of the State, or
- (b) the processing of such data under the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 or the Vehicle Registration Data (Automated Searching and Exchange) Act 2018 to the extent that the Act of 1988 is applied in those Acts.

...

**PART 1****PRELIMINARY AND GENERAL****Short title and commencement**

1. (1) This Act may be cited as the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.
- (2) This Act (other than *section 172*) shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Interpretation**

2. (1) In this Act—

- “Act of 1939” means Offences Against the State Act 1939;
- “Act of 1984” means Criminal Justice Act 1984;
- “Act of 1990” means Criminal Justice (Forensic Evidence) Act 1990;
- “Act of 1996” means Criminal Justice (Drug Trafficking) Act 1996;
- “Act of 2001” means Children Act 2001;
- “Act of 2005” means Garda Síochána Act 2005;
- “Act of 2006” means International Criminal Court Act 2006;
- “Act of 2007” means Criminal Justice Act 2007;
- “Act of 2008” means Criminal Justice (Mutual Assistance) Act 2008;
- “analysis”, in relation to a sample, includes comparison and matching;
- “appropriate consent” has the meaning assigned to it by *section 15*;

“authorised member of the staff”, in relation to a children detention school, shall be construed in accordance with *section 151*;

“authorised person” shall be construed in accordance with *section 150*;

“body”, in relation to a deceased human person (including a foetus or stillborn child), means the body or a part of the body of the person and includes the decomposed or cremated remains of the person;

“child” means a person who has not attained the age of 18 years and, for the purposes of *sections 32* and *38*, includes a person who has attained the age of 18 years who is detained in a children detention school in accordance with *section 155* of the Act of 2001;

“child offender” shall be construed in accordance with *section 32(1)*;

“children detention school” has the meaning it has in *section 3(1)* of the Act of 2001;

“code of practice” means a code of practice that is approved by the Minister under *section 157* ;

“Commissioner” means the Commissioner of the Garda Síochána;

“Committee” means the DNA Database System Oversight Committee established by *section 71* ;

“crime scene” shall be construed in accordance with *section 61(2)*;

“crime scene index”, in relation to the DNA Database System, shall be construed in accordance with *section 61*;

“crime scene sample”, other than in *sections 168* and *169*, means a sample of biological material found at, or recovered from, a crime scene from which a DNA profile in respect of a person may be generated;

“Director”, in relation to FSI, means the officer who is for the time being in charge of FSI;

“Director”, in relation to a children detention school, has the meaning it has in *section 157* of the Act of 2001;

“DNA” means deoxyribonucleic acid;

“DNA Database System” shall be construed in accordance with *section 59*;

“DNA profile”, in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a sample of biological material that is clearly identifiable as relating to the person and that is capable of comparison with similar information derived from an examination and analysis of another sample of biological material for the purpose of determining whether or not that other sample could relate to that person;

“elimination (crime scene investigators) index”, in relation to the DNA Database System, shall be construed in accordance with *section 64*;

“elimination (Garda Síochána) index”, in relation to the DNA Database System, shall be construed in accordance with *section 63*;

“elimination (prescribed persons) index”, in relation to the DNA Database System, shall be construed in accordance with *section 65*;

“enactment” means a statute or an instrument made under a power conferred by statute;

“forensic testing”, in relation to a sample (other than a crime scene sample), means the examination and analysis of the sample and the carrying out of biochemical or other scientific tests and techniques used in connection with the detection and investigation of crime or the identification of persons or bodies, as may be appropriate, on the sample and, if appropriate, includes the generation of a DNA profile from the sample in respect of a person;

“former offender” shall be construed in accordance with *section 33*;

“FSI” means Forensic Science Ireland (formerly known as Forensic Science Laboratory) of the Department of Justice and Equality;

“governor”, in relation to a prison or a place of detention, means—

- (a) the governor of the prison or the place of detention, as the case may be, or
- (b) a person who is for the time being performing the functions of governor of the prison or the place of detention, as the case may be;

“guardian”, in relation to a child (including a protected person who is a child), means—

- (a) a person who is guardian of the child pursuant to the Guardianship of Infants Act 1964 or who is appointed to be guardian of the child by deed or will or order of a court, or
- (b) a person who has custody or care of the child by order of a court, but does not include the Health Service Executive;

“identification division”, in relation to the DNA Database System, shall be construed in accordance with *section 59(4)*;

“inadequately labelled”, in relation to a sample, means incorrectly labelled or labelled in such a manner that it is not possible to identify with certainty the person from whom the sample was taken;

“insufficient”, in relation to a sample, means, subject to *section 3(5)*, insufficient in quantity or quality for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample for the forensic testing of it;

“intimate sample” means any of the following taken, or to be taken, from a person under *section 12*:

- (a) a sample of—
  - (i) blood,
  - (ii) pubic hair, or
  - (iii) urine;
- (b) a swab from a genital region or a body orifice other than the mouth;  
or
- (c) a dental impression;

“investigation division”, in relation to the DNA Database System, shall be construed in accordance with *section 59(3)*;

“match”, in relation to two DNA profiles but other than in *Chapter 2 of Part 12*, means that there is such a degree of correspondence between them that they are indistinguishable and it is probable that they relate to the

same person, and the degree of that probability can be indicated statistically;

“member in charge” of a Garda Síochána station has the meaning assigned to it by Regulation 4 of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987) subject to the modification that the reference in paragraph (1) of that Regulation to the member who is in charge of a Garda Síochána station at a time when the member in charge of the station is required to do anything or cause anything to be done pursuant to those Regulations shall be construed as a reference to the member who is in charge of the Garda Síochána station at a time when the member in charge is required to do anything or cause anything to be done under this Act;

“member of the staff of FSI” means an officer of the Minister who is assigned to perform duties in FSI;

“Minister” means Minister for Justice and Equality;

“missing person” means a person who, whether before or after the commencement of this section, is observed to be missing from his or her normal patterns of life, in relation to whom those persons who are likely to have heard from the person are unaware of the whereabouts of the person and that the circumstances of the person being missing raises concerns for his or her safety and well-being;

“missing and unknown persons index”, in relation to the DNA Database System, shall be construed in accordance with *section 66* ;

“non-coding part of DNA”, in relation to a person, means the chromosome regions of the person’s DNA that are not known to provide for any functional properties of the person;

“non-intimate sample” means any of the following taken, or to be taken, from a person under *section 13* :

(a) a sample of—

- (i) saliva,
- (ii) hair other than pubic hair,
- (iii) a nail, or
- (iv) any material found under a nail;

(b) a swab from any part of the body including the mouth but not from any other body orifice or a genital region; or

(c) a skin impression;

“offender” shall be construed in accordance with *section 31(1)*;

“Ombudsman Commission” means the Garda Síochána Ombudsman Commission;

“parent”, in relation to a protected person or child, means—

- (a) in a case in which one parent has the sole custody, charge or care of the person or child, that parent,
- (b) in a case in which the person or child has been adopted under the Adoption Act 2010 (or, if adopted outside the State, his or her adoption is recognised under the law of the State), the adopter or either of the adopters or the surviving adopter, and



(c) in any other case, either parent;

“place of detention”, in relation to a child offender (being a male aged 16 or 17 years), means—

(a) Saint Patrick’s Institution, or

(b) a place of detention provided under section 2 of the Prisons Act 1970, and “prison officer”, in relation to a place of detention, shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Minister under section 5 ;

“prison” means a place of custody administered by the Minister (other than a Garda Síochána station) and includes—

(a) Saint Patrick’s Institution other than in respect of the detention of males aged 16 and 17 years therein,

(b) a place of detention provided under section 2 of the Prisons Act 1970 other than in respect of the detention of males aged 16 and 17 years therein, and

(c) a place specified under section 3 of the Prisons Act 1972, and “prison officer”, in relation to a prison, and “imprisonment” shall be construed accordingly;

“protected person” means, subject to subsection (2), a person (including a child) who, by reason of a mental or physical disability—

(a) lacks the capacity to understand the general nature and effect of the taking of a sample from him or her, or

(b) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he or she consents to a sample being taken from him or her;

“reference index”, in relation to the DNA Database System, shall be construed in accordance with section 62 ;

“registered dentist” means a person whose name is entered for the time being in the Register of Dentists established under section 26 of the Dentists Act 1985;

“registered medical practitioner” means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007;

“registered nurse” means a person whose name is entered for the time being in the nurses division of the register of nurses and midwives established under section 46 of the Nurses and Midwives Act 2011;

“relevant offence” means an offence in respect of which a person may be detained under any of the provisions referred to in section 9(1) (whether or not the person concerned was so detained);

“request under Chapter 3 of Part 5 of the Act of 2008” means a request for assistance which is made by a requesting authority within the meaning of section 2(1) of the Act of 2008 under and in accordance with a relevant international instrument within the meaning of the said section 2(1);

“request under section 50 of the Act of 2006” means a request from the International Criminal Court under Article 93.1(a) of the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998, for

assistance under section 50 of the Act of 2006 in obtaining identification evidence within the meaning of that section;

“sample” means a sample taken, or to be taken, from a person under Part 2, 3, 4, 5 or 6 and, if the context so requires, a crime scene sample;

“sexual offence” has the meaning it has in section 3 of the Sex Offenders Act 2001 (and includes such an offence that is a relevant offence);

“sex offender” —

(a) in the case of an offender, shall be construed in accordance with *section 31(1)(d)*, and

(b) in the case of a child offender, shall be construed in accordance with *section 32(1)(d)*;

“skin impression”, in relation to a person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his or her foot or of any other part of his or her body;

“unknown deceased person” shall be construed in accordance with *section 50*;

“unknown person” shall be construed in accordance with *section 49*.

(2) The reference in the definition of “protected person” in *subsection (1)* to a mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.

(3) Subject to *section 48(5)*, references in *section 11* and in Part 3, 4, 5, 6 or 7 to a sample—

(a) in relation to a person, means a sample of hair other than pubic hair of the person or a swab from the mouth of the person, and

(b) in relation to the body of a deceased person, means a sample of biological material from the body of the deceased person from which a DNA profile in respect of the person may be generated.

(4) In this Act references to the mouth of a person shall be construed as including references to the inside of the mouth of the person.

(5) In the application of this Act in relation to a protected person who is married—

(a) the references in *sections 15, 16, 21, 23, 24, 25, 31, 34, 38, 39, 54, 55, 58, 77* and *81* to a parent or guardian of the person shall be construed as references to his or her spouse, and

(b) the references in *sections 21, 23, 24, 54, 55, 57* and *58* to a relative of the protected person shall be construed as including references to his or her parent or guardian.

(6) In the application of this Act in relation to a child who is married—

(a) the references in *sections 15, 17, 19, 22, 24, 25, 32, 34, 38, 39, 54, 55, 58, 77* and *81* to a parent or guardian of the child shall be construed as references to his or her spouse, and

(b) the references in *sections 22, 24, 54, 55, 57* and *58* to a relative of the child shall be construed as including references to his or her parent or guardian.

(7) If a person is regarded as a protected person for the purposes of this Act, the person shall not thereby be regarded as lacking capacity for purposes other than those to which this Act relates.

**Annotations**

**Amendments:**

**F1** Inserted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 82, not commenced as of date of revision.

**Modifications (not altering text):**

**C2** Prospective affecting provision: definitions inserted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 82, not commenced as of date of revision.

F1["Act of 2022" means the *Defence Forces (Evidence) Act 2022*;]

F1["DNA (Military Police) Database System" has the meaning it has in the *Act of 2022*;]

**Supplementary provisions relating to samples and DNA profiles**

3. (1) In this Act references to the giving of information regarding the effect of the entry of a DNA profile in respect of a person in any index of the DNA Database System shall include references to the giving of information regarding the following:

(a) that the DNA profile may be compared with other DNA profiles in that System under *section 68* ;

(b) the effect of the DNA profile matching another DNA profile in that System;

(c) in the case of a DNA profile entered, or to be entered, in the reference index of that System, other than a DNA profile entered, or to be entered, in that index of that System under *section 28* , that the DNA profile may be subject to an automated search or an automated comparison with DNA profiles under *Chapter 2* of *Part 12* and the effect of the DNA profile matching another DNA profile following such an automated search or automated comparison;

(d) in the case of a DNA profile entered in the missing and unknown persons index of that System, that the DNA profile may be transmitted under *section 142* to a law enforcement agency within the meaning of *Chapter 7* of *Part 12*.

(2) In this Act references to a person giving his or her consent in writing to the taking of a sample under this Act (whether from the person himself or herself or another person) shall include references to—

(a) the person signing a document, or

(b) in case the person is unable to write, the person making his or her mark on a document,

to indicate his or her consent.

(3) Where a sample of hair other than pubic hair is taken from a person under this Act—

- (a) the sample may be taken by plucking hairs with their roots and, in so far as it is reasonably practicable, the hairs shall be plucked singly, and
  - (b) no more hairs shall be plucked than the person taking the sample reasonably considers necessary to constitute a sufficient sample for the purpose of forensic testing.
- (4) For the purposes of *sections 12 and 13*, a sample taken from a person includes a sample taken from the person that consists of matter from the body of another person.
- (5) References in this Act to a sample proving to be insufficient (within the meaning of *section 2(1)*) shall include references to where, as a consequence of—
- (a) the loss, destruction or contamination of the whole or any part of the sample,
  - (b) any damage to the whole or a part of the sample, or
  - (c) the use of the whole or a part of the sample for analysis which produced no results or which produced results some or all of which have to be regarded, in the circumstances, as unreliable,
- the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.
- (6) Where an authorisation to take a sample from a person under this Act is given, nothing in this Act shall require such an authorisation to be given again to re-take such a sample from the person if the first or previous such sample taken from the person proves to be insufficient or, where appropriate, is inadequately labelled and the insufficiency or, as may be appropriate, the inadequate labelling of that sample is apparent within a period of 1 hour of the taking of that sample.
- (7) Subject to *subsections (9) and (11)*, a person who is required under *Part 10* to destroy, or cause to be destroyed, a sample taken under this Act shall ensure that the sample, and every record relating to the sample insofar as it identifies the person from whom the sample has been taken, are destroyed.
- (8) Subject to *subsection (11)*, a person who is required under *Part 10* to destroy, or cause to be destroyed, a DNA profile generated from a sample taken under this Act shall ensure that the DNA profile, and every record relating to the DNA profile insofar as it identifies the person to whom the DNA profile relates, are destroyed.
- (9) Nothing in *subsection (7)* shall require—
- (a) the removal from the DNA Database System of a DNA profile that may be retained in that System in accordance with this Act, or
  - (b) the destruction of a record that is required to identify the person to whom a DNA profile referred to in *paragraph (a)* relates.
- (10) Subject to *subsection (11)*, the Director of FSI who is required under *Part 10* to remove, or cause to be removed, a DNA profile from the DNA Database System shall ensure that that System is altered so that it is no longer possible to identify the person to whom the DNA profile relates.
- (11) *Subsections (7), (8) and (10)* shall operate in a manner that permits—

- (a) the Commissioner, the Director of FSI or other person referred to in *section 97* to retain such records as may be required by him or her to show that that section has been complied with, and
  - (b) the Commissioner or the Director of FSI to retain such records as may be required by him or her to show that *section 98* has been complied with.
- (12) In *subsections (7), (8), (9) and (11)* “record”, in relation to a sample or a DNA profile, includes a copy of a record.

**Transmission or provision of samples taken under *Part 2* or *4*, and DNA profiles generated from such samples, under other enactments**

- 4. (1) A sample taken from a person under *Part 2* or *4*, and the DNA profile (if any) generated from the sample in respect of the person, may be transmitted outside the State pursuant to a request under Chapter 3 of Part 5 of the Act of 2008.
- (2) A sample taken from a person under *Part 2* or *4*, and the DNA profile (if any) generated from the sample in respect of the person, may be transmitted to the International Criminal Court pursuant to a request under section 50 of the Act of 2006.
- (3) A DNA profile of a person generated from a sample taken from the person under *Part 2* or *4* may be provided to Europol under section 8 or 9 of the Europol Act 2012.
- (4) In this section “Europol” has the meaning it has in section 1 of the Europol Act 2012.

**Orders and regulations**

- 5. (1) The Minister may make such orders as are provided for in this Act.
- (2) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect.
- (3) An order or regulation under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the order or regulation, as the case may be.
- (4) Every order (other than an order under *section 1(2)*) or regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

**Annotations**

**Editorial Notes:**

- E1** Power pursuant to section exercised (22.12.2022) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022* (S.I. No. 738 of 2022).

<b>E2</b>	Power pursuant to section exercised (20.11.2015) by <i>Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 156) Regulations 2015</i> (S.I. No. 528 of 2015), in effect as per reg. 1(2).
<b>E3</b>	Power pursuant to section exercised (20.11.2015) by <i>Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 11) Order 2015</i> (S.I. No. 527 of 2015), in effect as per reg. 1(2).
<b>E4</b>	Power pursuant to section exercised (20.11.2015) by <i>Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Certificates) Regulations 2015</i> (S.I. No. 526 of 2015).

### Repeal and revocations

6. (1) The Criminal Justice (Forensic Evidence) Act 1990 is repealed.
- (2) The Criminal Justice (Forensic Evidence) Act 1990 Regulations 1992 (S.I. No. 130 of 1992) and the Criminal Justice (Forensic Evidence) Act 1990 (Amendment) Regulations 2008 (S.I. No. 154 of 2008) are revoked.

### Transitional provisions

7. (1) Subject to this section, nothing in this Act shall affect the operation after the commencement of this section of—
- (a) the Act of 1990 in relation to bodily samples that were taken from persons under that Act, or
- (b) any other arrangement under which bodily samples were taken from persons by, or on behalf of, the Garda Síochána, before such commencement.
- (2) Subject to *subsections (3) and (4)* and notwithstanding the repeal by section 6 of the Act of 1990, that Act shall continue to apply to bodily samples that were taken under it before its repeal as if it had not been so repealed.
- (3) A DNA profile of a person generated from a bodily sample taken from the person before the commencement of this section under the Act of 1990 may, subject to *subsection (4)*, be entered in the reference index of the DNA Database System, irrespective of whether the DNA profile of the person is generated from that sample before or after such commencement.
- (4) The DNA profile of a person generated from a bodily sample taken from the person under the Act of 1990 shall, if that sample is required to be destroyed under section 4 of that Act—
- (a) not be entered in the reference index of the DNA Database System, or
- (b) if so entered, be removed from that System not later than the expiration of a period of 3 months from the date of that requirement.
- (5) If—
- (a) a bodily sample (other than one taken under the Act of 1990) that was taken from a person under any arrangement under which bodily samples were, before the commencement of this section, taken by, or on behalf of, the Garda Síochána from persons who were detained under any of the provisions referred to in *section 9(1)*, or
- (b) the DNA profile of the person (if any) generated from the sample,

is required for any purpose other than the purpose for which that sample was taken from the person, the Commissioner shall, before using that sample or DNA profile for that other purpose—

- (i) inform the person by notice in writing of that other purpose, and
- (ii) obtain the consent in writing of the person to the use of that sample or DNA profile, as the case may be, for that purpose.

### Expenses

8. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

## PART 2

### TAKING OF SAMPLES FROM PERSONS IN CUSTODY OF GARDA SÍOCHÁNA

#### Power to take samples from persons in custody of Garda Síochána

9. (1) Where a person is detained under any of the following provisions, a sample under *section 11*, an intimate sample or a non-intimate sample or more than one sample may be taken from the person:
- (a) section 30 of the Act of 1939;
  - (b) section 4 of the Act of 1984;
  - (c) section 2 of the Act of 1996;
  - (d) section 42 of the Criminal Justice Act 1999;
  - (e) section 50 of the Act of 2007;
  - (f) section 16 or 17 of the Criminal Procedure Act 2010.
- (2) For the avoidance of doubt it is hereby declared that a reference to any statutory provision specified in a paragraph of *subsection (1)* under which a person may be detained shall include a reference to any other statutory provision pursuant to which a person may be arrested again and detained and which applies the first-mentioned statutory provision or another of the statutory provisions specified in *subsection (1)* with or without modification in relation to such detention.

#### Protected persons for purposes of Part 2

10. (1) Subject to *subsection (2)*, the member in charge of the Garda Síochána station in which a person is detained under any of the provisions referred to in *section 9(1)* shall, as soon as practicable after the detention of the person begins, determine whether or not he or she is a protected person for the purposes of this Part.
- (2) Where—
- (a) an authorisation to take an intimate sample under *section 12* from a person is given, and
  - (b) the member in charge of the Garda Síochána station in which the person is detained is of opinion that the person may be a protected person,

he or she shall arrange to have the condition of the person assessed by a registered medical practitioner for the purpose of certifying whether or not the person is a protected person.

- (3) A certificate provided by a registered medical practitioner under *subsection (2)* shall specify the reasons for the registered medical practitioner concluding that the person concerned is or is not a protected person.

**Taking of samples from persons in custody of Garda Síochána for purposes of DNA Database System**

11. (1) Subject to this Act, a member of the Garda Síochána may take, or cause to be taken, from a person who is detained under any of the provisions referred to in *section 9(1)* for the investigation of a relevant offence a sample for the purpose of generating a DNA profile in respect of the person to be entered in the reference index of the DNA Database System.

(2) A sample may be taken from a person under *subsection (1)* only if a member of the Garda Síochána not below the rank of sergeant (including the member in charge of the Garda Síochána station in which the person is detained if he or she is not below that rank) authorises it to be taken.

(3) Before a member of the Garda Síochána takes, or causes to be taken, a sample under this section from a person, the member shall inform the person of the following:

(a) that an authorisation to take the sample from him or her has been given under *subsection (2)*;

(b) in a case in which a sample already taken under this section from the person has proved to be insufficient—

(i) that that sample has proved to be insufficient, and

(ii) that either—

(I) another authorisation under *subsection (2)* is not, by virtue of *section 3(6)*, required, or

(II) an authorisation to take a second sample from him or her has, in accordance with *section 25(1)*, been given under *subsection (2)*;

(c) that if the person (other than a child) fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 24* to take the sample;

(d) that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference index of the DNA Database System and the effect of such an entry;

(e) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by this Act; and

(f) that the sample may be destroyed, and the DNA profile in respect of the person entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.

(4) This section shall not apply to—

(a) a protected person, or



- (b) subject to *subsection (7)*, a person who has not attained the age of 14 years.
- (5) The Minister shall, by order made under this section, specify a relevant offence or a category of relevant offences that are, for the purposes of *subsection (1)*, excluded from the application of this section as evidence relating to DNA would not, in the opinion of the Minister, assist with the investigation or prosecution of the offence or those offences due to the nature of the offence or offences concerned.
- (6) The Minister shall, not later than 6 years after the commencement of this section, review the operation of this section insofar as it applies to children who have attained the age of 14 years.
- (7) If, arising from the review referred to in *subsection (6)*, the Minister considers that it is proper to do so having regard, on the one hand, to the operation of the DNA Database System in relation to children and its effectiveness in the investigation of offences committed, or suspected of having been committed, by children and, on the other hand, to the desire to protect the rights of children, he or she may by order made under this section provide that this section shall not apply to children who have not attained an age, of 14 years or older, that is specified in the order.

**Annotations**

**Editorial Notes:**

- E5** Power pursuant to section exercised (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 11) Order 2015* (S.I. No. 527 of 2015), in effect as per reg. 1(2).

**Taking of intimate samples from persons in custody of Garda Síochána**

- 12.** (1) Subject to this Act, a member of the Garda Síochána may take, or cause to be taken, an intimate sample under this section from a person who is detained under any of the provisions referred to in *section 9(1)* for the purposes of forensic testing and, if appropriate, the generation of a DNA profile in respect of the person to be entered in the reference index of the DNA Database System.
- (2) An intimate sample may be taken under this section only if—
- (a) a member of the Garda Síochána not below the rank of inspector authorises it to be taken for the purposes specified in *subsection (1)*, and
- (b) the appropriate consent has been given in writing to the taking of the sample.
- (3) An authorisation to take an intimate sample under this section shall not be given unless the member of the Garda Síochána giving it has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in the commission of the offence in respect of which he or she is detained, and
- (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of the offence concerned.
- (4) The results of the forensic testing of an intimate sample may be given in evidence in any proceedings.

- (5) Before a member of the Garda Síochána seeks the consent of a person from whom an intimate sample is required to the taking of such a sample or the member takes, or causes to be taken, such a sample from the person, the member shall inform the person of the following:
- (a) the nature of the offence in the commission of which it is suspected that the person has been involved;
  - (b) that an authorisation to take the sample from him or her has been given under *subsection (2)(a)* and the grounds on which it has been given;
  - (c) that in a case in which an intimate sample already taken from the person has proved to be insufficient—
    - (i) that that sample has proved to be insufficient, and
    - (ii) that either—
      - (I) another authorisation under *subsection (2)(a)* is not, by virtue of *section 3(6)*, required, or
      - (II) an authorisation to take a second intimate sample from him or her has, in accordance with *section 25(1)*, been given under *subsection (2)(a)* and the grounds on which it has been given;
  - (d) that the results of the forensic testing of the sample may be given in evidence in any proceedings;
  - (e) if appropriate, the matters referred to in *subsections (2) and (3) of section 19* if that section is to have effect in relation to the person;
  - (f) if appropriate, that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference index of the DNA Database System and the effect of such an entry;
  - (g) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by this Act;
  - (h) that the sample may be compared under *section 145* with evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency within the meaning of *Chapter 7 of Part 12*; and
  - (i) that the sample may be destroyed, and (if appropriate) the DNA profile in respect of the person entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (6) If a person expressly withdraws the appropriate consent given under *subsection (2)(b)* (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of an intimate sample under this section—
- (a) that withdrawal of consent shall be treated as a refusal to give the appropriate consent to the taking of the sample under this section, and
  - (b) the provisions of this Part shall apply accordingly.
- (7) A withdrawal under *subsection (6)* of the appropriate consent given under *subsection (2)(b)* shall be recorded in writing by a member of the Garda Síochána as soon as practicable after such withdrawal.

- (8) The appropriate consent given under *subsection (2)(b)* to the taking of an intimate sample under this section may not be withdrawn after the sample has been taken.

#### **Taking of non-intimate samples from persons in custody of Garda Síochána**

- 13.** (1) Subject to this Act, a member of the Garda Síochána may take, or cause to be taken, a non-intimate sample under this section from a person who is detained under any of the provisions referred to in *section 9(1)* for the purposes of forensic testing and, if appropriate, the generation of a DNA profile in respect of the person to be entered in the reference index of the DNA Database System.
- (2) A non-intimate sample may be taken under this section only if a member of the Garda Síochána not below the rank of inspector authorises it to be taken for the purposes specified in *subsection (1)*.
- (3) An authorisation to take a non-intimate sample under this section shall not be given unless the member of the Garda Síochána giving it has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in the commission of the offence in respect of which he or she is detained, and
  - (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of the offence concerned.
- (4) The results of the forensic testing of a non-intimate sample may be given in evidence in any proceedings.
- (5) Before a member of the Garda Síochána takes, or causes to be taken, a non-intimate sample from a person, the member shall inform the person of the following:
- (a) the nature of the offence in the commission of which it is suspected that the person has been involved;
  - (b) that an authorisation to take the sample from him or her has been given under *subsection (2)* and the grounds on which it has been given;
  - (c) in a case in which a non-intimate sample already taken from the person has proved to be insufficient or was inadequately labelled—
    - (i) that that sample has proved to be insufficient or was inadequately labelled, as may be appropriate, and
    - (ii) that either—
      - (I) another authorisation under *subsection (2)* is not, by virtue of *section 3(6)*, required, or
      - (II) an authorisation to take a second non-intimate sample from him or her has, in accordance with *section 25(1)*, been given under *subsection (2)* and the grounds on which it has been given;
  - (d) if appropriate, that if the person fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 24* to take the sample;
  - (e) that the results of the forensic testing of the sample may be given in evidence in any proceedings;

- (f) if appropriate, that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference index of the DNA Database System and the effect of such an entry;
- (g) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by this Act;
- (h) that the sample may be compared under *section 145* with evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency within the meaning of *Chapter 7 of Part 12*; and
- (i) that the sample may be destroyed, and (if appropriate) the DNA profile in respect of the person entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.

#### **Giving of information under *Part 2* to protected persons or children**

- 14. (1) The information to be given under *section 12(5), 13(5), 16(2) or 24(4)* shall, in the case of a protected person, be given insofar as it is practicable to do so in a manner and in language that are appropriate to the level of understanding of the person.
- (2) The information to be given under *section 11(3)* (if appropriate), *12(5), 13(5), 17(2) or 24(4)* shall, in the case of a child, be given insofar as it is practicable to do so in a manner and in language that are appropriate to the age and level of understanding of the child.

#### **Appropriate consent to taking of intimate samples**

- 15. (1) Subject to *subsection (2)*, in this Part “appropriate consent” means—
  - (a) subject to *paragraph (b)*, in the case of a person who has attained the age of 18 years, the consent of the person,
  - (b) in the case of a protected person—
    - (i) the consent of a parent or guardian of the person, or
    - (ii) an order of the District Court under *section 16* authorising the taking of an intimate sample from the person,
  - (c) in the case of a child (other than a protected person)—
    - (i) who has attained the age of 14 years, the consent of the child and either—
      - (I) the consent of a parent or guardian of the child, or
      - (II) an order of the District Court under *section 17* authorising the taking of an intimate sample from the child,
    - (ii) who has not attained the age of 14 years, either—
      - (I) the consent of a parent or guardian of the child, or
      - (II) an order of the District Court under *section 17* authorising the taking of an intimate sample from the child.

- (2) Where, in relation to the investigation of an offence, an intimate sample is to be taken from a protected person or a child, the consent of a parent or guardian of the protected person or child shall not be sought from a parent or guardian of the protected person or child, as the case may be, if—
- (a) he or she is the victim of the offence,
  - (b) he or she has been arrested in respect of the offence,
  - (c) the member in charge has reasonable grounds for suspecting him or her of complicity in the offence, or
  - (d) the member in charge has reasonable grounds for believing that he or she is likely to obstruct the course of justice.
- (3) *Subsection (2)* shall not prevent a parent or guardian of a protected person or a child who does not fall under *paragraph (a), (b), (c) or (d)* of that subsection from giving the consent required.
- (4) Before a member of the Garda Síochána seeks the consent of a parent or guardian of a protected person to the taking of an intimate sample from the person, the member shall inform the parent or guardian of the person of the matters referred to in *section 12(5)* in relation to the person.
- (5) Before a member of the Garda Síochána seeks the consent of a parent or guardian of a child to the taking of an intimate sample from the child, the member shall inform the parent or guardian of the child of the matters referred to in *section 12(5)* in relation to the child.

**Application for court order authorising taking of intimate sample from protected person**

**16. (1) If—**

- (a) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian of a protected person for the purposes of ascertaining whether or not he or she consents to the taking of an intimate sample from the person under this Part,
- (b) a parent or guardian of a protected person indicates to a member of the Garda Síochána that he or she cannot or will not attend at the Garda Síochána station in which the person is detained within a reasonable time for the purposes of giving consent to the taking of an intimate sample from the person under this Part,
- (c) subject to *subsection (3)* of *section 15*, the circumstances referred to in *subsection (2)* of that section exist in relation to a parent or guardian of a protected person,
- (d) a parent or guardian of a protected person refuses to consent to the taking of an intimate sample from the person under this Part, or
- (e) a protected person does not have, or the member in charge of the Garda Síochána station in which the person is detained cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether he or she has, a living parent or guardian from whom consent to the taking of an intimate sample from the person may be sought under this Part,

a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of an intimate sample from the protected person.

- (2) A member of the Garda Síochána who intends to make an application under *subsection (1)* shall inform the protected person concerned and, if it is reasonably practicable to do so, a parent or guardian of that person, other than a parent or guardian to whom *section 15(2)* applies, of that intention.
- (3) A judge of the District Court may order—
- (a) that an application under *subsection (1)* shall be heard otherwise than in public, or
  - (b) that a parent or guardian of the protected person concerned to whom *section 15(2)* applies shall be excluded from the Court during the hearing of the application,
- or both if—
- (i) on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, the judge is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the investigation of the relevant offence in respect of which the protected person concerned is detained, or
  - (ii) the judge considers that it is otherwise desirable in the interests of justice to do so.
- (4) A judge of the District Court shall, for the purposes of determining an application under *subsection (1)*, have regard to the following before making an order under this section:
- (a) the grounds on which the authorisation under *section 12(2)(a)* was given for the taking of an intimate sample from the protected person concerned;
  - (b) if appropriate, the reasons (if any) that a parent or guardian of the protected person concerned (other than a parent or guardian to whom *section 15(2)* applies) gave for refusing to consent to the taking of an intimate sample from that person;
  - (c) the nature of the offence in respect of which the protected person concerned is detained; and
  - (d) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the protected person concerned, the interests of the victim of the offence in respect of which the protected person concerned is detained and the protection of society, to make an order authorising the taking of an intimate sample from the protected person concerned.
- (5) If, on an application under *subsection (1)*, a parent or guardian of the protected person concerned applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that person to be heard.
- (6) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of an intimate sample from the protected person concerned in accordance with this Part.
- (7) If, on an application under *subsection (1)* in relation to a protected person who is detained under section 4 of the Act of 1984, a judge of the District Court makes an order under *subsection (6)*, the judge may, on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, issue a warrant authorising the detention of the protected person concerned for such further period as the judge may determine but not

exceeding 4 hours for the purpose of having an intimate sample taken from that person.

(8) *Subsection (7)* shall not affect the operation of section 4(3) of the Act of 1984.

(9) When an intimate sample has been taken from a protected person who is detained pursuant to a warrant issued under *subsection (7)*, the person shall be released from custody forthwith unless his or her detention is authorised apart from this section.

#### **Application for court order authorising taking of intimate sample from child**

17. (1) If—

(a) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian of a child for the purposes of ascertaining whether or not he or she consents to the taking of an intimate sample from the child under this Part,

(b) a parent or guardian of a child indicates to a member of the Garda Síochána that he or she cannot or will not attend at the Garda Síochána station in which the child is detained within a reasonable time for the purposes of giving consent to the taking of an intimate sample from the child under this Part,

(c) subject to *subsection (3)* of *section 15*, the circumstances referred to in *subsection (2)* of that section exist in relation to a parent or guardian of a child,

(d) a parent or guardian of a child refuses to consent to the taking of an intimate sample from the child under this Part, or

(e) a child does not have, or the member in charge of the Garda Síochána station in which the child is detained cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether he or she has, a living parent or guardian from whom consent to the taking of an intimate sample from the child may be sought under this Part,

a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of an intimate sample from the child.

(2) A member of the Garda Síochána who intends to make an application under *subsection (1)* shall inform the child concerned and, if it is reasonably practicable to do so, a parent or guardian of that child, other than a parent or guardian to whom *section 15(2)* applies, of that intention.

(3) A judge of the District Court may order—

(a) that an application under *subsection (1)* shall be heard otherwise than in public, or

(b) that a parent or guardian of the child concerned to whom *section 15(2)* applies shall be excluded from the Court during the hearing of the application,

or both if—

(i) on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, the judge is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the investigation of the relevant offence in respect of which the child concerned is detained, or

- (ii) the judge considers that it is otherwise desirable in the interests of justice to do so.
- (4) A judge of the District Court shall, for the purposes of determining an application under *subsection (1)*, have regard to the following before making an order under this section:
  - (a) the grounds on which the authorisation under *section 12(2)(a)* was given for the taking of an intimate sample from the child concerned;
  - (b) if appropriate, the reasons (if any) that a parent or guardian of the child concerned (other than a parent or guardian to whom *section 15(2)* applies) gave for refusing to consent to the taking of an intimate sample from that child;
  - (c) the age of the child concerned;
  - (d) the nature of the offence in respect of which the child concerned is detained; and
  - (e) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the child concerned, the interests of the victim of the offence in respect of which the child concerned is detained and the protection of society, to make an order authorising the taking of an intimate sample from the child concerned.
- (5) If, on an application under *subsection (1)*, a parent or guardian of the child concerned applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that child to be heard.
- (6) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of an intimate sample from the child concerned in accordance with this Part.
- (7) If, on an application under *subsection (1)* in relation to a child who is detained under section 4 of the Act of 1984, a judge of the District Court makes an order under *subsection (6)*, the judge may, on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, issue a warrant authorising the detention of the child concerned for such further period as the judge may determine but not exceeding 4 hours for the purpose of having an intimate sample taken from that child.
- (8) *Subsection (7)* shall not affect the operation of section 4(3) of the Act of 1984.
- (9) When an intimate sample has been taken from a child who is detained pursuant to a warrant issued under *subsection (7)*, the child shall be released from custody forthwith unless his or her detention is authorised apart from this section.

#### **Persons authorised to take intimate samples**

- 18. (1) A sample of blood or pubic hair or a swab from a genital region or a body orifice other than the mouth may be taken under this Part only by a registered medical practitioner or a registered nurse.
- (2) A dental impression may be taken under this Part only by a registered dentist or a registered medical practitioner.



- (3) An intimate sample other than a sample of blood or a dental impression shall, in so far as practicable, be taken by a person who is of the same sex as the person from whom the sample is being taken under this Part.

**Inferences from refusal to consent, or withdrawal of consent, to taking of intimate sample**

19. (1) Subject to *subsection (5)*, where in any proceedings against a person for an offence (other than an offence under *section 160(1)*) evidence is given that the accused refused without reasonable cause to give an appropriate consent required under *section 12(2)(b)* or he or she without reasonable cause withdrew the appropriate consent given thereunder, then—

(a) the court, in determining—

(i) whether a charge against the accused should be dismissed under Part IA of the Criminal Procedure Act 1967, or

(ii) whether there is a case to answer,

and

(b) the court (or, subject to the judge's directions, the jury), in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge),

may draw such inferences from the refusal or withdrawal, as the case may be, as appear proper; and the refusal or withdrawal may, on the basis of such inferences, be treated as, or as being capable of amounting to, corroboration of any evidence in relation to which the refusal or withdrawal is material, but a person shall not be convicted of such an offence solely or mainly on an inference drawn from such refusal or withdrawal.

(2) *Subsection (1)* shall not have effect in relation to an accused unless—

(a) he or she has been told in ordinary language by a member of the Garda Síochána when seeking his or her consent that—

(i) the sample was required for the purpose of forensic testing,

(ii) his or her consent was necessary, and

(iii) if his or her consent was not given, what the effect of a refusal or withdrawal by him or her of such consent might be,

and

(b) he or she was informed before such refusal or withdrawal of consent occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, he or she was afforded an opportunity to so consult before such refusal or withdrawal occurred.

(3) This section shall not apply to a refusal by a person to give the appropriate consent, or the withdrawal of such consent, unless the seeking of such consent by a member of the Garda Síochána is recorded by electronic or similar means or the person consents in writing to it not being so recorded.

(4) References in *subsection (1)* to evidence shall, in relation to the hearing of an application under Part IA of the Criminal Procedure Act 1967 for the dismissal of a charge, be taken to include a statement of the evidence to be given by a witness at the trial.

- (5) This section shall not apply—
- (a) to a protected person,
  - (b) to a person who has not attained the age of 14 years, or
  - (c) in a case where the appropriate consent has been refused, or been withdrawn, by a parent or guardian of a child unless a judge of the District Court makes an order under *section 17(6)* and the child refuses to comply with the order.

**When sample taken for purposes of DNA Database System may also be used for evidential purposes**

20. (1) Where a person is detained for a period under any of the provisions referred to in *section 9(1)* and—
- (a) a sample is taken from the person under *section 11* during the period, and
  - (b) a non-intimate sample is required from the person during the period, then, subject to *subsection (5)*, the sample that has already been taken from the person under *section 11* may be regarded as a non-intimate sample taken from the person during the period under this Part only if—
    - (i) a member of the Garda Síochána not below the rank of inspector authorises the first-mentioned sample to be so regarded for the purposes of forensic testing and the generation of a DNA profile in respect of the person to be entered in the reference index of the DNA Database System, and
    - (ii) a member of the Garda Síochána has informed the person of the following:
      - (I) the nature of the offence in the commission of which it is suspected that the person has been involved;
      - (II) that an authorisation to regard that sample as a non-intimate sample has been given under *paragraph (i)* and the grounds on which it has been given; and
      - (III) that the results of the forensic testing of that sample may be given in evidence in any proceedings.
- (2) An authorisation under *subsection (1)(i)* to regard a sample taken from a person under *section 11* as a non-intimate sample shall not be given unless the member of the Garda Síochána giving it has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the first-mentioned sample was taken in the commission of the offence in respect of which he or she is detained, and
  - (b) for believing that that sample will tend to confirm or disprove the involvement of that person in the commission of the offence concerned.
- (3) The results of the forensic testing of a sample taken under *section 11* that is regarded as a non-intimate sample in accordance with this section may be given in evidence in any proceedings.
- (4) A sample taken from a person under *section 11* that is regarded as a non-intimate sample in accordance with this section shall, for the purposes of

this Act, be regarded as a non-intimate sample taken from the person under *section 13*.

- (5) Where, during a period of detention of a person under any of the provisions referred to in *section 9(1)*, a sample is taken from the person under *section 11*, nothing in *subsection (1)* shall prevent the taking of an intimate sample or a non-intimate sample under this Part from the person during the period of detention.
- (6) Where, during a period of detention of a person under any of the provisions referred to in *section 9(1)*, an intimate sample or a non-intimate sample is taken from the person, nothing in this Part shall prevent the taking of a sample under *section 11* from the person during the period of detention.
- (7) In this section references to the detention of a person for a period under any of the provisions referred to in *section 9(1)* shall, if appropriate, include references to the detention of the person for consecutive periods under the provisions concerned.

### **Taking of samples from protected persons under Part 2**

**21.** (1) An intimate sample shall not be taken from a protected person under *Part 2* except where—

- (a) a parent or guardian of the person or, if appropriate, an adult relative or other adult reasonably named by the person who, pursuant to section 58 of the Act of 2001, *section 23(2)* or otherwise, attends at the Garda Síochána station in which the person is detained, or
- (b) in the absence, or the exclusion under *subsection (4)* or the removal under *subsection (5)*, of a person referred to in *paragraph (a)*, another adult (not being a member of the Garda Síochána) nominated by the member in charge of the Garda Síochána station,

is present while the sample is being taken, unless the protected person indicates that he or she does not wish to have the person present.

(2) The member in charge of the Garda Síochána station concerned shall, in so far as practicable, nominate a person under *subsection (1)(b)* who—

- (a) is of the same sex as the person from whom the sample is to be, or is being, taken, and
- (b) by reason of his or her training or experience with persons who have physical or mental disabilities or both, is suitable for that purpose.

(3) Subject to *subsections (4)* and *(5)*, a non-intimate sample shall, if it is reasonably practicable to do so, be taken from a protected person in the presence of a parent or guardian of the person or, if appropriate, an adult relative or other adult reasonably named by the person who, pursuant to section 58 of the Act of 2001, *section 23(2)* or otherwise, attends at the Garda Síochána station in which the person is detained, unless the protected person indicates that he or she does not wish to have the person present.

(4) The member in charge of the Garda Síochána station may authorise the exclusion of a parent or guardian of a protected person, or other adult referred to in *subsection (1)(a)* or *(3)*, as the case may be, who attends at the Garda Síochána station in which the protected person is detained, from the place where the sample concerned is to be, or is being, taken if—

- (a) the parent or guardian of the protected person, or the other adult who attends at the station, is the victim of the offence in relation to which the protected person is detained,

- (b) the parent or guardian of the protected person, or the other adult who attends at the station, has been arrested in respect of that offence,
  - (c) the member in charge has reasonable grounds for suspecting the parent or guardian of the protected person, or the other adult who attends at the station, of complicity in that offence, or
  - (d) the member in charge has reasonable grounds for believing that the parent or guardian of the protected person, or the other adult who attends at the station, is likely to obstruct the course of justice.
- (5) The member in charge of the Garda Síochána station may authorise the removal of a parent or guardian of a protected person, or other adult referred to in *subsection (1)(a) or (3)*, as the case may be, who attends at the Garda Síochána station in which the protected person is detained, from the place where the sample concerned is to be, or is being, taken if he or she attempts without reasonable cause to obstruct the taking of the sample.
- (6) Before a member of the Garda Síochána takes, or causes to be taken, an intimate sample or a non-intimate sample from a protected person, the member shall, if it is reasonably practicable to do so, inform a parent or guardian of the person or other adult referred to in *subsection (1)(a) or (3)*, as may be appropriate, who—
- (a) attends, pursuant to section 58 of the Act of 2001, *section 23(2)* or otherwise, at the Garda Síochána station in which the person is detained, and
  - (b) is not excluded under *subsection (4)* from the place where the sample is to be, or is being, taken,
- of the matters referred to in *section 12(5) or 13(5)*, as the case may be, in relation to the person.
- (7) *Subsection (6)* shall not apply in relation to the taking of an intimate sample from a protected person if a parent or guardian of the person has, pursuant to *section 15(4)*, been informed of the matters referred to in *section 12(5)* in relation to the person.

#### **Taking of samples from children under *Part 2***

- 22.** (1) An intimate sample shall not be taken from a child under *Part 2* except where—
- (a) a parent or guardian of the child or, if appropriate, any other adult who, pursuant to section 58 of the Act of 2001, attends at the Garda Síochána station in which the child is detained, or
  - (b) in the absence, or the exclusion under *subsection (4)* or the removal under *subsection (5)*, of a person referred to in *paragraph (a)*, another adult (not being a member of the Garda Síochána) nominated by the member in charge of the Garda Síochána station,
- is present while the sample is being taken, unless the child indicates that he or she does not wish to have the person present.
- (2) The member in charge of the Garda Síochána station concerned shall, in so far as practicable, nominate a person under *subsection (1)(b)* who—
- (a) is of the same sex as the child from whom the sample is to be, or is being, taken, and
  - (b) by reason of his or her training or experience with children, is suitable for that purpose.

(3) Subject to *subsections (4) and (5)* —

(a) if appropriate, a sample under *section 11* , or

(b) a non-intimate sample,

shall, if it is reasonably practicable to do so, be taken from a child in the presence of a parent or guardian of the child or, if appropriate, any other adult who, pursuant to section 58 of the Act of 2001, attends at the Garda Síochána station in which the child is detained, unless the child indicates that he or she does not wish to have the person present.

(4) The member in charge of the Garda Síochána station may authorise the exclusion of a parent or guardian of a child, or other adult referred to in *subsection (1)(a) or (3)*, as the case may be, who attends at the Garda Síochána station in which the child is detained, from the place where the sample concerned is to be, or is being, taken if—

(a) the parent or guardian of the child, or the other adult who attends at the station, is the victim of the offence in relation to which the child is detained,

(b) the parent or guardian of the child, or the other adult who attends at the station, has been arrested in respect of that offence,

(c) the member in charge has reasonable grounds for suspecting the parent or guardian of the child, or the other adult who attends at the station, of complicity in that offence, or

(d) the member in charge has reasonable grounds for believing that the parent or guardian of the child, or the other adult who attends at the station, is likely to obstruct the course of justice.

(5) The member in charge of the Garda Síochána station may authorise the removal of a parent or guardian of a child, or other adult referred to in *subsection (1)(a) or (3)*, as the case may be, who attends at the Garda Síochána station in which the child is detained, from the place where the sample concerned is to be, or is being, taken if he or she attempts without reasonable cause to obstruct the taking of the sample.

(6) Before a member of the Garda Síochána takes, or causes to be taken, a sample under *section 11* , an intimate sample or a non-intimate sample from a child, the member shall, if it is reasonably practicable to do so, inform a parent or guardian of the child or other adult who—

(a) attends, pursuant to section 58 of the Act of 2001 or otherwise, at the Garda Síochána station in which the child is detained, and

(b) is not excluded under *subsection (4)* from the place where the sample concerned is to be, or is being, taken,

of the matters referred to in *section 11(3), 12(5) or 13(5)*, as the case may be, in relation to the child.

(7) *Subsection (6)* shall not apply in relation to the taking of an intimate sample from a child if a parent or guardian of the child has, pursuant to *section 15(5)*, been informed of the matters referred to in *section 12(5)* in relation to the child.

#### **Persons other than parent or guardian to support protected person**

23. (1) If, in relation to the taking of an intimate sample or a non-intimate sample under this Part from a protected person, the member in charge of the Garda Síochána station in which the person is detained—

(a) is unable, having made reasonable efforts to do so, to contact a parent or guardian of the person, or

(b) the parent or guardian of the person indicates that he or she cannot or will not attend at the station within a reasonable time,

the member in charge shall inform the protected person, or cause him or her to be informed, without delay of that fact.

(2) Where—

(a) the circumstances referred to in *subsection (1)* exist in relation to a protected person, or

(b) a protected person does not have, or the member in charge of the Garda Síochána station in which the person is detained cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether he or she has, a living parent or guardian,

the member in charge of the Garda Síochána station in which the protected person is detained shall inform the person, or cause him or her to be informed, without delay that he or she is entitled to have an adult relative or other adult reasonably named by him or her requested to attend at the station without delay for the purposes of this Part and the member in charge of the station shall, on request, cause the named person to be notified accordingly as soon as practicable.

**Use of reasonable force to take sample under *section 11* or non-intimate sample**

**24.** (1) Without prejudice to the generality of *sections 11* and *13* and subject to *subsection (2)*, where a person fails or refuses to allow a sample to be taken from him or her pursuant to either of those sections a member of the Garda Síochána, and the member or members of the Garda Síochána assisting that member, may use such force as is reasonably considered necessary to take the sample or to prevent the loss, destruction or contamination of the sample or both.

(2) *Subsection (1)* shall not apply to—

(a) the taking of a sample under *section 11* from a child, or

(b) the taking of a non-intimate sample from a child who has not attained the age of 12 years.

(3) The power referred to in *subsection (1)* shall not be exercised unless a member of the Garda Síochána not below the rank of superintendent authorises it.

(4) Where it is intended to exercise the power conferred by *subsection (1)*, one of the members of the Garda Síochána concerned shall inform the person concerned—

(a) of that intention, and

(b) that an authorisation to do so has been given under *subsection (3)*.

(5) A sample to be taken pursuant to this section shall be taken in the presence of a member of the Garda Síochána not below the rank of inspector and that member shall determine the number of members of the Garda Síochána that is reasonably necessary for the purposes of *subsection (1)*.

(6) A non-intimate sample to be taken from a protected person pursuant to this section shall not be taken except where—

(a) a parent or guardian of the person or, if appropriate, an adult relative or other adult reasonably named by the person who, pursuant to section 58 of the Act of 2001, *section 23(2)* or otherwise, attends at the Garda Síochána station in which the person is detained, or

(b) in the absence, or the exclusion under *subsection (4)* of *section 21* or the removal under *subsection (5)* of that section, of a person referred to in *paragraph (a)*, another adult (not being a member of the Garda Síochána) nominated by the member in charge of the Garda Síochána station,

is present while the sample is being taken, unless the protected person indicates that he or she does not wish to have the person present.

(7) The member in charge of the Garda Síochána station concerned shall in so far as practicable, nominate a person under *subsection (6)(b)* who, by reason of his or her training or experience with persons who have physical or mental disabilities or both, is suitable for that purpose.

(8) A non-intimate sample to be taken from a child pursuant to this section shall not be taken except where—

(a) a parent or guardian of the child or, if appropriate, another adult who, pursuant to section 58 of the Act of 2001, attends at the Garda Síochána station in which the child is detained, or

(b) in the absence, or the exclusion under *subsection (4)* of *section 22* or the removal under *subsection (5)* of that section, of a person referred to in *paragraph (a)*, another adult (not being a member of the Garda Síochána) nominated by the member in charge of the Garda Síochána station,

is present while the sample is being taken, unless the child indicates that he or she does not wish to have the person present.

(9) The member in charge of the Garda Síochána station concerned shall, in so far as practicable, nominate a person under *subsection (8)(b)* who, by reason of his or her training or experience with children, is suitable for that purpose.

(10) The taking of a sample pursuant to this section shall be recorded by electronic or similar means.

#### **Re-taking of certain samples under *Part 2* in certain circumstances**

25. (1) Where—

(a) a person is detained for a period under any of the provisions referred to in *section 9(1)*, and

(b) a sample under *section 11* taken from the person during the period of detention proves to be insufficient or an intimate sample or a non-intimate sample taken from the person during the period of detention proves to be insufficient or is inadequately labelled,

a second sample under *section 11* or a second intimate sample or non-intimate sample, as the case may be, may be taken from the person in accordance with this Part while he or she is so detained only if, subject to *subsection (2)* and *section 3(6)*, an authorisation to take the second sample is given under *section 11(2)*, *12(2)(a)* or *13(2)*, as the case may be.

(2) An authorisation under *section 11(2)*, *12(2)(a)* or *13(2)*, as the case may be, to take a second sample from a person referred to in *subsection (1)*

may be given on one occasion only during a period of detention of the person under any of the provisions referred to in *section 9(1)*.

(3) Where—

(a) a non-intimate sample is taken from a person who is detained under any of the provisions referred to in *section 9(1)*,

(b) the person is released without any charge having been made against him or her, and

(c) the sample proves to be insufficient or is inadequately labelled,

a second non-intimate sample may be taken from the person in accordance with this Part only if—

(i) a member of the Garda Síochána not below the rank of superintendent authorises it to be taken, and

(ii) the person attends at a Garda Síochána station in accordance with this section for the purpose of having the second non-intimate sample taken from him or her.

(4) An authorisation under *paragraph (i) of subsection (3)* to take a second non-intimate sample from a person in accordance with that subsection shall not be given unless the member of the Garda Síochána giving it has reasonable grounds—

(a) for suspecting the involvement of the person from whom the first non-intimate sample concerned was taken in the offence in respect of which he or she was detained when that sample was taken, and

(b) for believing that a second non-intimate sample will tend to confirm or disprove the involvement of that person in that offence.

(5) An authorisation under *paragraph (i) of subsection (3)* to take a second non-intimate sample from a person in accordance with that subsection—

(a) may be given on one occasion only, and

(b) may not be given if a period of more than 6 months has elapsed since the first non-intimate sample concerned was taken from the person.

(6) If an authorisation under *subsection (3)(i)* to take a second non-intimate sample from a person has been given, a member of the Garda Síochána may, within the period specified in *subsection (7)*, require the person by notice in writing to attend at a specified Garda Síochána station within the period specified in *subsection (9)(a)* for the purpose of having a second non-intimate sample taken from him or her.

(7) The period referred to in *subsection (6)* for requiring the person concerned to attend at a specified Garda Síochána station is one month from the date on which a member of the Garda Síochána of the rank of superintendent in the Garda Síochána district in which the first non-intimate sample concerned was taken is informed of the fact that that sample has proved to be insufficient or was inadequately labelled, as the case may be.

(8) A notice under *subsection (6)* shall, in the case of a protected person or child, also be sent to a parent or guardian of the person or child, as the case may be.

(9) A notice under *subsection (6)* shall state that the first non-intimate sample concerned taken from the person concerned has proved to be insufficient or was inadequately labelled, as may be appropriate, and a requirement in the notice to attend at a specified Garda Síochána station—



- (a) shall give the person concerned a period of not less than 10 working days within which he or she shall so attend, and
  - (b) may direct the person concerned to so attend on specified days and at a specified time of day or between specified times of day.
- (10) If the person concerned fails or refuses without reasonable cause to comply with a notice under *subsection (6)*, a member of the Garda Síochána not below the rank of superintendent may apply to a judge of the District Court for a warrant for the arrest of the person and his or her detention in a Garda Síochána station for the purpose of having a second non-intimate sample taken from him or her.
- (11) A judge of the District Court may, on an application under *subsection (10)*, issue a warrant for the arrest of the person concerned and his or her detention in a Garda Síochána station for such period not exceeding 4 hours from the time the person concerned is arrested for the purpose of having a second non-intimate sample taken from him or her if the judge is satisfied that—
- (a) the first non-intimate sample concerned was taken from the person concerned in accordance with this Part,
  - (b) the first non-intimate sample concerned taken from the person concerned has proved to be insufficient or was inadequately labelled, as the case may be,
  - (c) the person concerned has failed or refused without reasonable cause to comply with a notice under *subsection (6)*, and
  - (d) in all the circumstances of the case, it is in the interests of justice to issue a warrant for the arrest and detention in a Garda Síochána station of the person concerned for the purpose of having a second such sample taken from him or her.
- (12) If a warrant for the arrest and detention of a person is issued under *subsection (11)* for the purpose of having a second non-intimate sample taken from the person, the sample shall be taken from him or her in accordance with this Part.
- (13) When a second non-intimate sample has been taken from a person who is detained pursuant to a warrant issued under *subsection (11)*, the person shall be released from custody forthwith unless his or her detention is authorised apart from this section.
- (14) Nothing in this section shall require the second non-intimate sample to be taken from a person under this section to be of the same type of biological material as the first sample taken from the person which proved to be insufficient or was inadequately labelled, provided that the second sample concerned is one that is permitted to be taken under *section 13*.
- (15) If a second non-intimate sample is taken from a person under *subsection (1)*, the references in this section other than in that subsection—
- (a) to a first non-intimate sample shall be construed as references to a second non-intimate sample, and
  - (b) to a second non-intimate sample shall be construed as references to a third non-intimate sample,
- taken, or to be taken, from the person.

(16) A sample taken, or to be taken, from a person under this section shall, for the purposes of this Act, be regarded as if it is to be taken, or had been taken, from the person under *section 11, 12 or 13*, as may be appropriate.

(17) In this section references to the detention of a person for a period under any of the provisions referred to in *section 9(1)* shall, if appropriate, include references to the detention of the person for consecutive periods under the provision concerned.

**Annotations**

**Amendments:**

**F2** Substituted by *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*, s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.

**Modifications (not altering text):**

**C3** Prospective affecting provision: subsection amended by *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*, s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.

(7) The period referred to in *subsection (6)* for requiring the person concerned to attend at a specified Garda Síochána station is one month from the date on which a member of the Garda Síochána of the rank of superintendent in the Garda Síochána F2[division] in which the first non-intimate sample concerned was taken is informed of the fact that that sample has proved to be insufficient or was inadequately labelled, as the case may be.

**Samples not to be taken from persons in custody of Garda Síochána other than in accordance with this Part**

26. Subject to *section 165*, a member of the Garda Síochána shall not, following the commencement of this Part, take, or cause to be taken, a sample for forensic testing from a person who is detained under any of the provisions referred to in *section 9(1)* other than in accordance with this Part.

## PART 3

### TAKING OF SAMPLES FROM VOLUNTEERS TO GENERATE DNA PROFILES

#### Taking of samples from volunteers to generate DNA profiles

27. (1) A member of the Garda Síochána or an authorised person may request a person other than a person to whom *section 11, 12, 13, 29, 31 or 32* applies (in this section and *section 28* called a “volunteer”) to have a sample taken from him or her under this section for the purpose of generating a DNA profile in respect of the volunteer in relation to—

(a) the investigation of a particular offence, or

(b) the investigation of a particular incident that may have involved the commission of an offence.

(2) A person who is a victim, or is reasonably considered to be a victim, of the offence or incident that may have involved the commission of an offence being investigated may be a volunteer.

- (3) Subject to *sections 53* and *55*, a member of the Garda Síochána or an authorised person shall inform a volunteer of the following before seeking his or her consent to the taking of a sample under this section or the member or authorised person takes, or causes to be taken, such a sample from him or her:
- (a) that the volunteer is not obliged to have the sample taken from him or her;
  - (b) in a case in which a sample already taken under this section from the volunteer has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 30* a second or further sample is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample is, in accordance with *section 30*, to be taken from him or her;
  - (c) that the sample will be used to generate a DNA profile in respect of the volunteer for the purposes of the investigation of the offence, or incident that may have involved the commission of an offence, in relation to which it is being taken; and
  - (d) that the sample and the DNA profile generated from the sample in respect of the volunteer may be destroyed in accordance with *Part 10*.
- (4) Subject to *sections 54* and *56* a volunteer shall, before a sample is taken from him or her under this section, consent in writing to the taking of the sample and the consent shall specify the particular offence, or incident that may have involved the commission of an offence, that is being investigated to which the consent relates.
- (5) Subject to this Act, a member of the Garda Síochána or an authorised person may take, or cause to be taken, from a volunteer a sample under this section.
- (6) A sample may be taken under this section from a volunteer in a Garda Síochána station or other place nominated by a member of the Garda Síochána not below the rank of sergeant or, subject to the agreement of the member of the Garda Síochána or authorised person taking the sample, at a place designated by the volunteer.
- (7) Subject to *section 58*, if a volunteer expressly withdraws consent given under *subsection (4)* (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of a sample under this section, that withdrawal of consent shall be treated as a refusal to give consent to the taking of the sample under this section.
- (8) A withdrawal under *subsection (7)* of consent given under *subsection (4)* shall be confirmed in writing as soon as practicable after such withdrawal.
- (9) A refusal of a person to give consent under *subsection (4)* shall not of itself constitute reasonable cause for a member of the Garda Síochána to suspect the person of having committed the offence concerned for the purpose of arresting and detaining him or her under any of the provisions referred to in *section 9(1)* in connection with the investigation of that offence.

**Entry of DNA profiles of volunteers in reference index of DNA Database System**

**28.** (1) A member of the Garda Síochána not below the rank of sergeant may, at the time a sample is taken under *section 27* or at any time thereafter, inform a volunteer from whom the sample is being, or was, taken, other than—

- (a) a protected person,
- (b) a child, or
- (c) a victim, or a person reasonably considered to be a victim, of the offence, or incident that may have involved the commission of an offence, being investigated,

that he or she may consent to the entry of his or her DNA profile generated from the sample in the reference index of the DNA Database System.

(2) A member of the Garda Síochána or an authorised person shall inform a volunteer to whom *subsection (1)* applies of the following before the DNA profile in respect of the volunteer may be entered in the reference index of the DNA Database System:

- (a) that the volunteer concerned is not obliged to consent to his or her DNA profile being entered in the reference index of the DNA Database System;
- (b) the effect of the entry of the DNA profile in that index of that System; and
- (c) that the sample taken under *section 27* from the volunteer concerned may be destroyed if not previously destroyed, and his or her DNA profile entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.

(3) A volunteer referred to in *subsection (1)* shall consent in writing before his or her DNA profile may be entered in the reference index of the DNA Database System and, if he or she so consents, his or her DNA profile may be entered in that index of that System.

**Taking of samples for mass screening**

**29.** (1) A sample may be taken under this section from a person who is one of a class of persons to whom an authorisation for a mass screening given under *subsection (2)* applies for the purpose of generating a DNA profile in respect of the person in relation to the investigation of a particular relevant offence.

(2) A member of the Garda Síochána not below the rank of chief superintendent may authorise the mass screening of a class of persons in accordance with this section for the purposes of the investigation of a relevant offence if the member has reasonable grounds for believing that the mass screening of that class of persons—

- (a) is likely to further the investigation of the offence, and
- (b) is a reasonable and proportionate measure to be taken in the investigation of the offence.

(3) A class of persons for the purposes of a mass screening may be determined by reference to one or more of the following:

- (a) the sex of the persons;

- (b) the age of the persons;
  - (c) the kinship of the persons;
  - (d) a geographic area in which the persons reside or work;
  - (e) a period of time during which the persons did anything or were at any place;
  - (f) such other matter as the member of the Garda Síochána giving the authorisation for the mass screening concerned considers appropriate.
- (4) Subject to *sections 53* and *55*, a member of the Garda Síochána or an authorised person shall inform a person of the following before seeking his or her consent to the taking of a sample under this section or the member or authorised person takes, or causes to be taken, a sample under this section from him or her:
- (a) that an authorisation for a mass screening has been given under *subsection (2)* and that the person is one of the class of persons to whom it applies;
  - (b) the purpose of the mass screening that has been authorised;
  - (c) that the person is not obliged to have the sample taken from him or her;
  - (d) in a case in which a sample already taken under this section from the person has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 30* a second or further sample is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample is, in accordance with *section 30*, to be taken from him or her;
  - (e) that the sample will be used to generate a DNA profile in respect of the person for the purposes of the investigation of the particular relevant offence in relation to which the sample is being taken; and
  - (f) that the sample and the DNA profile generated from the sample in respect of the person may be destroyed in accordance with *Part 10*.
- (5) Subject to *sections 54* and *56*, a person shall, before a sample is taken from him or her under this section, consent in writing to the taking of the sample and the consent shall refer to the authorisation for a mass screening concerned.
- (6) Subject to this Act, a member of the Garda Síochána or an authorised person may take, or cause to be taken, a sample under this section from a person who is one of a class of persons to whom an authorisation for a mass screening given under *subsection (2)* applies.
- (7) A sample may be taken under this section from a person who is one of a class of persons to whom an authorisation for a mass screening given under *subsection (2)* applies in a Garda Síochána station or other place nominated by a member of the Garda Síochána not below the rank of sergeant or, subject to the agreement of the member of the Garda Síochána or the authorised person taking the sample, at a place designated by the person from whom the sample is to be taken.

- (8) Subject to *section 58*, if a person expressly withdraws consent given under *subsection (5)* (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of a sample under this section, that withdrawal of consent shall be treated as a refusal to give consent to the taking of the sample under this section.
- (9) A withdrawal under *subsection (8)* of consent given under *subsection (5)* shall be confirmed in writing as soon as practicable after such withdrawal.
- (10) A refusal of a person to give consent under *subsection (5)* shall not of itself constitute reasonable cause for a member of the Garda Síochána to suspect the person of having committed the relevant offence concerned for the purpose of arresting and detaining him or her under any of the provisions referred to in *section 9(1)* in connection with the investigation of that offence.

### Re-taking of samples under *Part 3*

30. Where a sample taken from a person under *section 27* or *29* proves to be insufficient or was inadequately labelled or, for any other good reason, a member of the Garda Síochána considers that it is necessary for a second or further such sample to be taken from the person, a second or further sample may be taken from him or her in accordance with the section concerned.

## PART 4

### TAKING OF SAMPLES FROM OTHER PERSONS OR BODIES FOR REFERENCE INDEX OF DNA DATABASE SYSTEM

#### Taking of samples from offenders

31. (1) A sample may be taken under this section from a person (in this section called an “offender”)—
- (a) who has been convicted of a relevant offence before the commencement of this section and, at that commencement, a sentence of imprisonment has been imposed by a court on the offender in respect of the offence and—
- (i) the offender is serving the sentence in prison,
- (ii) the offender is temporarily released under section 2 of the F3[Criminal Justice Act 1960,]
- F4[(iia) the offender is released on parole within the meaning of the Parole Act 2019, or]
- (iii) the sentence is otherwise still in force or current,
- (b) who at any time before or after the commencement of this section has been or is convicted of a relevant offence and, after that commencement, a sentence of imprisonment is imposed by a court on the offender in respect of the offence,
- (c) who—
- (i) at any time before or after the commencement of this section has been or is convicted outside the State of an offence, and

(ii) at any time after that commencement, is serving a sentence of imprisonment, or the balance thereof, in a prison in the State in respect of that offence pursuant to—

(I) a warrant issued by the High Court under the Transfer of Sentenced Persons Act 1995 authorising the bringing of the person into the State and his or her imprisonment in the State, F5[...]

F6[(IA) a committal order within the meaning of the Transfer of Sentenced Persons Act 1995,]

(II) an order of the High Court under the Transfer of Execution of Sentences Act 2005 committing the person to a prison,

F6[(III) a committal order within the meaning of the Transfer of Execution of Sentences Act 2005, or

(IV) a committal order within the meaning of Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023,]

provided that, when issuing the warrant or making the order, as the case may be, the offence that the High Court F6[or an appropriate court (within the meaning of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023), as the case may be,] determined to be the corresponding offence in the State to that offence is a relevant offence, or

(d) who may fall under *paragraph (a), (b) or (c)* and who, on or at any time after the commencement of this section is, or becomes, subject to the requirements of Part 2 of the Sex Offenders Act 2001 (in this Act called a “sex offender”).

(2) A sample taken from an offender under this section shall be used to generate a DNA profile in respect of the offender to be entered in the reference index of the DNA Database System.

(3) A sample under this section shall be taken from an offender as soon as practicable after the commencement of this section or he or she becomes an offender, whichever occurs first and, in any event, the sample shall be taken from him or her before the expiry of the sentence concerned or, if he or she is a sex offender, before the end of the notification period.

(4) Subject to this Act, a prison officer may take, or cause to be taken, a sample under this section from an offender who is in prison.

(5) A sample under this section shall be taken from an offender referred to in *subsection (4)* in the prison in which he or she is imprisoned, but only if the governor of the prison authorises it to be taken.

(6) Subject to this Act, a member of the Garda Síochána may take, or cause to be taken, a sample under this section from an offender who is not in prison.

(7) A sample under this section may be taken from an offender referred to in *subsection (6)* only if—

(a) a member of the Garda Síochána not below the rank of sergeant authorises it to be taken, and

(b) the offender attends at a Garda Síochána station in accordance with this section for the purpose of having the sample taken from him or her.

- (8) A prison officer or a member of the Garda Síochána, as may be appropriate, shall inform an offender of the following before taking, or causing to be taken, a sample under this section from him or her:
- (a) that an authorisation to take the sample from him or her has been given under *subsection (5) or (7)(a)*, as the case may be;
  - (b) in a case in which a sample already taken under this section from the offender, or a sample already taken from him or her under *section 32* when he or she was a child offender, has proved to be insufficient—
    - (i) that that sample has proved to be insufficient, and
    - (ii) that either—
      - (I) another authorisation under *subsection (5) or (7)(a)*, as the case may be, is not, by virtue of *section 3(6)*, required, or
      - (II) an authorisation to take a second sample under this section from him or her has, in accordance with *subsection (3) or (5)*, as may be appropriate, of *section 38*, been given under *subsection (5) or (7)(a)*, if appropriate, that an authorisation under *section 38(7)(a)* has been given for the taking of a second such sample from him or her;
  - (c) if appropriate, that where the offender fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 36* to take the sample;
  - (d) that the sample will be used to generate a DNA profile in respect of the offender to be entered in the reference index of the DNA Database System and the effect of such an entry;
  - (e) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by this Act; and
  - (f) that the sample may be destroyed, and the DNA profile in respect of the offender entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (9) Where a sample under this section has not been taken from an offender in prison, a member of the Garda Síochána not below the rank of inspector in the Garda Síochána district in which the offender ordinarily resides may require the offender by notice in writing to attend at a specified Garda Síochána station within the period specified in *subsection (11)(a)* for the purpose of having such a sample taken from him or her.
- (10) If the member of the Garda Síochána sending a notice under *subsection (9)* knows or believes that the offender to whom the notice is being sent is a protected person, the member shall also send the notice to a parent or guardian of the person.
- (11) A requirement in a notice under *subsection (9)* to attend at a specified Garda Síochána station—
- (a) shall give the offender concerned a period of not less than 10 working days within which he or she shall so attend, and
  - (b) may direct the offender concerned to so attend on specified days and at a specified time of day or between specified times of day.



(12) An offender who fails or refuses, without reasonable cause, to comply with a notice under *subsection (9)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(13) In this section references to a sentence of imprisonment imposed by a court on an offender include references to—

(a) a sentence of imprisonment imposed by a court on the offender the execution of the whole or a part of which is suspended,

(b) a sentence of imprisonment imposed by a court on the offender following the contravention by him or her of a condition in an order made by the court under section 100 of the Criminal Justice Act 2006, and

(c) a sentence of detention imposed by a court on the offender when he or she was a child where he or she is transferred to a prison to serve the remainder of the sentence in accordance with section 155 of the Act of 2001.

(14) In this section—

"the end of the notification period", in relation to a sex offender, means the end of the period for which he or she is subject to the requirements of Part 2 of the Sex Offenders Act 2001;

"the expiry of the sentence", in relation to an offender other than a sex offender, means—

(a) in the case of an offender falling under *paragraph (a) or (b) of subsection (1)*, the expiry of the sentence of imprisonment imposed by a court on him or her in respect of the relevant offence concerned,

(b) in the case of an offender falling under *subsection (1)(c)*, the expiry of the sentence of imprisonment determined by the High Court F6[or an appropriate court (within the meaning of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023), as the case may be] in respect of the offence concerned of which he or she was convicted outside the State—

(i) on his or her transfer to the State and imprisonment in a prison in the State under the Transfer of Sentenced Persons Act 1995, F5[...]

(ii) on his or her committal to a prison in the State under the F7[Transfer of Execution of Sentences Act 2005, or]

F6[(iii) on his or her transfer to the State and detention in a place of detention in the State under Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023,]

as the case may be;

"temporary release", in relation to an offender, means the release of the offender from prison for a temporary period in accordance with a direction given by the Minister under section 2 of the Criminal Justice Act 1960.

**Annotations**

**Amendments:**

**F3** Substituted (30.07.2021) by *Parole Act 2019* (28/2019), s. 39(a), S.I. No. 405 of 2021.

- F4** Inserted (30.07.2021) by *Parole Act 2019 (28/2019)*, s. 39(b), S.I. No. 405 of 2021.
- F5** Deleted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (3/2023)*, s. 78(1)(a)(i), (b)(ii), S.I. No. 213 of 2023.
- F6** Inserted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (3/2023)*, s. 78(1)(a)(ii), (iii), (iv), (b)(i), (iv), S.I. No. 213 of 2023.
- F7** Substituted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (3/2023)*, s. 78(1)(b)(iii), S.I. No. 213 of 2023.
- F2** Substituted by *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*, s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.
- Modifications (not altering text):**
- C4** Prospective affecting provision: subsection amended by *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*, s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.
- (9) Where a sample under this section has not been taken from an offender in prison, a member of the Garda Síochána not below the rank of inspector in the Garda Síochána F2[division] in which the offender ordinarily resides may require the offender by notice in writing to attend at a specified Garda Síochána station within the period specified in subsection (11)(a) for the purpose of having such a sample taken from him or her.
- Editorial Notes:**
- E6** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010 (8/2010)*, ss. 3, 4(1), S.I. No. 662 of 2010.

### Taking of samples from child offenders

- 32. (1)** A sample may be taken under this section from a child (in this section called a “child offender”)—
- (a) who has been convicted of a relevant offence before the commencement of this section and, at that commencement, a sentence of detention has been imposed by a court on the child offender in respect of the offence and—
- (i) the child offender is serving the sentence in a children detention school or a place of detention,
- (ii) the child offender is on a permitted absence from a children detention school or is temporarily released under section 2 of the Criminal Justice Act 1960 from a place of detention, or
- (iii) the sentence is otherwise still in force or current,
- (b) who at any time before or after the commencement of this section has been or is convicted of a relevant offence and, after that commencement, a sentence of detention is imposed by a court on the child offender in respect of the offence,
- (c) who—
- (i) at any time before or after the commencement of this section has been or is convicted outside the State of an offence, and

(ii) at any time after that commencement, is serving a sentence of detention, or the balance thereof, in the State in respect of that offence pursuant to—

(I) a warrant issued by the High Court under the Transfer of Sentenced Persons Act 1995 authorising the bringing of the child into the State and his or her detention in a children detention school or a place of detention, F8[...]

F9[(IA) a committal order within the meaning of the Transfer of Sentenced Persons Act 1995,]

(II) an order of the High Court under the Transfer of Execution of Sentences Act 2005 committing the child to Saint Patrick's Institution,

F9[(III) a committal order within the meaning of the Transfer of Execution of Sentences Act 2005, or

(IV) a committal order within the meaning of Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023,]

provided that, when issuing the warrant or making the order, as the case may be, the offence that the High Court F9[or an appropriate court (within the meaning of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023), as the case may be,] determined to be the corresponding offence in the State to that offence is a relevant offence, or

(d) who may fall under *paragraph (a), (b) or (c)* and who, on or at any time after the commencement of this section is, or becomes, subject to the requirements of Part 2 of the Sex Offenders Act 2001 (in this Act called a "sex offender").

(2) A sample taken from a child offender under this section shall be used to generate a DNA profile in respect of the child offender to be entered in the reference index of the DNA Database System.

(3) Subject to *section 156(2)*, a sample under this section shall be taken from a child offender as soon as practicable after the commencement of this section or he or she becomes a child offender, whichever occurs first and, in any event, the sample shall be taken from him or her before the expiry of the sentence concerned or, if he or she is a sex offender, before the end of the notification period.

(4) Subject to this Act, an authorised member of the staff of a children detention school in which a child offender is detained or a prison officer of a place of detention in which the child offender is detained may take, or cause to be taken, a sample under this section from the child offender.

(5) A sample under this section shall be taken from a child offender referred to in *subsection (4)* in the children detention school or, as the case may be, the place of detention in which he or she is detained, but only if the Director of the children detention school or the governor of the place of detention, as the case may be, authorises it to be taken.

(6) Subject to this Act, a member of the Garda Síochána may take, or cause to be taken, a sample under this section from a child offender who is not in a children detention school or a place of detention.

(7) A sample under this section may be taken from a child offender referred to in *subsection (6)* only if—

- (a) a member of the Garda Síochána not below the rank of sergeant authorises it to be taken, and
  - (b) the child offender attends at a Garda Síochána station in accordance with this section for the purpose of having the sample taken from him or her.
- (8) An authorised member of the staff of a children detention school, a prison officer of a place of detention or a member of the Garda Síochána, as may be appropriate, shall inform a child offender of the following before taking, or causing to be taken, a sample under this section from him or her:
- (a) that an authorisation to take the sample from him or her has been given under *subsection (5) or (7)(a)*, as the case may be;
  - (b) in a case in which a sample already taken under this section from the child offender has proved to be insufficient—
    - (i) that that sample has proved to be insufficient, and
    - (ii) that either—
      - (I) another authorisation under *subsection (5) or (7)(a)*, as the case may be, is not, by virtue of *section 3(6)*, required, or
      - (II) an authorisation to take a second sample under this section from him or her has, in accordance with *section 38(4)*, been given under *subsection (5) or*, if appropriate, that an authorisation under *section 38(8)(a)* has been given for the taking of a second such sample from him or her;
  - (c) if appropriate, that where the child offender fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 36* to take the sample;
  - (d) that the sample will be used to generate a DNA profile in respect of the child offender to be entered in the reference index of the DNA Database System and the effect of such an entry;
  - (e) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by this Act; and
  - (f) that the sample may be destroyed, and the DNA profile in respect of the child offender entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (9) Where a sample under this section has not been taken from a child offender in a children detention school or a place of detention, a member of the Garda Síochána not below the rank of inspector in the Garda Síochána district in which the child offender ordinarily resides may require the child offender by notice in writing to attend at a specified Garda Síochána station within the period specified in *subsection (11)(a)* for the purpose of having such a sample taken from him or her.
- (10) A notice under *subsection (9)* shall also be sent to a parent or guardian of the child offender concerned.
- (11) A requirement in a notice under *subsection (9)* to attend at a specified Garda Síochána station—

- (a) shall give the child offender concerned a period of not less than 10 working days within which he or she shall so attend, and
- (b) may direct the child offender concerned to so attend on specified days and at a specified time of day or between specified times of day.
- (12) A child offender who fails or refuses, without reasonable cause, to comply with a notice under *subsection (9)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine or detention for a period not exceeding 6 months or both.
- (13) For the avoidance of doubt it is hereby declared that references in this section to a relevant offence shall, in the case of a child offender aged 10 or 11 years, be construed as references to an offence referred to in section 52(2) of the Act of 2001.
- (14) In this section references to a sentence of detention imposed by a court on a child offender include references to a sentence of detention imposed by a court on the child offender the execution of the whole or a part of which is suspended.
- (15) In this section—
- "the end of the notification period", in relation to a sex offender, means the end of the period for which he or she is subject to the requirements of Part 2 of the Sex Offenders Act 2001;
- "the expiry of the sentence", in relation to a child offender other than a sex offender, means—
- (a) in the case of a child offender falling under *paragraph (a)* or *(b)* of *subsection (1)*, the expiry of the sentence of detention imposed by a court on him or her in respect of the relevant offence concerned,
- (b) in the case of a child offender falling under *subsection (1)(c)*, the expiry of the sentence of detention determined by the High Court F9[or an appropriate court (within the meaning of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023), as the case may be] in respect of the offence concerned of which he or she was convicted outside the State—
- (i) on his or her transfer to the State and detention in a children detention school or a place of detention in the State under the Transfer of Sentenced Persons Act 1995, F8[...]
- (ii) on his or her committal to Saint Patrick's Institution under the F10[Transfer of Execution of Sentences Act 2005, or]
- F9[(iii) on his or her transfer to the State and detention in a place of detention in the State under Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023,]
- as the case may be;
- "permitted absence", in relation to the absence of a child offender from a children detention school, means—
- (a) the absence of the child offender from the school pursuant to an order under section 202 or 203 of the Act of 2001,
- (b) the absence of the child offender from the school on a mobility trip within the meaning of section 204 of the Act of 2001,
- (c) the absence of the child offender on temporary leave from the school granted in accordance with sections 205 and 206 of the Act of 2001, or

(d) the placing out of the child offender under supervision in the community under section 207 of the Act of 2001;

"temporary release", in relation to a child offender, means the release of the child offender from a place of detention for a temporary period in accordance with a direction given by the Minister under section 2 of the Criminal Justice Act 1960.

#### Annotations

#### Amendments:

- F8** Deleted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 78(2)(a)(i), (b)(ii), S.I. No. 213 of 2023.
- F9** Inserted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 78(2)(a)(ii), (iii), (iv), (b)(i), (iv), S.I. No. 213 of 2023.
- F10** Substituted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 78(2)(b)(iii), S.I. No. 213 of 2023.
- F2** Substituted by *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.

#### Modifications (not altering text):

- C5** Prospective amending provision: subsection amended by *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.

(9) Where a sample under this section has not been taken from a child offender in a children detention school or a place of detention, a member of the Garda Síochána not below the rank of inspector in the Garda Síochána F2[division] in which the child offender ordinarily resides may require the child offender by notice in writing to attend at a specified Garda Síochána station within the period specified in *subsection (11)(a)* for the purpose of having such a sample taken from him or her.

#### Editorial Notes:

- E7** A class C fine means a fine not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(1), S.I. No. 662 of 2010.

#### Former offenders

**33.** (1) Subject to this section, a sample may be taken under *section 34* from a person (including a child) (in this Act called a "former offender")—

(a) who at any time before the commencement of *sections 31* and *32* would, if those sections had been in operation at that time, have been an offender or a child offender but who, on the commencement of those sections, was not an offender or a child offender, as the case may be, by reason of the fact that—

(i) the sentence for the offence concerned of which the person had been convicted had expired, or

(ii) in the case of a sex offender, the notification period had ended,

(b) who at any time after the commencement of *sections 31* and *32* was an offender or a child offender and—

(i) a sample under those sections—

(I) was not taken from him or her, or

(II) was taken from him or her but the sample has proved to be insufficient,

and

(ii) who is no longer an offender or a child offender, as the case may be, by reason of the fact that—

(I) the sentence for the offence concerned of which the person had been convicted has expired, or

(II) in the case of a sex offender, the notification period has ended,

or

(c) who—

(i) whether before or after the commencement of *sections 31* and *32* has been or is convicted, in a place other than the State, of an offence that corresponds to a relevant offence or a sexual offence and has been or is sentenced in that place in respect of that offence, and

(ii) is no longer subject to that sentence.

(2) A person shall not be a former offender unless—

(a) insofar as it can reasonably be ascertained, his or her DNA profile is not entered in the reference index of the DNA Database System, and

(b) having regard to the following matters, a member of the Garda Síochána not below the rank of superintendent or a judge of the District Court, as the case may be, is satisfied that it is appropriate for a sample under *section 34* to be taken from the person:

(i) the number of relevant offences or sexual offences of which the person has been convicted;

(ii) the seriousness of the relevant offence or offences or sexual offence or offences of which the person has been convicted;

(iii) the nature of the relevant offence or offences or sexual offence or offences of which the person has been convicted and whether evidence relating to DNA is likely to assist with the investigation or prosecution of such an offence or such offences;

(iv) the duration of the sentence or sentences of imprisonment or detention imposed on the person in respect of the relevant offence or offences or sexual offence or offences of which he or she has been convicted;

(v) the period that has elapsed since the expiry of the sentence for the relevant offence concerned or, if more than one such offence, the expiry of the sentence for the relevant offence that was the last to expire or, if the person was convicted of a sexual offence, the period that has elapsed since the end of the notification period or, if more than one such period, the end of the last one;

(vi) in relation to any offence of which the person was convicted when he or she was a child if the conviction is one to which this section applies, the age of the person at the time of such conviction;

(vii) any other matter that the member of the Garda Síochána or the judge, as the case may be, considers appropriate.

- (3) A person shall not be a former offender if a period of not less than 10 years, or such shorter period as may be prescribed by the Minister, has elapsed since—
- (a) the expiry of the sentence for a relevant offence of which the person has been convicted or, if more than one such offence, the expiry of the sentence for the relevant offence that was the last to expire, or
  - (b) if the person was convicted of a sexual offence, the end of the notification period or, if more than one such period, the end of the last one,
- whichever is the later.
- (4) A person shall not be a former offender unless he or she—
- (a) is ordinarily resident in the State, or
  - (b) has his or her principal residence in the State.
- (5) This section shall, in relation to a relevant offence or a sexual offence of which a person was convicted when he or she was a child, apply to the conviction for the offence concerned—
- (a) in the case of a conviction in the State, only if the offence concerned is one that is required to be tried by the Central Criminal Court, or
  - (b) in the case of a conviction in a place other than the State, only if the offence concerned is one that corresponds to an offence that is required to be tried by the Central Criminal Court.
- (6) In this section references to—
- (a) a relevant offence shall include references to an offence under the law of a place other than the State that corresponds to a relevant offence, and
  - (b) a sexual offence shall include references to an offence under the law of a place other than the State that corresponds to a sexual offence.
- (7) For the purposes of this section—
- (a) an offence under the law of a place other than the State corresponds to a relevant offence where the act or omission constituting the offence under the law of that place would, if done or made in the State, constitute a relevant offence, and
  - (b) an offence under the law of a place other than the State corresponds to a sexual offence where the act constituting the offence under the law of that place would, if done in the State, constitute a sexual offence.
- (8) In this section references, in relation to a person who was convicted of a sexual offence, to the end of the notification period shall include references to the end of the equivalent period under the law of a place other than the State in which the person was convicted during which information of a similar nature to that required to be notified by a person who is subject to the requirements of Part 2 of the Sex Offenders Act 2001 is to be notified to the police in that place.
- (9) In this section references to a sentence of imprisonment or detention imposed on a person include references to—
- (a) a sentence of imprisonment or detention imposed on the person the execution of the whole or a part of which is suspended, and



(b) in the case of a person other than a child, a sentence of imprisonment imposed on the person following the contravention by him or her of a condition in an order made by a court under section 100 of the Criminal Justice Act 2006.

(10) In this section—

“the end of the notification period”, in relation to a person who was convicted of a sexual offence, means the end of the period for which he or she was subject to the requirements of Part 2 of the Sex Offenders Act 2001;

“the expiry of the sentence”, in relation to a person, means—

(a) the expiry of the sentence of imprisonment or detention imposed on him or her by a court in respect of a relevant offence of which he or she was convicted, or

(b) the expiry of the sentence of imprisonment or detention determined by the High Court F11[or an appropriate court (within the meaning of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023), as the case may be] in respect of an offence of which he or she was convicted outside the State—

(i) on his or her transfer to the State and imprisonment or detention, as may be appropriate, in a prison, a children detention school or a place of detention, as the case may be, in the State under the Transfer of Sentenced Persons Act 1995, F12[...]

(ii) on his or her committal to a prison or Saint Patrick’s Institution under the F13[Transfer of Sentenced Persons Act 1995, or]

F11[(iii) on his or her transfer to the State and detention in a place of detention in the State under Part 3 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023,]

as the case may be;

“police”, in relation to a place referred to in *subsection (8)*, means any police force in that place, or a member thereof, whether that force is organised at a national, regional or local level.

#### Annotations

#### Amendments:

- F11** Inserted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 78(3)(a), (d), S.I. No. 213 of 2023.
- F12** Deleted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 78(3)(b), S.I. No. 213 of 2023.
- F13** Substituted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 78(3)(c), S.I. No. 213 of 2023.

#### Taking of samples from former offenders

**34.** (1) A sample taken under this section from a former offender shall be used to generate a DNA profile in respect of the former offender to be entered in the reference index of the DNA Database System.

(2) If a member of the Garda Síochána not below the rank of superintendent is satisfied that—

- (a) a person is a former offender, and
- (b) it is in the interests of the protection of society, and it is desirable for the purpose of assisting the Garda Síochána in the investigation of offences, to have a sample under this section taken from the person,
- the member may authorise the making of a request of the person under *subsection (3)*.
- (3) A member of the Garda Síochána may, if so authorised under *subsection (2)*, request a person in respect of whom the authorisation under that subsection has been given to have a sample under this section taken from him or her.
- (4) A member of the Garda Síochána who makes a request under *subsection (3)* shall indicate to the person concerned that if he or she does not comply with the request that an application may be made to a judge of the District Court under *subsection (6)* for an order to authorise the sending of a notice under that subsection to him or her.
- (5) If a person of whom a request is made under *subsection (3)* does not comply with the request, an application may be made for an order under *subsection (6)*.
- (6) A judge of the District Court may, on an application in that behalf by a member of the Garda Síochána not below the rank of superintendent, make an order authorising the Garda Síochána to send a notice to a person requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice for the purpose of having a sample under this section taken from him or her if the judge is satisfied that—
- (a) the person is a former offender, and
- (b) it is in the interests of justice in all the circumstances of the case to make the order.
- (7) If an order is made under *subsection (6)*, a notice pursuant to the order may be sent by a member of the Garda Síochána to the former offender concerned.
- (8) A notice under *subsection (7)* shall, in the case of a child, also be sent to a parent or guardian of the child and, if the member of the Garda Síochána sending the notice knows or believes that the former offender to whom the notice is being sent is a protected person, the member shall also send the notice to a parent or guardian of the person.
- (9) Subject to this Act, a member of the Garda Síochána may take, or cause to be taken, from a former offender a sample under this section.
- (10) A member of the Garda Síochána shall inform a former offender of the following before taking, or causing to be taken, a sample under this section from him or her:
- (a) that an authorisation to request a sample under this section from the former offender has been given under *subsection (2)* or, as may be appropriate, a judge of the District Court has made an order under *subsection (6)* authorising the sending of a notice under that subsection to him or her requiring him or her to attend at a named Garda Síochána station for the purpose of having a sample under this section taken from him or her;
- (b) in a case in which a sample already taken under this section from the former offender has proved to be insufficient—

- (i) that that sample has proved to be insufficient, and
  - (ii) that a request for the taking of a second sample from him or her has been made under *subsection (1)* of *section 39* or a judge of the District Court has made an order under *subsection (4)* of that section for the taking of a second sample from him or her, as may be appropriate;
  - (c) that the sample will be used to generate a DNA profile in respect of the former offender to be entered in the reference index of the DNA Database System and the effect of such an entry;
  - (d) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by this Act; and
  - (e) that the sample may be destroyed, and the DNA profile in respect of the former offender entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (11) Subject to *subsection (12)*, a person who fails or refuses, without reasonable cause, to comply with a notice under *subsection (7)*, shall be guilty of an offence and shall be liable on summary conviction—
- (a) if the person is not a child, to a class A fine or imprisonment for a term not exceeding 12 months or both, and
  - (b) if the person is a child, to a class C fine or detention for a term not exceeding 6 months or both.
- (12) It shall be a defence in proceedings for an offence under *subsection (11)* for the person charged with the offence to show that he or she is not a former offender.

**Annotations****Editorial Notes:**

- E8** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(1), S.I. No. 662 of 2010.
- A class C fine means a fine not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(1), S.I. No. 662 of 2010.

**Taking of samples from deceased persons suspected of commission of relevant offence**

- 35. (1)** A sample may be taken under this section from the body of a deceased person for the purpose of generating a DNA profile in respect of the person to be entered in the reference index of the DNA Database System.
- (2) A member of the Garda Síochána not below the rank of superintendent may apply to a judge of the District Court for an order under this section where he or she has reasonable grounds—
- (a) for suspecting that a person, who has since died, committed a relevant offence, and
  - (b) for believing that the taking of a sample from the body of the person, the generation of a DNA profile from the sample in respect of the person

and the entry of the DNA profile in the reference index of the DNA Database System would further the investigation of the relevant offence concerned.

(3) A member of the Garda Síochána who intends to make an application under *subsection (2)* shall inform—

(a) subject to *subsection (4)* and insofar as it is practicable to do so, a member of the family of the deceased person concerned, and

(b) where the death of the deceased person concerned is reportable to a coroner under the Coroners Act 1962, the coroner to whom it is reportable,

of that intention.

(4) The member of the Garda Síochána referred to in *subsection (3)* shall not be required to comply with that subsection insofar as it relates to a member of the family of the deceased person concerned if he or she is of opinion that it is not appropriate to do so because of a risk of prejudice to the investigation of the relevant offence concerned.

(5) If, on an application under *subsection (2)*, a judge of the District Court is satisfied that—

(a) there are reasonable grounds for suspecting that the deceased person concerned committed the relevant offence concerned,

(b) there are reasonable grounds for believing that the taking of a sample from the body of the deceased person concerned, the generation of a DNA profile from the sample in respect of that person and the entry of the DNA profile in the reference index of the DNA Database System would further the investigation of the relevant offence concerned, and

(c) it would, in all the circumstances of the case, be in the interests of justice to make an order under this section,

the judge may make an order authorising the Garda Síochána to cause to be taken from the body of the deceased person concerned a sample under this section.

(6) The owner or occupier of the place in which the body of the deceased person concerned is located shall permit entry to the place for the purpose of having a sample under this section taken from the body of that person pursuant to an order under *subsection (5)*.

(7) In addition to an order under *subsection (5)*, a judge of the District Court may, on an application in that behalf by a member of the Garda Síochána not below the rank of superintendent, make such other orders—

(a) authorising the entry and search of a place where it is believed the body of the deceased person concerned is located, and

(b) if appropriate, the seizure of the body of that person,

as are necessary for the taking of the sample concerned.

(8) An order under *subsection (7)* shall be expressed, and shall operate, to authorise a named member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other persons or both as the member thinks necessary—

(a) to enter, at any time or times within one week of the date of the making of the order, on production if so requested of the order, and if necessary by the use of reasonable force, the place named in the order, and

- (b) to search that place to locate the body of the deceased person concerned and, if appropriate, to seize the body of that person.
- (9) A sample may be taken under this section from the body of the deceased person concerned and a DNA profile generated in respect of that person and entered in the reference index of the DNA Database System.
- (10) If the death of the deceased person concerned is reportable to a coroner under the Coroners Act 1962, the coroner shall facilitate the Garda Síochána regarding the taking of a sample under this section from the body of the deceased person concerned.
- (11) Subject to this Act, a registered medical practitioner or other person prescribed for that purpose may take, or cause to be taken, a sample under this section.
- (12) When the DNA profile in respect of the deceased person concerned is entered in the DNA Database System, it may be compared with other DNA profiles in that System in accordance with *section 68(3)*.
- (13) When the comparison of the DNA profile in respect of the deceased person concerned under *subsection (12)* has been completed, then, subject to *subsection (14)*, the sample taken under this section from the body of that person shall be destroyed, and the DNA profile shall be removed from the DNA Database System, as soon as practicable.
- (14) If the member of the Garda Síochána in charge of the investigation of the relevant offence of which the deceased person concerned is suspected is satisfied that the sample and the DNA profile in respect of that deceased person should not be destroyed, the sample and the DNA profile may be retained for the purposes of that investigation for such period as he or she considers appropriate.
- (15) Nothing in this section shall authorise the exhumation of the body of a deceased person.
- (16) In this section “place” includes a dwelling.

#### **Use of reasonable force to take sample from offender or child offender**

- 36.** (1) Without prejudice to the generality of *section 31*, where an offender who is in prison fails or refuses to allow a sample to be taken from him or her pursuant to that section, a prison officer and the prison officer or officers assisting that officer, may use such force as is reasonably considered necessary to take the sample or to prevent the loss, destruction or contamination of the sample or both.
- (2) Without prejudice to the generality of *section 32*, where a child offender who is detained in a children detention school or a place of detention fails or refuses to allow a sample to be taken from him or her pursuant to that section—
- (a) an authorised member of the staff of a children detention school and the authorised member or members of the staff of the school assisting that member of the staff, or
- (b) a prison officer of a place of detention and the prison officer or officers assisting that officer,
- as the case may be, may use such force as is reasonably considered necessary to take the sample or to prevent the loss, destruction or contamination of the sample or both.

- (3) The power referred to in *subsection (1) or (2)* shall not be exercised, as may be appropriate, by—
- (a) a prison officer, unless the governor of the prison authorises it,
  - (b) an authorised member of the staff of a children detention school, unless the Director of the school authorises it, or
  - (c) a prison officer of a place of detention, unless the governor of the place of detention authorises it.
- (4) Where it is intended to exercise the power conferred by *subsection (1) or (2)*, one of the prison officers or the authorised members of the staff of the children detention school or the prison officers of the place of detention, as the case may be, concerned shall inform the offender or child offender concerned—
- (a) of that intention, and
  - (b) that an authorisation to do so has been given under *subsection (3)*.
- (5) A sample to be taken pursuant to this section shall be taken—
- (a) in the presence of the governor of the prison, if taken by a prison officer,
  - (b) in the presence of the Director of a children detention school, if taken by an authorised member of the staff of the school, or
  - (c) in the presence of the governor of a place of detention, if taken by a prison officer of the place of detention.
- (6) In relation to the exercise of the powers conferred by *subsections (1) and (2)* —
- (a) the governor of the prison, in the case of prison officers,
  - (b) the Director of the children detention school, in the case of authorised members of the staff of the school, and
  - (c) the governor of the place of detention, in the case of prison officers of the place of detention,
- who is present under *subsection (5)* for the taking of a sample pursuant to this section, shall determine the number of prison officers, authorised members of the staff of the school or prison officers of the place of detention, as the case may be, that is reasonably necessary for the purposes of *subsection (1) or (2)*, as the case may be.
- (7) The taking of a sample pursuant to this section shall be recorded by electronic or similar means.

#### **Giving of information under *Part 4* to protected persons or children**

- 37.** (1) The information to be given under *section 31(8), 32(8), 34(10) or 36(4)* shall, in the case of a protected person, be given insofar as it is practicable to do so in a manner and in language that are appropriate to the level of understanding of the person.
- (2) The information to be given under *section 32(8), 34(10) or 36(4)* shall, in the case of a child, be given insofar as it is practicable to do so in a manner and in language that are appropriate to the age and level of understanding of the child.

**Re-taking of samples under *section 31* or *32* in certain circumstances**

- 38.** (1) Where a sample taken from an offender under *section 31* proves to be insufficient, a second such sample may be taken from him or her in accordance with this section before the expiry of the sentence concerned or, if the offender is a sex offender, before the end of the notification period.
- (2) Where a sample taken from a child offender under *section 32* proves to be insufficient, a second such sample may be taken from him or her in accordance with this section before the expiry of the sentence concerned or, if the child offender is a sex offender, before the end of the notification period.
- (3) If an offender is in prison, a prison officer may take, or cause to be taken, a second sample under *section 31* from the offender in accordance with that section only if, subject to *section 3(6)* and *subsection (6)*, an authorisation to take the second sample is given under *section 31(5)*.
- (4) If a child offender is in a children detention school or a place of detention, an authorised member of the staff of the children detention school or a prison officer of the place of detention may take, or cause to be taken, a second sample under *section 32* from the child offender in accordance with that section only if, subject to *section 3(6)* and *subsection (6)*, an authorisation to take the second sample is given under *section 32(5)*.
- (5) If at the time a sample taken from a child offender under *section 32* proves to be insufficient, he or she is in prison, a prison officer may take, or cause to be taken, a second sample from him or her in accordance with *section 31* only if, subject to *section 3(6)* and *subsection (6)*, an authorisation to take the second sample is given under *section 31(5)*.
- (6) An authorisation under *section 31(5)* or *32(5)* to take a second sample from an offender referred to in *subsection (3)*, or a child offender referred to in *subsection (4)* or *(5)*, as the case may be, may be given on one occasion only.
- (7) If an offender is not in prison, a second sample under *section 31* may be taken from him or her in accordance with that section only if—
- (a) a member of the Garda Síochána not below the rank of inspector authorises it to be taken, and
- (b) the offender attends at a Garda Síochána station in accordance with this section for the purpose of having the second sample taken from him or her.
- (8) Subject to *subsection (5)*, if a child offender is not detained in a children detention school or a place of detention, a second sample under *section 32* may be taken from him or her in accordance with that section only if—
- (a) a member of the Garda Síochána not below the rank of inspector authorises it to be taken, and
- (b) the child offender attends at a Garda Síochána station in accordance with this section for the purpose of having the second sample taken from him or her.
- (9) An authorisation under *subsection (7)(a)* or *(8)(a)* to take a second sample from an offender or a child offender in accordance with *subsection (7)* or *(8)*, as the case may be—
- (a) may be given on one occasion only, and

- (b) may not be given if a period of more than 6 months has elapsed since the first sample concerned was taken from the offender or child offender concerned.
- (10) If an authorisation under *subsection (7)(a) or (8)(a)* to take a second sample from an offender or a child offender has been given, a member of the Garda Síochána may require the offender or child offender, as the case may be, by notice in writing to attend at a specified Garda Síochána station within the period specified in *subsection (12)(a)* for the purpose of having a second sample taken from him or her.
- (11) A notice under *subsection (10)* shall, in the case of a child, also be sent to a parent or guardian of the child and, if the member of the Garda Síochána knows or believes that the person to whom the notice is being sent is a protected person, the member shall also send the notice to a parent or guardian of the person.
- (12) A notice under *subsection (10)* shall state that the first sample concerned taken from the offender or child offender concerned has proved to be insufficient, and a requirement in the notice to attend at a specified Garda Síochána station—
- (a) shall give the offender or child offender concerned a period of not less than 10 working days within which he or she shall so attend, and
- (b) may direct the offender or child offender concerned to so attend on specified days and at a specified time of day or between specified times of day.
- (13) An offender or a child offender who fails or refuses, without reasonable cause, to comply with a notice under *subsection (10)*, shall be guilty of an offence and shall be liable on summary conviction—
- (a) in the case of an offender, to a class A fine or imprisonment for a term not exceeding 12 months or both, and
- (b) in the case of a child offender, to a class C fine or detention for a period not exceeding 6 months or both.
- (14) Nothing in this section shall require the second sample to be taken from an offender or child offender in accordance with this section to be of the same type of biological material as the first sample taken from the offender or child offender which proved to be insufficient, provided that the second sample is one that is permitted to be taken under this Part.
- (15) A sample taken from an offender or a child offender in accordance with this section shall, for the purposes of this Act, be regarded as if it had been taken from the offender or child offender under *section 31 or 32*, as may be appropriate.
- (16) In this section references to a child offender in relation to the taking of a second sample from him or her shall include references to a person who is no longer a child at the time the first sample taken from him or her proves to be insufficient.
- (17) In this section—
- “the end of the notification period”, in relation to an offender or a child offender who is a sex offender, means the end of the period for which he or she is subject to the requirements of Part 2 of the Sex Offenders Act 2001;
- “the expiry of the sentence” —



(a) in relation to an offender other than a sex offender, has the meaning it has in *section 31*, and

(b) in relation to a child offender other than a sex offender, has the meaning it has in *section 32*.

#### Annotations

##### Editorial Notes:

**E9** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(1), S.I. No. 662 of 2010.

A class C fine means a fine not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(1), S.I. No. 662 of 2010.

#### Re-taking of samples from former offenders

**39. (1)** Where a sample taken from a former offender under *section 34* proves to be insufficient, a member of the Garda Síochána may, within a period of not more than 6 months from the taking of the sample, request him or her to have a second sample under that section taken from him or her.

(2) A member of the Garda Síochána who makes a request under *subsection (1)* shall indicate to the former offender concerned that if he or she does not comply with the request that an application may be made to a judge of the District Court under *subsection (4)* for an order to authorise the sending of a notice under that subsection to him or her.

(3) If a former offender of whom a request is made under *subsection (1)* does not comply with the request, an application may be made under *subsection (4)*.

(4) Subject to *subsections (5) and (6)*, a judge of the District Court may, on an application in that behalf by a member of the Garda Síochána not below the rank of superintendent, make an order authorising the Garda Síochána to send a notice to a former offender requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice for the purpose of having a second sample under *section 34* taken from him or her.

(5) A judge of the District Court shall not make an order under *subsection (4)* unless he or she is satisfied that—

(a) either—

(i) if an order was not made under *section 34(6)*, the person concerned is a former offender, or

(ii) an order was made by a judge of the District Court under *subsection (6) of section 34* authorising the sending of a notice under that subsection to the former offender concerned requiring him or her to attend at a named Garda Síochána station for the purpose of having a sample under that section taken from him or her,

(b) the first sample concerned was taken from the former offender concerned in accordance with *section 34*,

(c) that sample has proved to be insufficient, and

(d) it is in the interests of justice in all the circumstances of the case to make the order under *subsection (4)*.

- (6) An order under *subsection (4)* —
- (a) in the case of any former offender, may be made on one occasion only, and
  - (b) in the case of a former offender who falls under *section 33(1)(b)*, may not be made if a second sample has been taken from him or her in accordance with *section 38*.
- (7) If an order is made under *subsection (4)*, a notice under that subsection may be sent by a member of the Garda Síochána to the former offender concerned.
- (8) A notice under *subsection (4)* shall, in the case of a child, also be sent to a parent or guardian of the child and, if the member of the Garda Síochána sending the notice knows or believes that the former offender to whom the notice is being sent is a protected person, the member shall also send the notice to a parent or guardian of the person.
- (9) Nothing in this section shall require the second sample to be taken from a former offender in accordance with this section to be of the same type of biological material as the first sample taken from him or her which proved to be insufficient, provided that the second sample is one that is permitted to be taken under this Part.
- (10) A sample taken from a former offender in accordance with this section shall, for the purposes of this Act, be regarded as if it had been taken from the former offender under *section 34*.
- (11) Subject to *subsection (12)*, a person who fails or refuses, without reasonable cause, to comply with a notice under *subsection (4)* shall be guilty of an offence and shall be liable on summary conviction—
- (a) if the person is not a child, to a class A fine or imprisonment for a term not exceeding 12 months or both, and
  - (b) if the person is a child, to a class C fine or detention for a period not exceeding 6 months or both.
- (12) It shall be a defence in proceedings for an offence under *subsection (11)* for the person charged with the offence to show that he or she is not a former offender.

**Annotations**

**Editorial Notes:**

**E10** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(1), S.I. No. 662 of 2010.

A class C fine means a fine not greater than €2,500, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 6(1), S.I. No. 662 of 2010.

## PART 5

### TAKING OF SAMPLES FOR ELIMINATION PURPOSES

#### Definitions (*Part 5*)

**40.** In this Part—

“contamination”, in relation to a crime scene sample, means the inadvertent incorporation in the crime scene sample of the DNA of a person to whom this Part applies during—

- (a) his or her attendance at the crime scene concerned in the execution of his or her duties,
- (b) the conduct of the investigation of an offence or incident that may have involved the commission of an offence, or
- (c) the examination or analysis of that sample;

“member of the Garda Síochána” has the meaning it has in section 3 of the Act of 2005.

#### **Taking of samples from Garda Síochána personnel for elimination (Garda Síochána) index**

**41.** (1) A sample taken under this section from a person shall be used to generate a DNA profile in respect of the person to be entered in the elimination (Garda Síochána) index of the DNA Database System for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample.

(2) A sample shall be taken under this section from the following:

- (a) a member of the Garda Síochána, other than a member of the Garda Síochána to whom *section 42(2)(a)* applies, who is appointed as such a member after the commencement of this section;
- (b) a person who is, after the commencement of this section, admitted in accordance with the Act of 2005 to training for membership (including as a reserve member within the meaning of section 3 of that Act) of the Garda Síochána, other than such a person to whom *section 42(2)(b)* applies.

(3) A sample may be taken under this section from—

- (a) a member of the Garda Síochána, other than a member of the Garda Síochána to whom *section 42(3)(a)* applies, who is such a member upon the commencement of this section, or
- (b) a person who is, on the commencement of this section, admitted in accordance with the Act of 2005 to training for membership (including as a reserve member within the meaning of section 3 of that Act) of the Garda Síochána, other than such a person to whom *section 42(3)(b)* applies,

only if he or she consents in writing to having such a sample taken from him or her.

(4) A member of the Garda Síochána or an authorised person shall inform a person to whom this section applies of the following before taking, or causing to be taken, a sample under this section from him or her:

- (a) that the sample is to be taken from him or her under this section;
- (b) in a case in which a sample already taken under this section from the person has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 47(1)* a second or further sample under this section is required to be taken from him or her—
  - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or

further sample under this section to be taken, as may be appropriate, and

- (ii) that a second or further sample under this section is, in accordance with *section 47(1)*, to be taken from him or her;
  - (c) that the sample will be used to generate a DNA profile in respect of the person to be entered in the elimination (Garda Síochána) index of the DNA Database System and the effect of such an entry;
  - (d) that if the person is, at any time after the taking of the sample, assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes, the DNA profile in respect of the person will be transferred from the elimination (Garda Síochána) index to the elimination (crime scene investigators) index of the DNA Database System;
  - (e) that, in the case of a person referred to in *subsection (2)(b) or (3)(b)*, if he or she is at any time after the taking of the sample appointed as a member of the Garda Síochána, the DNA profile generated from the sample in respect of the person and entered in the elimination (Garda Síochána) index of the DNA Database System may be retained in that index of that System in accordance with *subsection (8)*; and
  - (f) that the sample may be destroyed, and the DNA profile in respect of the person entered in the elimination (Garda Síochána) index or elimination (crime scene investigators) index, as the case may be, of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (5) Subject to this Act, a member of the Garda Síochána or an authorised person may take, or cause to be taken, a sample under this section from a person to whom this section applies.
- (6) A sample that was taken before the commencement of this section from a person referred to in *subsection (3)* for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample, and any DNA profile that was generated from the sample in respect of the person, shall be regarded as a sample taken from him or her under this section and a DNA profile generated from the sample to be entered in the elimination (Garda Síochána) index of the DNA Database System in respect of him or her only if—
- (a) that person consents in writing to the sample and DNA profile concerned being so regarded, and
  - (b) before the consent referred to in *paragraph (a)* is obtained, *subsection (4)* shall, with any necessary modifications, be applied in relation to that person.
- (7) If a person from whom a sample is taken, or is regarded under *subsection (6)* as having been taken, under this section is, at any time after the sample is taken or so regarded as having been taken, assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes, the DNA profile that was generated from the sample in respect of the person shall be transferred from the elimination (Garda Síochána) index to the elimination (crime scene investigators) index of the DNA Database System.
- (8) If a person referred to in *subsection (2)(b) or (3)(b)* is at any time after a sample is taken, or in the case of a person referred to in *subsection (3)(b)* is regarded under *subsection (6)* as having been taken, from him or her under this section appointed as a member of the Garda Síochána, the DNA profile generated from the sample in respect of the person and entered in

the elimination (Garda Síochána) index of the DNA Database System may be retained in that index of that System as if it were generated from a sample taken from the person under *subsection (2)(a)*.

**Taking of samples from Garda Síochána personnel for elimination (crime scene investigators) index**

- 42.** (1) A sample taken under this section from a person shall be used to generate a DNA profile in respect of the person to be entered in the elimination (crime scene investigators) index of the DNA Database System for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample.
- (2) A sample shall be taken under this section from any of the following who is assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes:
- (a) a member of the Garda Síochána who is appointed as such a member after the commencement of this section;
  - (b) a person who is, after the commencement of this section, admitted in accordance with the Act of 2005 to training for membership (including as a reserve member within the meaning of section 3 of that Act) of the Garda Síochána;
  - (c) a member of the civilian staff of the Garda Síochána who is appointed as such a member of staff after the commencement of this section.
- (3) A sample may be taken under this section from any of the following who is assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes only if he or she consents in writing to having such a sample taken from him or her:
- (a) a member of the Garda Síochána who is such a member upon the commencement of this section;
  - (b) a person who is, on the commencement of this section, admitted in accordance with the Act of 2005 to training for membership (including as a reserve member within the meaning of section 3 of that Act) of the Garda Síochána;
  - (c) a member of the civilian staff of the Garda Síochána who is such a member of staff upon the commencement of this section.
- (4) A member of the Garda Síochána or an authorised person shall inform a person to whom this section applies of the following before taking, or causing to be taken, a sample under this section from him or her:
- (a) that the sample is to be taken from him or her under this section;
  - (b) in a case in which a sample already taken under this section from the person has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 47(1)* a second or further sample under this section is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample under this section is, in accordance with *section 47(1)*, to be taken from him or her;

- (c) that the sample will be used to generate a DNA profile in respect of the person to be entered in the elimination (crime scene investigators) index of the DNA Database System and the effect of such an entry;
  - (d) that if, in the case of a person referred to in *paragraph (a) or (b) of subsection (2) or paragraph (a) or (b) of subsection (3)*, the person is no longer assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes, the DNA profile in respect of the person will be transferred from the elimination (crime scene investigators) index to the elimination (Garda Síochána) index of the DNA Database System;
  - (e) that, in the case of a person referred to in *subsection (2)(b) or (3)(b)*, if he or she is at any time after the taking of the sample appointed as a member of the Garda Síochána, the DNA profile generated from the sample in respect of the person and entered in the elimination (crime scene investigators) index of the DNA Database System may be retained in that index of that System in accordance with *subsection (8)*; and
  - (f) that the sample may be destroyed, and the DNA profile in respect of the person entered in the elimination (crime scene investigators) index or the elimination (Garda Síochána) index, as the case may be, of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (5) Subject to this Act, a member of the Garda Síochána or an authorised person may take, or cause to be taken, a sample under this section from a person to whom this section applies.
- (6) A sample that was taken before the commencement of this section from a person referred to in *subsection (3)* for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample, and any DNA profile that was generated from the sample in respect of the person, shall be regarded as a sample taken from him or her under this section and a DNA profile generated from the sample to be entered in the elimination (crime scene investigators) index of the DNA Database System in respect of him or her only if—
- (a) that person consents in writing to the sample and DNA profile concerned being so regarded, and
  - (b) before the consent referred to in *paragraph (a)* is obtained, *subsection (4)* shall, with any necessary modifications, be applied in relation to that person.
- (7) If a person referred to in *paragraph (a) or (b) of subsection (2), or paragraph (a) or (b) of subsection (3)*, from whom a sample was taken, or is regarded under *subsection (6)* as having been taken, under this section is no longer assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes, the DNA profile that was generated from the sample in respect of the person shall be transferred from the elimination (crime scene investigators) index to the elimination (Garda Síochána) index of the DNA Database System.
- (8) If a person referred to in *subsection (2)(b) or (3)(b)* is at any time after a sample is taken, or in the case of a person referred to in *subsection (3)(b)* is regarded under *subsection (6)* as having been taken, from him or her under this section appointed as a member of the Garda Síochána, the DNA profile generated from the sample in respect of the person and entered in the elimination (crime scene investigators) index of the DNA Database System may be retained in that index of that System as if it were generated from a sample taken from the person under *subsection (2)(a)*.

**Taking of samples from members of staff of FSI for elimination (crime scene investigators) index**

- 43.** (1) A sample taken under this section from a member of the staff of FSI shall be used to generate a DNA profile in respect of the member of staff to be entered in the elimination (crime scene investigators) index of the DNA Database System for the purpose, in relation to the investigation of offences, of ascertaining whether that member of staff has contaminated a crime scene sample.
- (2) A sample shall be taken under this section from a member of the staff of FSI who is appointed as such a member of staff after the commencement of this section.
- (3) A sample may be taken under this section from a member of the staff of FSI who is such a member of staff upon the commencement of this section only if he or she consents in writing to having such a sample taken from him or her.
- (4) A person who is authorised in writing by the Director of FSI to take samples under this section shall inform a member of the staff of FSI of the following before taking, or causing to be taken, such a sample from him or her:
- (a) that the sample is to be taken from him or her under this section;
  - (b) in a case in which a sample already taken under this section from the member of staff has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 47(2)* a second or further sample under this section is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample under this section is, in accordance with *section 47(2)*, to be taken from him or her;
  - (c) that the sample will be used to generate a DNA profile in respect of the person to be entered in the elimination (crime scene investigators) index of the DNA Database System and the effect of such an entry; and
  - (d) that the sample may be destroyed, and the DNA profile in respect of the person entered in the elimination (crime scene investigators) index of the DNA Database System may be removed from that System, in accordance with *Part 10*.
- (5) Subject to this Act, a person who is authorised in writing by the Director of FSI to take samples under this section may take, or cause to be taken, such a sample from a member of the staff of FSI.
- (6) A sample that was taken from a member of the staff of FSI before the commencement of this section for the purpose, in relation to the investigation of offences, of ascertaining whether that member of staff has contaminated a crime scene sample, and any DNA profile that was generated from the sample in respect of the member of staff, shall be regarded as a sample taken from him or her under this section and a DNA profile generated from the sample to be entered in the elimination (crime scene investigators) index of the DNA Database System in respect of him or her only if—
- (a) that member of staff consents in writing to the sample and DNA profile concerned being so regarded, and

- (b) before the consent referred to in *paragraph (a)* is obtained, *subsection (4)* shall, with any necessary modifications, be applied in relation to that member of staff.

#### **Taking of samples from other persons for elimination purposes**

- 44.** (1) A sample taken under regulations made under this section from a person prescribed under *subsection (2)* (in this section called a “prescribed person”) shall be used to generate a DNA profile in respect of the prescribed person for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample.
- (2) Any of the following persons may be prescribed for the purposes of this section:
- (a) such officers of the Minister who are assigned to perform duties in the State Pathologist’s Office of the Department of Justice and Equality as the Minister considers appropriate to prescribe;
  - (b) such members of the staff of the Ombudsman Commission as the Minister considers appropriate to prescribe;
  - (c) such other persons, or class of persons, as the Minister considers appropriate to prescribe who, by reason of the functions or tasks performed or carried out by them, may inadvertently contaminate crime scene samples.
- (3) The Minister may, in relation to prescribed persons, prescribe all or any of the following:
- (a) the circumstances in which samples shall be, or may be, taken from such persons;
  - (b) the arrangements to be made for the taking of samples from such persons;
  - (c) the information to be given to such persons before samples are taken from them;
  - (d) the circumstances in which the consent of such persons is required before samples are taken from them;
  - (e) the circumstances in which samples may be re-taken from such persons;
  - (f) the circumstances in which DNA profiles in respect of such persons generated from the samples taken from them may be—
    - (i) entered in the elimination (crime scene investigators) index of the DNA Database System,
    - (ii) entered in the elimination (prescribed persons) index of that System,
    - (iii) transferred to the elimination (crime scene investigators) index from the elimination (prescribed persons) index of that System or from the former index to the latter index of that System, or
    - (iv) used, without entering them in the DNA Database System, to ascertain whether such persons have contaminated particular crime scene samples;
  - (g) subject to *section 90*, the circumstances in which samples taken from such persons may be destroyed and the DNA profiles in respect of such persons generated from those samples may be removed from the DNA Database System or destroyed, as may be appropriate.



- (4) Regulations made by the Minister under this section may prescribe different circumstances and different arrangements for the taking or re-taking of samples or the destruction of samples or the destruction, or removal from the DNA Database System, of DNA profiles in accordance with this section in respect of different prescribed persons or different classes of such persons.

**Annotations**

**Editorial Notes:**

- E11** Power pursuant to section exercised (22.12.2022) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022* (S.I. No. 738 of 2022).

**Direction from Commissioner for sample to be taken for elimination purposes**

- 45.** (1) If the Commissioner has good reason to believe that, in relation to the investigation of an offence, a person specified in *subsection (2)* has, or may have, contaminated a particular crime scene sample, the Commissioner may direct that the person shall have a sample taken from him or her under this section for the purpose, in relation to the investigation of that offence, of ascertaining whether that person has contaminated that crime scene sample.
- (2) A direction may be given under *subsection (1)* in respect of any of the following persons, other than a person to whom *section 41(2)* or *42(2)* applies:
- (a) a member of the Garda Síochána;
  - (b) a person who is in accordance with the Act of 2005 admitted to training for membership (including as a reserve member within the meaning of section 3 of that Act) of the Garda Síochána;
  - (c) a member of the civilian staff of the Garda Síochána.
- (3) A direction under *subsection (1)* shall be given in writing and the Commissioner shall give, or cause to be given, a copy of it to the person to whom it relates.
- (4) A member of the Garda Síochána or an authorised person shall inform a person of the following before taking, or causing to be taken, a sample under this section from him or her:
- (a) that the sample is to be taken from him or her pursuant to a direction given under this section;
  - (b) in a case in which a sample already taken under this section from the person has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 47(1)* a second or further sample under this section is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample under this section is, in accordance with *section 47(1)*, to be taken from him or her;

- (c) that the sample will be used to generate a DNA profile in respect of the person for the purpose of ascertaining whether he or she has contaminated the crime scene sample concerned;
  - (d) that the sample, and the DNA profile in respect of the person generated from it, may be destroyed in accordance with *Part 10*.
- (5) Subject to this Act, a member of the Garda Síochána or an authorised person may take, or cause to be taken, a sample under this section from a person in respect of whom a direction is given under *subsection (1)*.

**Direction from Director of FSI for sample to be taken for elimination purposes**

46. (1) If the Director of FSI has good reason to believe that, in relation to the investigation of an offence, a person specified in *subsection (2)* has, or may have, contaminated a particular crime scene sample, the Director may direct that the person shall have a sample taken from him or her under this section for the purpose, in relation to the investigation of that offence, of ascertaining whether that person has contaminated that crime scene sample.
- (2) A direction may be given under *subsection (1)* in respect of a member of the staff of FSI other than a member of staff to whom *section 43(2)* applies.
  - (3) A direction under *subsection (1)* shall be given in writing and the Director of FSI shall give, or cause to be given, a copy of it to the member of the staff of FSI to whom it relates.
  - (4) A person who is authorised in writing by the Director of FSI to take samples under this section shall inform a member of the staff of FSI of the following before taking, or causing to be taken, such a sample from him or her:
    - (a) that the sample is to be taken from him or her pursuant to a direction given under this section;
    - (b) in a case in which a sample already taken under this section from the member of staff has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 47(2)* a second or further sample under this section is required to be taken from him or her—
      - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
      - (ii) that a second or further sample under this section is, in accordance with *section 47(2)*, to be taken from him or her;
    - (c) that the sample will be used to generate a DNA profile in respect of the member of staff for the purpose of ascertaining whether he or she has contaminated the crime scene sample concerned;
    - (d) that the sample, and the DNA profile in respect of the member of staff generated from it, may be destroyed in accordance with *Part 10*.
  - (5) Subject to this Act, a person who is authorised in writing by the Director of FSI to take samples under this section may take, or cause to be taken, such a sample from a person in respect of whom a direction is given under *subsection (1)*.

**Re-taking of samples under Part 5**

47. (1) Where a sample taken from a person under *section 41, 42 or 45* proves to be insufficient or was inadequately labelled or, for any other good reason, the Commissioner considers that it is necessary for a second or further such sample to be taken from the person, a second or further sample may be taken from him or her in accordance with whichever of those sections is appropriate.
- (2) Where a sample taken from a person under *section 43 or 46* proves to be insufficient or was inadequately labelled or, for any other good reason, the Director of FSI considers that it is necessary for a second or further such sample to be taken from the person, a second or further sample may be taken from him or her in accordance with whichever of those sections is appropriate.

**PART 6**

TAKING OF SAMPLES FROM PERSONS OR BODIES FOR PURPOSES OF  
IDENTIFICATION DIVISION OF DNA DATABASE SYSTEM

**Taking of samples in relation to missing persons**

48. (1) A sample may be taken under this section—
- (a) in accordance with *subsection (5)* in relation to a missing person who is missing in circumstances referred to in *subsection (2)*, or
  - (b) from a person who is a relative by blood of a missing person,
- for the purpose of generating a DNA profile in respect of the person concerned to be entered in the missing and unknown persons index of the DNA Database System to assist with finding or identifying the missing person.
- (2) A sample may be taken under this section for the purposes of the investigation by the Garda Síochána of the disappearance of a missing person if—
- (a) a member of the Garda Síochána not below the rank of inspector is satisfied that the circumstances of the disappearance so require, or
  - (b) following a natural or other disaster, one or more persons are missing.
- (3) A sample may be taken under this section only if a member of the Garda Síochána not below the rank of inspector authorises it to be taken.
- (4) An authorisation under *subsection (3)* shall not be given unless the member of the Garda Síochána giving it believes that the taking of the sample concerned, the generation of a DNA profile from the sample in respect of the person concerned and the entry of the DNA profile in the missing and unknown persons index of the DNA Database System may assist with finding or identifying the missing person concerned.
- (5) In the case of a missing person, a sample of biological material from which a DNA profile may be generated may be taken under this section from the clothing or other belongings of the person or from things reasonably believed to belong to, or to have been used by, the person or with which the person was reasonably believed to have been in contact.

- (6) Subject to *sections 53* and *55*, a member of the Garda Síochána or an authorised person shall inform a person referred to in *subsection (1)(b)* of the following before taking, or causing to be taken, a sample under this section from him or her:
- (a) that an authorisation to take the sample has been given under *subsection (3)*;
  - (b) that the person is not obliged to have a sample under this section taken from him or her;
  - (c) in a case in which a sample already taken under this section from the person has proved to be insufficient, was inadequately labelled or for any other reason mentioned in *section 50* a second or further sample is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample is, in accordance with *section 50*, to be taken from him or her;
  - (d) that the sample will be used to generate a DNA profile in respect of the person to be entered in the missing and unknown persons index of the DNA Database System and the effect of such an entry; and
  - (e) that the sample may be destroyed, and the DNA profile in respect of the person entered in the missing and unknown persons index of the DNA Database System may be removed from the System, in accordance with *Part 10*.
- (7) Subject to *sections 54* and *56*, a person referred to in *subsection (1)(b)* shall, before a sample is taken from him or her under this section, consent in writing to the taking of the sample and the consent shall specify the name of the missing person in connection with whose disappearance the sample is being taken.
- (8) Subject to this Act, a member of the Garda Síochána or an authorised person may take, or cause to be taken, in relation to a missing person or from a person referred to in *subsection (1)(b)* a sample under this section.
- (9) Subject to *section 58*, if a person referred to in *subsection (1)(b)* expressly withdraws consent given under *subsection (7)* (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of a sample under this section, that withdrawal of consent shall be treated as a refusal to give consent to the taking of the sample under this section.
- (10) A withdrawal under *subsection (9)* of consent given under *subsection (7)* shall be confirmed in writing as soon as practicable after such withdrawal.
- (11) A sample relating to a missing person taken before the commencement of this section that is in the possession or control of the Garda Síochána or the Director of FSI arising from the investigation of the disappearance of the missing person (whether or not taken by a member of the Garda Síochána or an authorised person) may be regarded as a sample taken in relation to the missing person under this section and *subsections (1) to (5)* shall apply, with any necessary modifications, to the sample.
- (12) A sample taken before the commencement of this section from a person who is a relative by blood of a missing person that is in the possession or control of the Garda Síochána or the Director of FSI arising from the

investigation of the disappearance of the missing person (whether or not taken by a member of the Garda Síochána or an authorised person) may, subject to the following, be regarded as a sample taken from the person under this section:

- (a) where the person from whom the sample was taken is deceased, *subsections (1) to (4)* shall, with any necessary modifications, apply to the sample;
- (b) in any other case, this section, other than *subsection (8)*, shall, with any necessary modifications, apply to the sample.

#### **Taking of samples from unknown persons**

49. (1) A sample may be taken under this section from a person who is seriously ill or severely injured and who, by reason of the illness or injury, is unable to identify himself or herself (in this section called an “unknown person”) for the purpose of generating a DNA profile in respect of the unknown person to be entered in the missing and unknown persons index of the DNA Database System to assist with identifying that person.
- (2) A person referred to in *subsection (4)* may, following consultation, in the case of a person referred to in *paragraph (a) or (b)* of that subsection, with a member of the Garda Síochána not below the rank of inspector, make an application to the High Court for an order authorising the Commissioner to cause a sample to be taken under this section from an unknown person.
- (3) An application to the High Court under *subsection (2)* shall not be made in relation to an unknown person unless—
- (a) a registered medical practitioner is satisfied following an examination of the unknown person, and so certifies in writing, that that person is suffering from a serious illness, or has sustained a severe injury, by reason of which he or she is unable to identify himself or herself and that that inability is likely to endure for a prolonged period, and
  - (b) the unknown person, other than a child or a protected person, has been consulted regarding the making of the application, in so far as such consultation is possible having regard to the nature and extent of the illness or injury of that person, and he or she has not indicated that he or she does not wish the application to be made.
- (4) Any of the following persons may, in relation to an unknown person, make an application to the High Court under *subsection (2)* in relation to the unknown person:
- (a) the Health Service Executive;
  - (b) the owner or manager of a hospital or nursing home in which the unknown person is receiving care;
  - (c) the Commissioner.
- (5) The High Court shall, on an application under *subsection (2)*, make an order authorising the Commissioner to cause a sample to be taken under this section from the unknown person concerned if the Court considers that it is in the best interests of that person to be identified and the Court is satisfied—
- (a) by the evidence of a registered medical practitioner that the unknown person is suffering from a serious illness, or has sustained a severe injury, by reason of which he or she is unable to identify himself or herself and that that inability is likely to endure for a prolonged period,

- (b) that the taking of a sample from the unknown person under this section, the generation of a DNA profile from the sample in respect of him or her and the entry of the DNA profile in the missing and unknown persons index of the DNA Database System may assist with the identification of the unknown person, and
  - (c) that, if appropriate, the unknown person has been consulted regarding the making of the application in accordance with *subsection (3)(b)* and that he or she has not indicated that he or she did not wish the application to be made.
- (6) Subject to this Act, a registered medical practitioner, a registered nurse or other person prescribed for that purpose may take, or cause to be taken, from the unknown person concerned a sample under this section.
- (7) An order of the High Court under *subsection (5)* shall, for the purposes of *section 51(1)*, be regarded as authorising the re-taking of a sample under this section from the unknown person concerned.

#### **Taking of samples from bodies of unknown deceased persons**

- 50.** (1) A sample may be taken under this section from the body of a deceased person who has not been identified (in this section called an “unknown deceased person”) for the purpose of generating a DNA profile in respect of the person to be entered in the missing and unknown persons index of the DNA Database System to assist with identifying that person.
- (2) The coroner to whom the death of the unknown deceased person concerned is reported under the Coroners Act 1962 may authorise the taking of a sample under this section from the body of that person.
- (3) An authorisation under *subsection (2)* shall not be given unless the coroner giving it has reason to believe that the taking of a sample under this section, the generation of a DNA profile from the sample in respect of the unknown deceased person concerned and the entry of a DNA profile in the missing and unknown persons index of the DNA Database System may assist with identifying that person.
- (4) The coroner concerned shall inform a member of the Garda Síochána of the rank of superintendent in the Garda Síochána district in which the death of the unknown deceased person occurred or the body of that person was discovered that he or she has given an authorisation under *subsection (2)*.
- (5) Subject to this Act, a registered medical practitioner or other person prescribed for that purpose may take, or cause to be taken, a sample under this section from the body of the unknown deceased person concerned.
- (6) A sample taken from the body of an unknown deceased person that is in the possession of the coroner concerned may be regarded as a sample taken from the body of that person under this section and this section shall, with any necessary modifications, apply to the sample.
- (7) A sample taken before the commencement of this section from the body of an unknown deceased person that is in the possession of the Garda Síochána, the Director of FSI or the State Pathologist, or the person acting as such, in the State Pathologist’s Office of the Department of Justice and Equality may be regarded as a sample taken from the body of that unknown deceased person under this section and this section shall, with any necessary modifications, apply to the sample.
- (8) Nothing in this section shall prevent the use of a sample taken, or regarded as having been taken, under *subsection (5)*, and the DNA profile generated

from it, for the purposes of the investigation of the death of the unknown deceased person concerned and any proceedings arising therefrom.

**Annotations**

**Amendments:**

- F2** Substituted by *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*, s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.

**Modifications (not altering text):**

- C6** Prospective affecting provision: subs. (4) amended by *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*, s. 4(1) and sch. 1 ref. 30, subject to transitional provision in ss. 13, 22, 26, not commenced as of date of revision.

(4) The coroner concerned shall inform a member of the Garda Síochána of the rank of superintendent in the Garda Síochána F2[division] in which the death of the unknown deceased person occurred or the body of that person was discovered that he or she has given an authorisation under *subsection (2)*.

**Re-taking of samples under Part 6**

- 51.** (1) Where a sample taken from a person under *section 48* or *49* proves to be insufficient or was inadequately labelled or, for any other good reason, a member of the Garda Síochána considers that it is necessary for a second or further such sample to be taken from the person, a second or further sample may be taken from him or her in accordance with the section concerned.
- (2) Where a sample taken under *section 48* in relation to a missing person proves to be insufficient or was inadequately labelled or, for any other good reason, a member of the Garda Síochána considers that it is necessary for a second or further such sample to be taken, a second or further sample may be taken in relation to the missing person in accordance with that section.
- (3) Where a sample taken under *section 50* from the body of an unknown deceased person proves to be insufficient or was inadequately labelled or, for any other good reason, the coroner to whom the death of that person is reported under the Coroners Act 1962 considers that it is necessary for a second or further such sample to be taken, a second or further sample may be taken from that body in accordance with that section.

**Part 6 not to affect provisions or powers relating to investigation of offences or investigations relating to deaths of deceased persons**

**52.** Nothing in this Part shall affect—

- (a) the operation of any provision of any other enactment, or
- (b) the exercise of any power by a member of the Garda Síochána or any other person or body under any other enactment or the common law,
- relating to the investigation of offences or investigations relating to the deaths of deceased persons.

**PART 7**

TAKING OF CERTAIN SAMPLES UNDER *PARTS 3* AND *6* FROM PROTECTED  
PERSONS OR CHILDREN

**Giving of information under *Parts 3* and *6* to protected persons or children**

53. (1) The information to be given under *section 27(3)*, *29(4)* or *48(6)* shall, in the case of a protected person, be given insofar as it is practicable to do so in a manner and in language that are appropriate to the level of understanding of the person.
- (2) The information to be given under *section 27(3)*, *29(4)* or *48(6)* shall, in the case of a child, be given insofar as it is practicable to do so in a manner and in language that are appropriate to the age and level of understanding of the child.

**Consent to taking of certain samples under *Parts 3* and *6* from protected persons or children**

54. (1) The references in *subsection (4)* of *section 27*, *subsection (5)* of *section 29* and *subsection (7)* of *section 48* to the consent in writing of a person from whom a sample may be taken under any of those sections shall, in the case of a child who has attained the age of 16 years, be construed as references to the consent in writing of the child.
- (2) Subject to *subsections (3) to (8)*, the references in *subsection (4)* of *section 27*, *subsection (5)* of *section 29* and *subsection (7)* of *section 48* to the consent in writing of a person from whom a sample may be taken under any of those sections shall, in the case of a protected person or a child who has not attained the age of 16 years, be construed as references to—
- (a) in the case of a protected person, the consent in writing of a parent or guardian of the person, and
- (b) in the case of such a child (other than a protected person)—
- (i) who has attained the age of 14 years, the consent in writing of the child and of a parent or guardian of the child,
- (ii) who has not attained the age of 14 years, the consent in writing of a parent or guardian of the child.
- (3) If the consent in writing of a parent or guardian of a protected person, or of a child referred to in *subsection (2)(b)*, to the taking of the sample concerned from the protected person or child, as the case may be, cannot be obtained, a grandparent, or a brother or sister who is an adult, of the protected person or child or a child who is an adult of the protected person may, subject to *subsection (5)*, give that consent.
- (4) If—
- (a) the consent in writing of a parent or guardian, a grandparent, a brother or sister who is an adult of a protected person or a child referred to in *subsection (2)(b)*, or the consent in writing of a child who is an adult of the protected person, to the taking of the sample concerned from the protected person or child, as the case may be, cannot be obtained, and
- (b) in the case of a child referred to in *subsection (2)(b)(i)*, the child has consented in writing to the taking of the sample concerned from him or her,
- an application may be made to a judge of the District Court under *section 56* for an order to authorise the taking of that sample from the protected



person or child, as the case may be, without the consent referred to in *paragraph (a)*.

- (5) Where, in relation to the investigation of an offence, a sample is to be taken under *section 27, 29 or 48* from a protected person or a child, the consent in writing of a parent or guardian, or other relative referred to in *subsection (3)*, as the case may be, of the protected person or child to the taking of the sample concerned from the person or child shall not be sought from a parent or guardian, or such a relative, of the person or child, as the case may be, if—
- (a) the parent, guardian or relative has been arrested in respect of the offence,
  - (b) a member of the Garda Síochána not below the rank of inspector has reasonable grounds for suspecting him or her of complicity in the offence, or
  - (c) a member of the Garda Síochána not below the rank of inspector has reasonable grounds for believing that he or she is likely to obstruct the course of justice.
- (6) Subject to *subsection (7)*, *subsection (5)* shall not prevent a parent or guardian, or other relative referred to in *subsection (3)*, of a protected person or a child who does not fall under *paragraph (a), (b) or (c)* of *subsection (5)* from giving the consent required for the taking of the sample concerned from the person or child, as the case may be.
- (7) If the circumstances referred to in *subsection (5)* exist in relation to a parent or guardian of a protected person or a child referred to in *subsection (2)(b)*, then, subject to *subsection (6)* applying to another parent or guardian of the protected person or child, an application may be made to a judge of the District Court under *section 56* for an order to authorise the taking of the sample concerned from the protected person or child, as the case may be, without the consent of a parent or guardian of the person or child provided that, in the case of a child referred to in *subsection (2)(b)(i)*, the child has consented in writing to the taking of the sample concerned from him or her.
- (8) In this section references to circumstances in which the consent of a parent or guardian, or other relative, of a protected person or child to the taking of a sample under *section 27, 29 or 48*, as the case may be, from the protected person or child, as the case may be, cannot be obtained shall be construed as references to either of the following:
- (a) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian, or other relative, of the protected person or child for the purposes of ascertaining whether or not he or she consents to the taking of the sample concerned from the protected person or child; or
  - (b) the protected person or child does not have, or a member of the Garda Síochána cannot, having made reasonable efforts to do so, ascertain whether he or she has, a living parent or guardian, or other relative, from whom consent to the taking of the sample concerned from the protected person or child, as the case may be, may be sought.

**Information to be given to parents or guardians of protected persons or children or to others regarding certain samples under *Parts 3 and 6***

55. (1) If a member of the Garda Síochána or an authorised person is of opinion that a person from whom a sample under *section 27, 29 or 48* is to be taken is a protected person, then, subject to *subsection (5)* of *section 54*, before

the member or authorised person seeks the consent of a parent or guardian, or other relative referred to in *subsection (3)* of that section, of the protected person to the taking of such a sample, the member or authorised person, as the case may be, shall (in addition to informing the protected person) inform the parent or guardian, or the other relative concerned, of the protected person of the matters referred to in *section 27(3), 29(4)* or *48(6)*, as the case may be, in relation to that person.

- (2) Subject to *subsection (5)* of *section 54*, before a member of the Garda Síochána or an authorised person seeks the consent of a parent or guardian, or other relative referred to in *subsection (3)* of that section, of a child who has not attained the age of 16 years from whom a sample under *section 27, 29* or *48* is to be taken to the taking of such a sample, the member or authorised person, as the case may be, shall (in addition to informing the child) inform the parent or guardian, or the other relative concerned, of the child of the matters referred to in *section 27(3), 29(4)* or *48(6)*, as the case may be, in relation to the child.

**Application for court order authorising taking of certain samples under Parts 3 and 6 from protected person or child**

56. (1) In the circumstances referred to in *subsection (4)* or (7) of *section 54*, a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of a sample under *section 27, 29* or *48*, as the case may be, from the protected person or child concerned.

(2) A judge of the District Court shall, for the purposes of determining an application under *subsection (1)*, have regard to the following before making an order under this section:

- (a) if the sample concerned is required for the purposes of the investigation of a particular offence, the nature and seriousness of that offence;
- (b) the best interests of the protected person or child concerned;
- (c) in so far as they can be ascertained, the wishes of the protected person or child (in the case of a child referred to in *section 54(2)(b)(ii)*) concerned regarding whether the sample concerned should be taken from him or her;
- (d) whether the taking of the sample concerned is justified in all the circumstances of the case.

(3) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of the sample concerned from the protected person or child concerned in accordance with *Part 3* or *6*, as the case may be.

**Taking of certain samples under Parts 3 and 6 from protected persons or children**

57. (1) Subject to *subsection (2)*, a sample under *section 27, 29* or *48* shall, if it is reasonably practicable to do so, be taken from a protected person or a child who has not attained the age of 16 years in the presence of—

- (a) the person who, in accordance with *section 54*, gave consent for the taking of the sample concerned from the protected person or child, as the case may be, or
- (b) a relative of the protected person or child, if an order is made under *section 56* to authorise the taking of the sample,

unless the protected person or child indicates that he or she does not wish to have that person present.

- (2) Notwithstanding that consent to take a sample under *section 27, 29 or 48* from a protected person or a child has been given in accordance with *section 54*, or an order has been made under *section 56* by a judge of the District Court authorising the taking of such a sample, the sample shall not be taken from the protected person or child, as the case may be, if he or she objects to or resists the taking of the sample.

**Withdrawal of consent to taking of certain samples under *Parts 3 and 6* from protected persons or children**

58. (1) The references in *subsection (7) of section 27, subsection (8) of section 29 and subsection (9) of section 48* to the withdrawal of consent by a person from whom a sample may be taken under any of those sections shall, in the case of a child who has attained the age of 16 years, be construed as references to the withdrawal of consent by the child.
- (2) The references in *subsection (7) of section 27, subsection (8) of section 29 and subsection (9) of section 48* to the withdrawal of consent by a person from whom a sample may be taken under any of those sections shall, in the case of a protected person or a child who has not attained the age of 16 years, be construed as references to—
- (a) in the case of a protected person, the withdrawal of consent by a parent or guardian, or other relative referred to in *section 54(3)*, of the person who gave the consent that is being withdrawn, and
- (b) in the case of such a child—
- (i) who has attained the age of 14 years, the withdrawal of consent by the child or by a parent or guardian, or other relative referred to in *section 54(3)*, of the child who gave the consent that is being withdrawn,
- (ii) who has not attained the age of 14 years, the withdrawal of consent by a parent or guardian, or other relative referred to in *section 54(3)*, of the child who gave the consent that is being withdrawn.

## PART 8

### DNA DATABASE SYSTEM

#### CHAPTER 1

##### *Structure and purposes of DNA Database System*

#### **DNA Database System**

59. (1) The Director of FSI shall, as soon as may be after the commencement of this section, establish in accordance with this Part a database to be known as the DNA Database System (in this Act called the “DNA Database System”).
- (2) The DNA Database System shall comprise the following 2 divisions:
- (a) the investigation division; and

- (b) the identification division.
- (3) The investigation division of the DNA Database System (in this Part called “the investigation division”) shall contain the following indexes of DNA profiles and information that may be used to identify the person from whose biological material each DNA profile was generated:
  - (a) the crime scene index;
  - (b) the reference index;
  - (c) the elimination (Garda Síochána) index;
  - (d) the elimination (crime scene investigators) index; and
  - (e) the elimination (prescribed persons) index.
- (4) The identification division of the DNA Database System (in this Part called “the identification division”) shall contain the missing and unknown persons index of DNA profiles and information that may be used—
  - (a) to identify or describe the person from whose biological material each DNA profile was generated, and
  - (b) in the case of the DNA profile of a blood relative of a missing person that is entered in that index, to associate that DNA profile with the missing person.

#### **Purposes of DNA Database System**

- 60.** (1) The DNA Database System shall be used only for the following purposes:
- (a) the investigation and prosecution of criminal offences;
  - (b) the finding or identification of missing persons, the identification of seriously ill, or severely injured, persons who are unable by reason of the illness or injury to indicate their identity or the identification of the bodies of unknown deceased persons.
- (2) Without prejudice to the generality of *subsection (1)*, the DNA Database System may be used for all or any of the following:
- (a) the conduct of permitted searching under *section 68*;
  - (b) the automated searching for, or automated comparison of, certain DNA profiles in the System with other DNA profiles in accordance with *Chapter 2 of Part 12*;
  - (c) where appropriate, the transmission or provision to a person or body under *section 4* of DNA profiles in the reference index of that System, other than DNA profiles entered in that index of that System under *section 28*;
  - (d) the entry in or transmission from the System of DNA profiles under *Chapter 7 of Part 12*;
  - (e) the facilitation of the performance by the Committee of its functions under *Part 9* in relation to the management and operation of the System;
  - (f) the compilation of statistics on the operation of the System under *section 69*;
  - (g) the facilitation of a review of an alleged miscarriage of justice under section 2 of the Criminal Procedure Act 1993;

(h) any other related purpose.

## CHAPTER 2

### *Investigation Division of DNA Database System*

#### **Crime scene index**

**61.** (1) The crime scene index in the investigation division of the DNA Database System (in this Part called “the crime scene index”) shall comprise the DNA profiles of persons—

(a) generated from samples of biological material found at, or recovered from, a crime scene whether before or after the commencement of this section, and

(b) received and entered in that index under *Chapter 7 of Part 12*.

(2) For the purposes of this Act, a crime scene, in relation to an offence or suspected offence, means all or any of the following (whether within or outside the State):

(a) a place—

(i) where the offence or suspected offence was, or is reasonably suspected of having been, committed, or

(ii) where there is, or may be, evidence of, or relating to, the commission of the offence or suspected offence that was, or is reasonably suspected of having been, committed elsewhere,

and includes a place that is designated as a crime scene by a direction given under section 5 of the Criminal Justice Act 2006 that is in force;

(b) the body of the victim, whether living or deceased, of the offence or suspected offence;

(c) anything worn or carried by or in contact with the victim, or a person reasonably considered to be a victim, at the time the offence or suspected offence was, or is reasonably suspected of having been, committed;

(d) the body of any other person who was, or is reasonably suspected of having been, connected with the commission of the offence or suspected offence;

(e) anything (including a mode of transport) that was, or is reasonably suspected of having been, connected with the commission of the offence or suspected offence.

#### **Reference index**

**62.** The reference index in the investigation division of the DNA Database System shall comprise the DNA profiles of persons—

(a) generated from samples taken from persons under *sections 11, 12, 13, 31, 32, 34 and 35* and entered in that index under those sections,

(b) generated from samples taken from persons under *section 27* and entered in that index under *section 28*,

(c) generated from samples taken from persons referred to in *section 7(3)*, and

(d) received and entered in that index under *Chapter 7 of Part 12*.

#### **Elimination (Garda Síochána) index**

**63.** The elimination (Garda Síochána) index in the investigation division of the DNA Database System shall comprise the DNA profiles of persons—

(a) generated from samples taken from persons under *section 41* and entered in that index under that section, and

(b) transferred to that index under *section 42(7)*.

#### **Elimination (crime scene investigators) index**

**64.** The elimination (crime scene investigators) index in the investigation division of the DNA Database System shall comprise the DNA profiles of persons—

(a) generated from samples taken from persons under *sections 42 and 43* and, where appropriate, *section 44* and entered in that index under those sections, and

(b) transferred to that index under *section 41(7)*.

#### **Elimination (prescribed persons) index**

**65.** The elimination (prescribed persons) index in the investigation division of the DNA Database System shall comprise the DNA profiles of persons generated from samples taken from certain persons under *section 44* and entered in that index under that section.

### CHAPTER 3

#### *Identification Division of DNA Database System*

#### **Missing and unknown persons index**

**66.** The missing and unknown persons index in the identification division of the DNA Database System shall comprise the DNA profiles of persons—

(a) generated from samples taken from, or in relation to, persons or the bodies of deceased persons, as may be appropriate, under *sections 48, 49 and 50*, and

(b) received and entered in that index under *Chapter 7 of Part 12*.

### CHAPTER 4

#### *Functions of Director of Forensic Science Ireland in relation to DNA Database System*

#### **Functions of Director of FSI in relation to DNA Database System**

**67.** (1) The Director of FSI shall establish and operate the DNA Database System in accordance with this Act.

- (2) Without prejudice to the generality of *subsection (1)*, the Director of FSI shall perform, or cause to be performed, the following functions in relation to the DNA Database System:
- (a) the generation of DNA profiles from the samples taken under this Act;
  - (b) if appropriate, the entry of the DNA profiles generated in the appropriate division and index of the System;
  - (c) the searching of the System in accordance with *section 68* to ascertain whether there is a match between two DNA profiles in the System;
  - (d) the reporting to the Garda Síochána, the Ombudsman Commission or a coroner, as may be appropriate, the results of searches of the System;
  - (e) the automated searching for, or automated comparison of certain DNA profiles in the System with other DNA profiles in accordance with *Chapter 2 of Part 12*;
  - (f) where appropriate, the making available of certain DNA profiles in the System for transmission or provision to a person or body under *section 4*;
  - (g) the entry in or transmission from the System of DNA profiles under *Chapter 7 of Part 12*;
  - (h) the destruction of samples taken under this Act in accordance with *Part 10*;
  - (i) the removal of DNA profiles from the System in accordance with *Part 10* or for the purpose of the administration of the System;
  - (j) the maintenance of the security of the DNA profiles and information in the System in accordance with this Act.
- (3) Subject to *subsection (4)*, the Director of FSI may make such arrangements, including contractual arrangements, as he or she considers appropriate with such other laboratories (whether within or outside the State) for the performance of the function under *subsection (2)(a)* or the performance of that function in any particular case or class of cases.
- (4) Arrangements under *subsection (3)* shall be subject to compliance with the requirements of this Act and such terms and conditions as may be agreed.

#### **Permitted searching**

- 68.** (1) A DNA profile entered in the DNA Database System may not be compared with another DNA profile entered in that System except in accordance with this section, unless it is done solely for the purpose of the administration of that System.
- (2) A DNA profile entered in the crime scene index of the DNA Database System may be compared with—
- (a) the other DNA profiles entered in that index,
  - (b) the DNA profiles entered in the reference index of that System,
  - (c) the DNA profiles entered in the elimination (Garda Síochána) index of that System in accordance with *subsection (4)*,
  - (d) the DNA profiles entered in the elimination (crime scene investigators) index of that System in accordance with *subsection (5)*, or

- (e) the DNA profiles entered in the elimination (prescribed persons) index of that System in accordance with *subsection (7)*.
- (3) A DNA profile entered in the reference index of the DNA Database System may be compared with—
  - (a) the other DNA profiles entered in that index,
  - (b) the DNA profiles entered in the crime scene index of that System, or
  - (c) the DNA profiles entered in the missing and unknown persons index of that System in accordance with *subsection (8)*.
- (4) A DNA profile in respect of a person that is entered in the elimination (Garda Síochána) index of the DNA Database System may be compared with—
  - (a) the other DNA profiles in that index, or
  - (b) a DNA profile that is generated from a crime scene sample found at, or recovered from, a particular crime scene and entered in the crime scene index of that System where—
    - (i) such comparison is necessary in relation to the investigation of an offence to ascertain whether the person has contaminated that crime scene sample, and
    - (ii) that comparison is in accordance with a direction given by the Director of FSI under *subsection (6)(a)*.
- (5) A DNA profile in respect of a person that is entered in the elimination (crime scene investigators) index of the DNA Database System may be compared with—
  - (a) the other DNA profiles in that index, or
  - (b) a DNA profile that is generated from a crime scene sample found at, or recovered from, a particular crime scene and entered in the crime scene index of that System where—
    - (i) such comparison is necessary in relation to the investigation of an offence to ascertain whether the person has contaminated that crime scene sample, and
    - (ii) that comparison is in accordance with a direction given by the Director of FSI under *subsection (6)(b)*.
- (6) (a) The Director of FSI, following consultation with the Commissioner, may, for the purposes of *subsection (4)(b)*, give a general direction in writing regarding the circumstances in which it is necessary for DNA profiles entered in the elimination (Garda Síochána) index of the DNA Database System to be compared with DNA profiles entered in the crime scene index of that System.
- (b) The Director of FSI, following consultation with the Commissioner, may, for the purposes of *subsection (5)(b)*, give a general direction in writing regarding the circumstances in which it is necessary for DNA profiles entered in the elimination (crime scene investigators) index of the DNA Database System to be compared with DNA profiles entered in the crime scene index of that System.
- (7) A DNA profile in respect of a prescribed person that is entered in the elimination (prescribed persons) index of the DNA Database System may be compared with—



- (a) the other DNA profiles in that index, or
  - (b) a DNA profile that is generated from a crime scene sample found at, or recovered from, a particular crime scene and entered in the crime scene index of that System in such circumstances as may be prescribed.
- (8) A DNA profile entered in the missing and unknown persons index of the DNA Database System may be compared with—
- (a) the other DNA profiles in that index,
  - (b) the DNA profiles entered in the crime scene index of that System, or
  - (c) the DNA profiles entered in the reference index of that System,
- but only for the purpose of finding or identifying the missing person, the unknown person or the unknown deceased person concerned.
- (9) The DNA Database System may not be searched other than by a member of the staff of FSI, or a DNA profile in that System may not be compared with a DNA profile that is not entered in that System, except in accordance with *Chapter 2 of Part 12*.

**Annotations**

**Amendments:**

- F14** Inserted by *Defence Forces (Evidence) Act 2022*(16/2022), s. 83, not commenced as of date of revision.

**Modifications (not altering text):**

- C7** Prospective affecting provision: subs. (10) inserted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 83, not commenced as of date of revision.
- F14[(10) A DNA profile entered in the DNA Database System may be compared with a DNA profile entered in the DNA (Military Police) Database System, established under section 25 of the Act of 2022, in accordance with section 32 of that Act.]

**Editorial Notes:**

- E12** Power pursuant to subs. (7) exercised (22.12.2022) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022* (S.I. No. 738 of 2022).

**Statistics**

- 69.** Nothing in this Act shall prevent a member of the staff of FSI from processing and using the information in the DNA Database System for statistical purposes and analysis provided the identity of the persons whose DNA profiles are entered in the System is not disclosed otherwise than in accordance with this Act.

**Annotations**

**Modifications (not altering text):**

- C8** References to "processing" construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 166, S.I. No. 174 of 2018.

**Reference to processing in enactment**

**166.** Subject to this Act, a reference in any enactment to processing within the meaning of the Act of 1988 shall be construed as including a reference to processing within the meaning of—

- (a) the Data Protection Regulation, and
- (b) Part 5.

#### **Annual report of Director of FSI in relation to DNA Database System**

- 70.** (1) The Director of FSI shall as soon as may be, but not later than 4 months, after the end of each year make a report in writing to the Minister regarding the performance by him or her of the functions assigned to him or her by this Act during that year, and the Minister shall as soon as may be after the receipt by him or her of the report cause a copy of the report to be laid before each House of the Oireachtas and to be published in such manner as the Minister considers appropriate.
- (2) A report made under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.
- (3) Notwithstanding *subsection (1)*, if, but for this subsection, the first report under that subsection would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 4 months, after the end of that year.

## **PART 9**

### **DNA DATABASE SYSTEM OVERSIGHT COMMITTEE**

#### **DNA Database System Oversight Committee**

- 71.** (1) Upon the commencement of this section, a committee which shall be known as An Coiste Formhaoirsithe um an gCóras Bunachair Sonraí DNA or, in the English language, as the DNA Database System Oversight Committee (in this Act referred to as “the Committee”) shall stand established to perform the functions assigned to it by this Act.
- (2) Subject to this Part, the Committee shall be independent in the performance of its functions.
- (3) *Schedule 1* shall have effect in relation to the Committee.

#### **Functions of Committee**

- 72.** (1) The Committee shall oversee the management and operation of the DNA Database System for the purposes of maintaining the integrity and security of the System and shall, for those purposes, satisfy itself that the provisions of this Act in relation to the System are being complied with.
- (2) Without prejudice to the generality of *subsection (1)*, the Committee shall oversee—
- (a) the arrangements employed by the Director of FSI in relation to the receipt, handling, transmission and storage of samples taken under this Act for the purpose of generating DNA profiles for entry in the DNA Database System,

- (b) the procedures employed by the Director of FSI in relation to the generation of DNA profiles from the samples taken under this Act, and the quality control and quality assurance of those procedures, to ensure that they comply with international best practice,
  - (c) the measures employed by the Director of FSI to ensure that the DNA Database System is not improperly accessed by any person, that the DNA profiles and information entered in the System are used only for the purposes permitted by this Act and that they are not improperly disclosed to any person,
  - (d) the means by which the results of searches of the DNA Database System are reported by the Director of FSI to the Garda Síochána, the Ombudsman Commission or a coroner, as may be appropriate,
  - (e) the practices and procedures employed by the Director of FSI to ensure that samples taken under this Act for the purpose of generating DNA profiles for entry in the DNA Database System are destroyed, and the DNA profiles generated from those samples are removed from that System, in accordance with *Part 10*,
  - (f) the practices and procedures employed by the Director of FSI in the operation of *Chapters 2 and 7 of Part 12*, and
  - (g) the practices and procedures employed by the Director of FSI in the operation of *section 4*.
- (3) The Committee shall, in the performance of its functions under *subsections (1) and (2)*, make such recommendations as it considers appropriate in relation to the management and operation of the DNA Database System to the Minister and the Director of FSI, as may be appropriate.
- (4) The Committee may, and if so requested by the Minister shall, review any matter relating to the management and operation of the DNA Database System and shall submit a report in writing of any such review to the Minister.
- (5) Subject to *subsections (6) and (7)*, the Minister shall, as soon as practicable after receiving a report under *subsection (4)*, cause a copy of it to be laid before each House of the Oireachtas and to be published in such manner as the Minister considers appropriate.
- (6) The Minister may, when laying a copy of a report received by him or her under *subsection (4)* before each House of the Oireachtas or publishing the report, omit any matter from the copy of the report that is so laid or published if he or she is of opinion that the disclosure of the matter—
- (a) would be prejudicial to the security of the DNA Database System, the security of the State or the investigation of criminal offences, or
  - (b) may infringe the constitutional rights of any person.
- (7) If a matter is omitted in accordance with *subsection (6)* from a report received by the Minister under *subsection (4)*, a statement to that effect shall be attached to the copy of the report when it is laid before each House of the Oireachtas or is published.

**Annotations****Amendments:**

- F15** Substituted by *Defence Forces (Evidence) Act 2022(16/2022)*, s. 84(a)(i)-(iii), (b)(i)-(v), (c)(i), (ii), (d), (e), (f), (g), not commenced as of date of revision.

**Modifications (not altering text):**

**C9** Prospective amending provision: section amended by *Defence Forces (Evidence) Act 2022*(16/2022), s. 84(a)(i)-(iii), (b)(i)-(v), (c)(i), (ii), (d), (e), (f), (g), not commenced as of date of revision.

**72.** (1) The Committee shall oversee the management and operation of F15[the DNA Database System and the DNA (Military Police) Database System] for the purposes of maintaining the integrity and security of F15[those Systems] and shall, for those purposes, satisfy itself that the provisions of F15[this Act and the Act of 2022] in relation to F15[those Systems] are being complied with.

(2) Without prejudice to the generality of *subsection (1)*, the Committee shall oversee—

(a) the arrangements employed by the Director of FSI in relation to the receipt, handling, transmission and storage of samples taken under F15[this Act and the Act of 2022] for the purpose of generating DNA profiles for entry in F15[the DNA Database System or the DNA (Military Police) Database System, as the case may be,]

(b) the procedures employed by the Director of FSI in relation to the generation of DNA profiles from the samples taken under F15[this Act and the Act of 2022], and the quality control and quality assurance of those procedures, to ensure that they comply with international best practice,

(c) the measures employed by the Director of FSI to ensure that F15[the DNA Database System and the DNA (Military Police) Database System are] not improperly accessed by any person, that the DNA profiles and information entered in F15[those Systems] are used only for the purposes permitted by F15[this Act or the Act of 2022] and that they are not improperly disclosed to any person,

(d) the means by which the results of searches of F15[the DNA Database System and the DNA (Military Police) Database System] are reported by the Director of FSI to the Garda Síochána, F15[the Ombudsman Commission, the Military Police Corps] or a coroner, as may be appropriate,

F15[(e) the practices and procedures employed by the Director of FSI to ensure that samples taken under this Act or the Act of 2022 for the purpose of generating DNA profiles for entry in the DNA Database System or the DNA (Military Police) Database System, as the case may be, are destroyed, and the DNA profiles generated from those samples are removed from the system concerned, in accordance with Part 10 or the Act of 2022, as the case may be,]

(f) the practices and procedures employed by the Director of FSI in the operation of *Chapters 2 and 7 of Part 12*, and

(g) the practices and procedures employed by the Director of FSI in the operation of *section 4*.

(3) The Committee shall, in the performance of its functions under *subsections (1) and (2)*, make such recommendations as it considers appropriate in relation to the management and operation of F15[the DNA Database System and the DNA (Military Police) Database System] to F15[the Minister, the Minister for Defence and the Director of FSI], as may be appropriate.

F15[(4) The Committee may, and if so requested by the Minister (in respect of the DNA Database System) or the Minister for Defence (in respect of the DNA (Military Police) Database System) shall, review any matter relating to the management and operation of the DNA Database System or the DNA (Military Police) Database System and shall submit a report in writing of any such review to the Minister (where the report relates to the DNA Database System) or the Minister for Defence (where the report relates to the DNA (Military Police) Database System).]

F15[(5) Subject to *subsections (6) and (7)*, a Minister of the Government to whom a report was submitted under *subsection (4)* shall, as soon as practicable after receiving the report, cause a copy of it to be laid before each House of the Oireachtas and to be published in such manner as the Minister of the Government concerned considers appropriate.]

F15[(6) A Minister of the Government to whom a report was submitted under *subsection (4)* may, when laying a copy of the report before each House of the Oireachtas or publishing the report, omit any matter from the copy of the report that is so laid or published if he or she is of the opinion that the disclosure of the matter —

(a) would be prejudicial to the security of the DNA Database System, the security of the DNA (Military Police) Database System, the security of the State or the investigation of criminal offences, or

(b) may infringe the constitutional rights of any person.]

(7) If a matter is omitted in accordance with *subsection (6)* from a report received by F15[a Minister of the Government] under *subsection (4)*, a statement to that effect shall be attached to the copy of the report when it is laid before each House of the Oireachtas or is published.

### Cooperation with Committee

**73.** (1) The Director and the other members of the staff of FSI shall cooperate with the Committee in relation to the performance by the Committee of its functions under this Act.

(2) The Director and the other members of the staff of FSI shall, for the purposes of *subsection (1)* furnish the Committee with such information as it may request and which, in the opinion of the Committee, is required for the performance of its functions.

(3) The Committee may, whenever it considers it appropriate to do so, request the Garda Síochána and the Ombudsman Commission to furnish information to it that is required for the performance of its functions under this Act.

(4) The Garda Síochána and the Ombudsman Commission shall comply with a request under *subsection (3)*.

(5) Nothing in any other enactment shall prohibit the disclosure of relevant factual information either to or by the Committee.

### Annotations

#### Amendments:

**F16** Substituted by *Defence Forces (Evidence) Act 2022*(16/2022), s. 85(a), (b),not commenced as of date of revision.

#### Modifications (not altering text):

**C10** Prospective amending provision: subss. (3), (4) amended by *Defence Forces (Evidence) Act 2022* (16/2022), s. 85(a), (b), not commenced as of date of revision.

(3) The Committee may, whenever it considers it appropriate to do so, request the F16[the Garda Síochána, the Military Police Corps] and the Ombudsman Commission to furnish information to it that is required for the performance of its functions under this Act.

(4) F16[The Garda Síochána, the Military Police Corps] and the Ombudsman Commission shall comply with a request under *subsection (3)*.

### Annual report of Committee

**74.** (1) The Committee shall as soon as may be, but not later than 6 months, after the end of each year make a report in writing to the Minister regarding the performance by the Committee of the functions assigned to it by this Act during that year.

- (2) A report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.
- (3) Subject to *subsection (4)*, the Minister shall, as soon as practicable after receiving a report under this section, cause a copy of it to be laid before each House of the Oireachtas and to be published in such manner as the Minister considers appropriate.
- (4) *Subsections (6) and (7) of section 72* shall, with any necessary modifications, apply to a report received by the Minister under this section as they apply to a report received by him or her under *subsection (4)* of that section.
- (5) Notwithstanding *subsection (1)*, if, but for this subsection, the first report under this section would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 6 months, after the end of that year.

## PART 10

### DESTRUCTION OF SAMPLES AND DESTRUCTION, OR REMOVAL FROM DNA DATABASE SYSTEM, OF DNA PROFILES

#### CHAPTER 1

*Application of this Part to persons from whom samples were taken under Parts 2 and 4*

#### **Interpretation (Chapter 1)**

**75. (1)** In this Chapter—

“civil partner” has the meaning it has in section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“cohabitant”, in relation to a person, means another person who is neither married to the person nor a civil partner of the person who is living with the person as a husband or wife, or as a civil partner, of the person;

“vulnerable person” means a person, other than a child, whose capacity to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, by another person is significantly impaired through—

(a) a physical disability, illness or injury,

(b) a disorder of the mind, whether as a result of mental illness or dementia,  
or

(c) an intellectual disability.

(2) For the purposes of this Chapter a person shall be regarded as associated with another person if—

(a) he or she is a spouse or a former spouse of the person,

(b) he or she is a civil partner or a former civil partner of the person,

(c) he or she is a cohabitant or a former cohabitant of the person,

(d) he or she is a relative of the person, or

- (e) he or she has or has had an intimate personal relationship with the person for a significant period of time.

**Destruction of intimate samples and non-intimate samples in certain circumstances**

76. (1) Subject to *section 77*, an intimate sample or a non-intimate sample taken from a person shall, if not previously destroyed, be destroyed in any of the following circumstances not later than the expiration of the period of 3 months from the date on which such circumstances first apply to the person:

(a) where proceedings for a relevant offence—

(i) are not instituted against the person within the period of 12 months from the date of the taking of the sample concerned, and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or

(ii) have been instituted and—

(I) the person is acquitted of the relevant offence,

(II) the charge against the person in respect of the relevant offence is dismissed under section 4E of the Criminal Procedure Act 1967, or

(III) the proceedings for the relevant offence are discontinued;

(b) the person is the subject of an order under section 1(1) of the Probation of Offenders Act 1907 in respect of the relevant offence concerned in connection with which the sample concerned was taken and he or she has not been convicted of a relevant offence during the period of 3 years from the making of the order under that Act;

(c) subject to *subsection (2)*, the person is the subject of an order under section 1(2) of the Probation of Offenders Act 1907 in respect of the relevant offence concerned in connection with which the sample concerned was taken and he or she has not been convicted of a relevant offence during the period of 3 years from the making of the order under that Act;

(d) the person's conviction for the relevant offence concerned in connection with which the sample concerned was taken is quashed;

(e) the person's conviction for the relevant offence concerned in connection with which the sample concerned was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.

(2) *Subsection (1)(c)* shall not apply to an order under section 1(2) of the Probation of Offenders Act 1907 discharged on the appeal of a person against conviction for the relevant offence concerned if on appeal his or her conviction is affirmed.

(3) For the purposes of this section the "retention period", in relation to an intimate sample or a non-intimate sample, means the period from the taking of the sample concerned from a person to the latest date for the destruction of that sample under *subsection (1)*.

**Extension of retention period under *section 76* for intimate samples and non-intimate samples in certain circumstances**

- 77.** (1) An intimate sample or a non-intimate sample taken from a person shall not be destroyed under *section 76* in any case in which the Commissioner determines that any of the following circumstances apply:
- (a) a decision has not been taken whether or not to institute proceedings against the person for the offence concerned in connection with which the sample concerned was taken;
  - (b) the investigation of that relevant offence has not been concluded;
  - (c) the sample concerned, and the results of any forensic testing of it, are likely to be required for the prosecution of an offence connected with the event, incident or circumstances the subject of the relevant offence concerned—
    - (i) for use as evidence in such proceedings,
    - (ii) for disclosure to, or use by, a defendant in such proceedings, or
    - (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings;
  - (d) having regard to the matters specified in *subsection (2)*, the Commissioner believes it is necessary to retain the sample concerned in connection with the investigation of the relevant offence concerned taking account of all the circumstances of the case and the reasons why—
    - (i) proceedings for that offence have not been instituted against the person, or
    - (ii) if such proceedings have been instituted against the person, they were determined without he or she being convicted of the relevant offence concerned or he or she being the subject of an order under section 1(1) of the Probation of Offenders Act 1907.
- (2) The matters referred to in *subsection (1)(d)* to which the Commissioner shall have regard are the following:
- (a) whether the person concerned has any previous conviction for an offence similar in nature or gravity to the relevant offence concerned in connection with which the sample concerned was taken from him or her;
  - (b) the nature and seriousness of that relevant offence;
  - (c) whether any alleged victim, or any intended victim, of that relevant offence was—
    - (i) a child,
    - (ii) a vulnerable person, or
    - (iii) associated with the person,at the time of the commission, or alleged commission, of that relevant offence; and
  - (d) any other matter that the Commissioner considers appropriate for the purposes of the determination.



- (3) If, in relation to an intimate sample or a non-intimate sample taken from a person, the Commissioner determines that one of the paragraphs of *subsection (1)* applies, then, he or she may, during the retention period referred to in *section 76*, give an authorisation to extend that period by a period of 12 months.
- (4) The Commissioner may, while an authorisation under *subsection (3)* or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she determines that one of the paragraphs of *subsection (1)* applies.
- (5) Whenever the Commissioner gives an authorisation under *subsection (3)* or *(4)*, he or she shall, in relation to an intimate sample or a non-intimate sample taken from a person that is the subject of the authorisation, cause—
- (a) the person from whom the sample concerned was taken, and
  - (b) if that person is a protected person or a child, a parent or guardian of the person or child, as the case may be,
- to be informed by notice in writing that the authorisation has been given under *subsection (3)* or *(4)*, as may be appropriate, the date on which that authorisation was given and of the right of appeal under *subsection (6)*.
- (6) The person to whom the authorisation concerned relates (in this section called “the appellant”) or, if that person is a child or a protected person, a parent or guardian on his or her behalf may, within the period of 3 months from the date of the notice under *subsection (5)* concerned, appeal to the District Court against that authorisation.
- (7) An appeal under *subsection (6)* shall—
- (a) be on notice to the Commissioner, and
  - (b) be heard otherwise than in public.
- (8) If, on an appeal under *subsection (6)*, the District Court—
- (a) confirms the authorisation concerned, or
  - (b) allows the appeal,
- the Commissioner shall give effect to the decision of the Court.
- (9) The jurisdiction conferred on the District Court by this section shall be exercised by a judge of the District Court who is assigned to the district court district in which the appellant ordinarily resides or, if the appellant does not ordinarily reside in the State, by a judge of the District Court who is assigned to the district court district in which the sample concerned was taken.
- (10) The District Court may make such order as to costs as it considers appropriate on an appeal under *subsection (6)*.
- (11) Nothing in this section shall—
- (a) prevent or restrict the exercise of powers conferred by *section 12* or *13*, or
  - (b) pending the conclusion of proceedings under this section, prevent or restrict the use of the sample concerned for the purposes of—
    - (i) this Act,

- (ii) a criminal investigation, or
- (iii) other proceedings.

**Destruction of intimate samples and non-intimate samples in exceptional circumstances**

- 78.** (1) Notwithstanding *sections 76 and 77*, if the Commissioner is satisfied that exceptional circumstances exist that justify the destruction of an intimate sample or a non-intimate sample, the sample concerned shall be destroyed as soon as practicable after the application of those circumstances in relation to that sample becomes known.
- (2) The exceptional circumstances referred to in *subsection (1)* are the following:
- (a) it is established, at any time after the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken, that no such offence was committed;
  - (b) it is established that the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that relevant offence; or
  - (c) it is determined by a court that the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken was unlawful.

**Destruction of certain samples taken for purposes of DNA Database System**

- 79.** (1) Subject to *subsection (2)*, a sample taken from a person under *section 11, 31, 32 or 34* shall, if not previously destroyed, be destroyed—
- (a) as soon as a DNA profile has been generated from the sample, or
  - (b) before the expiration of the period of 6 months from the taking of the sample,
- whichever occurs later.
- (2) If the Commissioner is satisfied that exceptional circumstances exist that justify the destruction of a sample taken from a person under *section 11*, the sample shall, if not previously destroyed, be destroyed as soon as practicable after the application of those circumstances in relation to the sample becomes known.
- (3) The exceptional circumstances referred to in *subsection (2)* are the following:
- (a) it is established, at any time after the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken, that no such offence was committed;
  - (b) it is established that the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that relevant offence; or

- (c) it is determined by a court that the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken was unlawful.

**Removal of certain DNA profiles in reference index of DNA Database System from that System in certain circumstances**

80. (1) Subject to *sections 81, 85* and *93*, a DNA profile of a person generated from a sample taken from him or her under *section 11, 12, 13, 31* or *32* and entered in the reference index of the DNA Database System shall, if not previously removed, be removed from that System in any of the following circumstances not later than the expiration of a period of 3 months from the date on which such circumstances first apply to the person:
- (a) in a case where the sample was taken from the person under *section 11, 12* or *13* and proceedings for a relevant offence—
- (i) are not instituted against the person within the period of 12 months from the taking of that sample and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or
- (ii) have been instituted and—
- (I) the person is acquitted of the relevant offence,
- (II) the charge against the person in respect of the relevant offence is dismissed under section 4E of the Criminal Procedure Act 1967, or
- (III) the proceedings for the relevant offence are discontinued;
- (b) in a case where the sample was taken from the person under *section 11, 12* or *13* and he or she is the subject of an order under section 1(1) of the Probation of Offenders Act 1907 in respect of the relevant offence concerned in connection with which that sample was taken and he or she has not been convicted of a relevant offence during the period of 3 years from the making of the order under that Act;
- (c) in a case where the sample was taken from the person under *section 11, 12, 13, 31* or *32* and, subject to *subsection (2)*, he or she is the subject of an order under section 1(2) of the Probation of Offenders Act 1907 in respect of the relevant offence concerned, or, if appropriate, the sexual offence concerned, in connection with which that sample was taken and he or she has not been convicted of a relevant offence during the period of 3 years from the making of the order under that Act;
- (d) in a case where the sample was taken from the person under *section 11, 12, 13, 31* or *32* and his or her conviction for the relevant offence concerned, or, if appropriate, the sexual offence concerned, in connection with which that sample was taken is quashed; or
- (e) in a case where the sample was taken from the person under *section 11, 12, 13, 31* or *32* and his or her conviction for the relevant offence concerned, or, if appropriate, the sexual offence concerned, in connection with which that sample was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.
- (2) *Subsection (1)(c)* shall not apply to an order under section 1(2) of the Probation of Offenders Act 1907 discharged on the appeal of a person against conviction for the relevant offence concerned if on appeal his or her conviction is affirmed.

- (3) For the purposes of this section the “retention period”, in relation to the DNA profile of a person that is entered in the reference index of the DNA Database System, means the period from the generation of that DNA profile from the sample concerned taken from the person to the latest date for the removal of that DNA profile from that System under *subsection (1)*.

**Extension of retention period under *section 80* for certain DNA profiles in reference index of DNA Database System in certain circumstances**

- 81.** (1) A DNA profile of a person in the reference index of the DNA Database System shall not be removed from that System under *section 80* in any case in which the Commissioner determines that it is necessary to retain the DNA profile in that index of that System to assist in the investigation or prosecution of offences.
- (2) The Commissioner may determine under *subsection (1)* that the DNA profile of a person shall be retained in the reference index of the DNA Database System in either of the following circumstances:
- (a) in relation to the investigation of the relevant offence concerned in connection with which the sample concerned was taken from the person (from which his or her DNA profile was generated)—
- (i) a decision whether or not to institute proceedings against the person for that offence has not been taken, or
- (ii) the investigation of that offence has not been concluded;
- or
- (b) having regard to the matters specified in *subsection (3)*, the Commissioner believes it is necessary to do so taking account of all the circumstances of the case and the reasons why—
- (i) proceedings for that offence have not been instituted against the person, or
- (ii) if such proceedings have been instituted against the person, they were determined without he or she being convicted of the relevant offence concerned or he or she being the subject of an order under section 1(1) of the Probation of Offenders Act 1907.
- (3) The matters referred to in *subsection (2)(b)* to which the Commissioner shall have regard are the following:
- (a) whether the person concerned has any previous conviction for an offence similar in nature or gravity to the relevant offence concerned in connection with which the sample concerned was taken from him or her (from which his or her DNA profile was generated);
- (b) the nature and seriousness of that relevant offence;
- (c) whether any alleged victim, or any intended victim, of that relevant offence was—
- (i) a child,
- (ii) a vulnerable person, or
- (iii) associated with the person,
- at the time of the commission, or alleged commission, of that relevant offence;

- (d) the age of the person concerned at the time that the sample concerned was taken from him or her (from which his or her DNA profile was generated); and
  - (e) any other matter that the Commissioner considers appropriate for the purposes of the determination.
- (4) Subject to *subsection (7)*, if, in relation to the DNA profile of a person, the Commissioner makes a determination under *subsection (1)* on the basis that *subsection (2)(a)* applies, he or she may, during the retention period referred to in *section 80*, give an authorisation to extend that period by a period of 12 months.
- (5) Subject to *subsection (7)*, the Commissioner may, while an authorisation under *subsection (4)* or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of not more than 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she makes a determination under *subsection (1)* on the basis that *subsection (2)(a)* applies.
- (6) Subject to *subsection (7)*, the Commissioner may, while an authorisation under *subsection (4)* or (5), as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a further period commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she makes a determination under *subsection (1)* on the basis that *subsection (2)(b)* applies.
- (7) An authorisation under *subsection (4)*, (5) or (6) may not be given if to do so would involve the retention of the DNA profile of the person concerned—
- (a) in the case of a child or a protected person, for a period of more than 3 years from—
    - (i) the taking of the sample concerned from the child or protected person, as the case may be, or
    - (ii) if appropriate, the date on which that sample is deemed under *section 86* to have been taken from him or her,whichever is the later, and
  - (b) in the case of any other person, for a period of more than 6 years from—
    - (i) the taking of the sample concerned from the person, or
    - (ii) if appropriate, the date on which that sample is deemed under *section 86* to have been taken from him or her,whichever is the later.
- (8) Subject to *subsection (9)*, if, in relation to the DNA profile of a person, the Commissioner makes a determination under *subsection (1)* on the basis that *subsection (2)(b)* applies, he or she may, during the retention period referred to in *section 80*, give an authorisation to extend that period.
- (9) An authorisation under *subsection (8)* may extend the retention period referred to in *section 80* for no longer than—
- (a) in the case of a child or a protected person, a period of 3 years from—
    - (i) the taking of the sample concerned from the child or protected person, as the case may be, or

- (ii) if appropriate, the date on which that sample is deemed under *section 86* to have been taken from him or her,  
whichever is the later, and
- (b) in the case of any other person, a period of 6 years from—
  - (i) the taking of the sample concerned from the person, or
  - (ii) if appropriate, the date on which that sample is deemed under *section 86* to have been taken from him or her,  
whichever is the later.
- (10) Whenever the Commissioner gives an authorisation under *subsection (4), (5), (6) or (8)*, he or she shall, in relation to the DNA profile of the person that is the subject of the authorisation, cause—
  - (a) the person, and
  - (b) if the person is a protected person or a child, a parent or guardian of the person or child, as the case may be,  
  
to be informed by notice in writing that the authorisation has been given under *subsection (4), (5), (6) or (8)*, as may be appropriate, the date on which that authorisation was given and of the right of appeal under *subsection (11)*.
- (11) The person to whom the authorisation concerned relates (in this section called “the appellant”) or, if that person is a child or a protected person, a parent or guardian on his or her behalf may, within the period of 3 months from the date of the notice under *subsection (10)* concerned, appeal to the District Court against that authorisation.
- (12) An appeal under *subsection (11)* shall—
  - (a) be on notice to the Commissioner, and
  - (b) be heard otherwise than in public.
- (13) If, on an appeal under *subsection (11)*, the District Court—
  - (a) confirms the authorisation concerned, or
  - (b) allows the appeal,the Commissioner shall give effect to the decision of the Court.
- (14) The jurisdiction conferred on the District Court by this section shall be exercised by a judge of the District Court who is assigned to the district court district in which the appellant ordinarily resides or, if the appellant does not ordinarily reside in the State, by a judge of the District Court who is assigned to the district court district in which the sample concerned was taken (from which the DNA profile of the appellant was generated).
- (15) The District Court may make such order as to costs as it considers appropriate on an appeal under *subsection (11)*.
- (16) Nothing in this section shall—
  - (a) prevent or restrict the exercise of powers conferred by *section 11, 12, 13, 30 or 31*,
  - (b) pending the conclusion of proceedings under this section, prevent or restrict the use of the DNA profile concerned for the purposes of—

- (i) this Act,
- (ii) a criminal investigation, or
- (iii) other proceedings.

**Removal in exceptional circumstances of certain DNA profiles in reference index of DNA Database System from that System**

**82.** (1) Notwithstanding *sections 80* and *81*, if the Commissioner is satisfied that exceptional circumstances exist that justify the removal from the DNA Database System of a DNA profile that was generated from a sample taken from a person under *section 11, 12* or *13* and entered in the reference index of that System, the DNA profile concerned shall be so removed as soon as practicable after the application of those circumstances in relation to that DNA profile becomes known.

(2) The exceptional circumstances referred to in *subsection (1)* are the following:

- (a) it is established, at any time after the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken (from which his or her DNA profile was generated), that no such offence was committed;
- (b) it is established that the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken (from which his or her DNA profile was generated) was on the basis of the mistaken identity of the person concerned as the perpetrator of that relevant offence; or
- (c) it is determined by a court that the detention of the person concerned under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence during which the sample concerned was taken (from which his or her DNA profile was generated) was unlawful.

**Application of this Part to former offenders**

**83.** (1) A person from whom a sample was taken under *section 34* may apply to the Commissioner under this section to have his or her DNA profile that was generated from the sample and entered in the reference index of the DNA Database System removed from that System.

(2) An application under *subsection (1)* may be made by a person if a conviction for any offence to which regard was had under *section 33* for the purposes of determining whether he or she was a former offender—

- (a) has been quashed, or
  - (b) has been declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.
- (3) An application under *subsection (1)* shall be made in writing and shall contain sufficient particulars relating to the sample or DNA profile concerned to facilitate its identification.
- (4) The Commissioner shall, as soon as may be after the receipt of an application under *subsection (1)*, acknowledge the receipt of it by notice in writing.

- (5) The Commissioner shall, as soon as may be but not later than 3 months after the receipt of an application under *subsection (1)*, determine the application.
- (6) The Commissioner shall, for the purposes of determining an application under *subsection (1)*, consider in accordance with *section 33* whether the person concerned is a former offender.
- (7) The determination of the Commissioner of an application under *subsection (1)* may provide for the retention in, or the removal from, the DNA Database System of the DNA profile of the person concerned.
- (8) The Commissioner shall cause the person concerned to be informed by notice in writing of the determination and the reasons for it, the date on which it was made and of the right of appeal under *subsection (9)*.
- (9) Where the Commissioner, in relation to an application under *subsection (1)* —
- (a) refuses the application, or
  - (b) does not determine the application within the time limit specified in *subsection (5)* in which case the application shall be deemed to have been refused,
- the person concerned or, if that person is a child or a protected person, a parent or guardian on his or her behalf may, within the period of 3 months from the date of the determination or, as may be appropriate, the latest date for making a determination under *subsection (5)*, appeal to the District Court against the determination.
- (10) An appeal under *subsection (9)* shall—
- (a) be on notice to the Commissioner, and
  - (b) be heard otherwise than in public.
- (11) If, on an appeal under *subsection (9)*, the District Court—
- (a) confirms the determination concerned, or
  - (b) allows the appeal,
- the Commissioner shall ensure that effect is given to the decision of the Court.
- (12) The jurisdiction conferred on the District Court by this section shall be exercised by a judge of the District Court who is assigned to the district court district in which the person concerned resides or, if that person does not ordinarily reside in the State, by a judge of the District Court who is assigned to the district court district in which the sample concerned was taken.
- (13) The District Court may make such order as to costs as it considers appropriate on an appeal under *subsection (9)*.
- (14) Nothing in this section shall—
- (a) prevent or restrict the exercise of powers conferred by *section 34* or *39*, or
  - (b) pending the conclusion of proceedings under this section, prevent or restrict the use of the DNA profile concerned for the purposes of—
    - (i) this Act,



- (ii) a criminal investigation, or
- (iii) other proceedings.

**Removal of DNA profiles in respect of former child offenders from DNA Database System in certain circumstances**

**84.** (1) Subject to *sections 85, 86* and *93*, the DNA profile generated from a sample taken under *section 11, 12, 13* or *32* and entered in the reference index of the DNA Database System in respect of a person who was a child offender to whom *subsection (2)* applies shall, if not previously removed, be removed from that System—

- (a) within the period of 4 years from the taking of the sample from the person if a sentence other than one of detention was imposed on the person, or
- (b) within the period of 6 years from the expiry of the sentence imposed on, or, as the case may be, the end of the notification period in relation to, the person,

in respect of the offence to which that subsection applies (in this section called the “retention period”).

(2) This section applies to a person who was a child offender if the offence in connection with which the sample concerned was taken (from which his or her DNA profile was generated) is an offence other than—

- (a) an offence that is triable by the Central Criminal Court, or
- (b) an offence, or one of a category of offences, specified in an order made by the Minister under this subsection that are, for the purposes of this subsection, excluded from its application by reason of the nature and seriousness of such an offence or offences.

(3) In this section—

“the end of the notification period”, in relation to a child offender who was a sex offender, means the end of the period for which he or she was subject to the requirements of Part 2 of the Sex Offenders Act 2001;

“the expiry of the sentence”, in relation to a child offender other than a sex offender, has the meaning it has in *section 32*.

**DNA profiles not to be removed from DNA Database System in certain circumstances**

**85.** (1) *Section 80* or *84* shall not apply to a person if, during the retention period—

- (a) proceedings for a relevant offence (“the subsequent relevant offence”) other than the offence in connection with which the sample concerned was taken (from which his or her DNA profile was generated and entered in the reference index of the DNA Database System) have not been instituted against the person, where the failure to institute such proceedings against him or her within the retention period is due to the fact that he or she absconded or could not be found,
- (b) proceedings for a relevant offence (“the subsequent relevant offence”) other than the offence in connection with which the sample concerned was taken (from which his or her DNA profile was generated and entered in the reference index of that System) have been instituted against the person, unless—

- (i) the person has been acquitted of that relevant offence,
  - (ii) the charge against the person in respect of that relevant offence has been dismissed under section 4E of the Criminal Procedure Act 1967, or
  - (iii) the proceedings for that relevant offence have been discontinued, or
  - (c) the person has been convicted of another relevant offence (“the subsequent relevant offence”) or sexual offence, unless—
    - (i) the conviction for that relevant or sexual offence, as the case may be, is quashed, or
    - (ii) the conviction for that relevant offence or sexual offence, as the case may be, is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.
- (2) In the circumstances referred to in *subsection (1)*, this Part shall apply in relation to the retention of the DNA profile of the person concerned in the reference index of the DNA Database System by reference to the subsequent relevant offence referred to in *paragraph (a), (b) or (c)* of that subsection, or the sexual offence referred to in that *paragraph (c)*, as may be appropriate.
- (3) In this section references to the retention period shall be construed as references to—
- (a) in the case of *section 80*, the retention period under that section and any extension of that period under an authorisation given under *subsection (4), (5), (6) or (8) of section 81*, and
  - (b) in the case of *section 84*, the retention period within the meaning of that section.

**Date on which sample under *section 11, 12, 13, 31 or 32* may be deemed to have been taken in certain circumstances**

- 86.** (1) This section applies where a sample (in this section called “the first sample”) is taken from a person—
- (a) under *section 11, 12 or 13* while he or she is detained under any of the provisions referred to in *section 9(1)* for the purposes of the investigation of a relevant offence, or
  - (b) under *section 31 or 32* in connection with a conviction for a relevant offence or a sexual offence,
- and a DNA profile in respect of the person is generated from that sample and entered in the reference index of the DNA Database System.
- (2) If, in the circumstances referred to in *subsection (1)* in relation to a person—
- (a) but for the taking from him or her of the first sample, a sample may be, but is not, taken from him or her on a date after the first sample was taken (“the subsequent date”)—
    - (i) under *section 11* while the person is detained under any of the provisions referred to in any paragraph of *section 9(1)* for the purposes of the investigation of a relevant offence other than the offence in connection with which the first sample was taken, or

(ii) under *section 31* or *32* in connection with a conviction for a relevant offence or sexual offence other than the offence in connection with which the first sample was taken,

or

(b) an intimate sample or a non-intimate sample taken from the person on a date after the taking of the first sample (“the subsequent date”) for the investigation of a relevant offence other than the offence in connection with which the first sample was taken is not used to generate a DNA profile in respect of the person to be entered in the reference index of the DNA Database System as his or her DNA profile has already been entered in that index,

the first sample shall be deemed to have been taken from him or her on the subsequent date—

(i) for the purposes of the application of *subsection (7)* or *(9)* of *section 81* to the person, and

(ii) for the purposes of the application of *subsection (1)* of *section 84* to the person so that the retention period under that section shall be—

(I) in the case of a person falling under *paragraph (a)* of that subsection, the period of 4 years from the subsequent date, or

(II) in the case of a person falling under *paragraph (b)* of that subsection, the period of 6 years from the subsequent date but only if that period is longer than the retention period under that subsection.

(3) The subsequent date for the purposes of *subsection (2)(a)* shall be the latest date on which a sample under *section 11, 31* or *32*, as the case may be, may have been taken from the person concerned.

## CHAPTER 2

### *Application of this Part to persons from whom samples were taken under Part 3*

#### **Destruction of samples taken from persons under Part 3 and destruction, or removal from DNA Database System, of their DNA profiles**

**87.** (1) Subject to *subsection (2)* —

(a) a person from whom a sample was taken under *section 27* or *29*, or

(b) in the case of a protected person or a child, the person who gave consent under *section 54* to the taking of a sample under *section 27* or *29* from the protected person or child, as the case may be,

may request the destruction of the sample, or the DNA profile generated from the sample in respect of the person from whom it was taken, or both by notice in writing sent or given to the Commissioner.

(2) Where the DNA profile in respect of a person from whom a sample was taken under *section 27* is entered in the reference index of the DNA Database System under *section 28*, a request by the person under *subsection (1)* to have his or her DNA profile destroyed shall be regarded as including a request to have his or her DNA profile removed from that System.

(3) Subject to *subsections (4)* to *(7)* and *section 93*, a sample taken from a person under *section 27* or *29*, and the DNA profile generated from the

sample in respect of the person from whom it was taken, shall be destroyed not more than 3 months after the receipt by the Commissioner of the notice under *subsection (1)*.

- (4) Where the DNA profile in respect of a person from whom a sample was taken under *section 27* is entered in the reference index of the DNA Database System under *section 28*, the Commissioner may request the person to consent to the removal of the DNA profile in respect of the person from that System and its retention solely for the purposes of the investigation of the particular offence in connection with the investigation of which the sample was taken.
- (5) If the person referred to in *subsection (4)* consents in writing to the retention of his or her DNA profile in relation to the investigation of the particular offence concerned, then, subject to *subsection (6)*, the DNA profile that was generated from the sample in respect of that person shall be removed from the DNA Database System and retained solely for the purposes of the investigation of that offence.
- (6) A member of the Garda Síochána shall, before the consent of the person concerned is obtained under *subsection (5)*, inform that person of the following effects of giving that consent:
  - (a) that the DNA profile in respect of that person generated from the sample that has already been taken from him or her shall be removed from the DNA Database System and retained solely for the purposes of the investigation of the particular offence concerned; and
  - (b) that the DNA profile in respect of that person may be destroyed in accordance with *subsections (1) and (3)*.
- (7) A consent under *subsection (5)* shall specify the particular offence that is being investigated to which it relates.
- (8) Subject to *subsection (10)*, a sample taken from a person under *section 27* or *29*, and the DNA profile generated from the sample in respect of the person from whom it was taken, shall, if not previously destroyed, be destroyed not more than 3 months after the investigation of the offence in relation to which the sample was taken is concluded or any proceedings in respect of that offence are determined, whichever is the later.
- (9) The member of the Garda Síochána in charge of the investigation of the offence referred to in *subsection (8)* shall determine, for the purposes of that subsection, when the investigation of that offence is concluded.
- (10) Where the DNA profile in respect of a person from whom a sample was taken under *section 27* is entered in the reference index of the DNA Database System under *section 28*, that DNA profile shall not be removed from that System unless the person makes a request, or is regarded under *subsection (2)* as having made such a request, to have it so removed and, on such a request being made or regarded as having been made, his or her DNA profile shall be removed as soon as practicable thereafter from that System.

### CHAPTER 3

Application of this Part to persons from whom samples were taken under *Part 5*

**Destruction of samples taken from persons under sections 41 and 42 and removal of their DNA profiles from DNA Database System**

**88.** (1) Subject to *subsection (4)*, a sample taken from a person under *section 41* or *42* shall be destroyed—

- (a) as soon as a DNA profile has been generated from the sample, or
- (b) before the expiration of the period of 6 months from the taking of the sample,

whichever occurs later.

(2) Subject to *subsections (5) and (6)*, the DNA profile in respect of a person to whom *section 41(2)* or *42(2)* applies entered in the elimination (Garda Síochána) index or the elimination (crime scene investigators) index of the DNA Database System shall not be removed from that System until the expiration of the period of 10 years after—

(a) in the case of a member of the Garda Síochána to whom *section 41(2)(a)* or *42(2)(a)* applies, the person ceases to be a member of the Garda Síochána,

(b) in the case of a person to whom *section 41(2)(b)* or *paragraph (b) or (c) of section 42(2)* applies, the person ceases to be employed by the Garda Síochána as such a person, but where he or she is appointed as a member of the Garda Síochána *paragraph (a)* applies to the person,

and the DNA profile concerned shall be removed from that System as soon as practicable after that period.

(3) A person—

(a) to whom *subsection (3) of section 41* applies and from whom a sample was taken under that section, or

(b) to whom *subsection (3) of section 42* applies and from whom a sample was taken under that section,

may, at any time and without specifying a reason, request the destruction of the sample if not already destroyed, and the removal of his or her DNA profile from the DNA Database System, by notice in writing sent or given to the Commissioner.

(4) Subject to *subsections (5) and (6)*, a sample taken under *section 41* or *42* from a person referred to in *subsection (3)* shall be destroyed if not previously destroyed, and his or her DNA profile shall be removed from the DNA Database System, not more than 3 months after the receipt by the Commissioner of the notice under that subsection.

(5) If the Director of FSI, following consultation with the Commissioner, is satisfied that there is good reason relating to the investigation of offences why a DNA profile in respect of a person entered in the elimination (Garda Síochána) index or the elimination (crime scene investigators) index of the DNA Database System should not be removed from that System under *subsection (2) or (4)*, the Director may, subject to *subsection (6)*, direct that the DNA profile should not be removed from that System.

(6) At the end of each year, the Director of FSI shall carry out a review to determine whether any of the DNA profiles in respect of persons referred to in *subsection (5)* shall be removed from the DNA Database System and he or she shall consult the Commissioner for the purposes of that review.

- (7) The Director of FSI shall inform by notice in writing a person from whom a sample was taken under *section 41 or 42* —
- (a) if a direction is given by the Director under *subsection (5)* in relation to the DNA profile in respect of the person, and
  - (b) if appropriate, of a determination under *subsection (6)* in relation to the DNA profile in respect of the person.
- (8) In this section “member of the Garda Síochána” has the meaning it has in *Part 5*.

**Destruction of samples taken from persons under *section 43* and removal of their DNA profiles from DNA Database System**

**89.** (1) Subject to *subsection (4)*, a sample taken from a person under *section 43* shall be destroyed—

- (a) as soon as a DNA profile has been generated from the sample, or
  - (b) before the expiration of the period of 6 months from the taking of the sample,
- whichever occurs later.

(2) Subject to *subsections (5) and (6)*, the DNA profile in respect of a member of the staff of FSI entered in the elimination (crime scene investigators) index of the DNA Database System shall not be removed from that System until the expiration of the period of 10 years after he or she ceases to be such a member of staff, and that DNA profile shall be removed from that System as soon as practicable after that period.

(3) A member of staff of FSI to whom *subsection (3) of section 43* applies and from whom a sample was taken under that section may, at any time and without specifying a reason, request the destruction of the sample if not already destroyed, and the removal of his or her DNA profile from the DNA Database System, by notice in writing sent or given to the Director of FSI.

(4) Subject to *subsections (5) and (6)*, a sample taken under *section 43* from a member of the staff of FSI referred to in *subsection (3)* shall be destroyed if not previously destroyed, and his or her DNA profile shall be removed from the DNA Database System, not more than 3 months after the receipt by the Director of FSI of the notice under that subsection.

(5) If the Director of FSI is satisfied that there is good reason relating to the investigation of offences why a DNA profile in respect of a member of the staff of FSI entered in the elimination (crime scene investigators) index of the DNA Database System should not be removed from that System under *subsection (2) or (4)*, the Director may, subject to *subsection (6)*, direct that the DNA profile shall not be removed from that System.

(6) At the end of each year, the Director of FSI shall carry out a review to determine whether any of the DNA profiles in respect of members of the staff of FSI referred to in *subsection (5)* shall be removed from the DNA Database System.

(7) The Director of FSI shall inform by notice in writing a person from whom a sample was taken under *section 43* —

- (a) if a direction is given by the Director under *subsection (5)* in relation to the DNA profile in respect of the person, and
- (b) if appropriate, of a determination under *subsection (6)* in relation to the DNA profile in respect of the person.

**Destruction of samples taken from persons under *section 44* and removal of their DNA profiles from DNA Database System**

- 90.** (1) A sample taken from a prescribed person under *section 44* shall be destroyed—
- (a) as soon as a DNA profile has been generated from the sample, or
  - (b) before the expiration of the period of 6 months from the taking of the sample,
- whichever occurs later.
- (2) Subject to *subsections (5) and (6)*, the DNA profile in respect of a person from whom a sample under *section 44* shall be taken that is entered in the elimination (crime scene investigators) index or the elimination (prescribed persons) index of the DNA Database System shall not be removed from that System until the expiration of the period of 10 years after the person ceases to be a prescribed person, and that DNA profile shall be removed from that System as soon as practicable after that period.
- (3) A prescribed person from whom a sample under *section 44* may be taken and from whom such a sample was taken may, at any time and without specifying a reason, request in the prescribed manner the destruction of the sample if not already destroyed and the removal of his or her DNA profile from the DNA Database System.
- (4) Subject to *subsections (5) and (6)*, a sample taken under *section 44* from a prescribed person referred to in *subsection (3)* shall be destroyed if not previously destroyed, and his or her DNA profile shall be removed from the DNA Database System, not more than 3 months after he or she makes the request under that subsection in the prescribed manner.
- (5) If the Director of FSI is satisfied that there is good reason relating to the investigation of offences why a DNA profile entered in the elimination (crime scene investigators) index or the elimination (prescribed persons) index of the DNA Database System should not be removed from that System under *subsection (2) or (4)*, the Director may, subject to *subsection (6)*, direct that the DNA profile shall not be removed from that System.
- (6) At the end of each year, the Director of FSI shall carry out a review to determine whether any of the DNA profiles in respect of persons referred to in *subsection (5)* shall be removed from the DNA Database System.
- (7) The Director of FSI shall inform by notice in writing a prescribed person from whom a sample was taken under *section 44* —
- (a) if a direction is given by the Director under *subsection (5)* in relation to the DNA profile in respect of the person, and
  - (b) if appropriate, of a determination under *subsection (6)* in relation to the DNA profile in respect of the person.

**Annotations**

**Editorial Notes:**

- E13** Power pursuant to section exercised (22.12.2022) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022* (S.I. No. 738 of 2022).

**Destruction of sample taken from person under *section 45* or *46* and his or her DNA profile**

91. (1) When the DNA profile of a person from whom a sample was taken under *section 45* or *46* has been compared with a DNA profile that was generated from the crime scene sample concerned, then, subject to *subsections (2)* and *(3)*, the sample taken from the person, and the DNA profile generated from the sample in respect of the person, shall be destroyed as soon as practicable.

(2) If—

(a) the Commissioner, in the case of a sample taken from a person under *section 45*, or

(b) the Director of FSI, in the case of a sample taken from a person under *section 46*,

is satisfied that there is good reason relating to the investigation of a particular offence why the sample taken from the person under *section 45* or *46*, as the case may be, or the DNA profile generated from the sample in respect of the person, or both should not be destroyed, he or she may direct that the sample or DNA profile or both shall not be destroyed until a period of not more than 3 months has elapsed after the investigation of that offence is concluded or any proceedings in respect of that offence are determined whichever is the later.

(3) The member of the Garda Síochána who is in charge of the investigation of the offence referred to in *subsection (2)* shall determine, for the purposes of that subsection, when the investigation of that offence is concluded.

(4) The Commissioner in the case of a person from whom a sample was taken under *section 45*, and the Director of FSI in the case of a person from whom a sample was taken under *section 46*, shall inform the person by notice in writing if a direction is given by the Commissioner or the Director, as the case may be, under *subsection (2)* in relation to the DNA profile in respect of the person.

CHAPTER 4

*Application of this Part to persons from whom, or in relation to whom, samples were taken under Part 6*

**Destruction of samples taken from persons under *Part 6* and removal of their DNA profiles from DNA Database System**

92. (1) A person referred to in *subsection (1)(b)* of *section 48* from whom a sample was taken under that section, or, in the case of a protected person or a child, the person who gave consent under *section 54* to the taking of a sample under that section from the protected person or the child, as the case may be, may request the destruction of the sample, or the removal from the DNA Database System of the DNA profile generated from the sample in respect of the person, or both by notice in writing sent or given to the Commissioner.

(2) Subject to *subsections (7)* to *(9)*, a sample taken under *section 48* from a person referred to in *subsection (1)(b)* of that section shall be destroyed, or the DNA profile generated from the sample in respect of the person shall be removed from the DNA Database System, or both not more than 3 months after the receipt by the Commissioner of the notice under *subsection (1)*.



- (3) Subject to *subsections (7) to (10)*, a sample taken under *section 48* from a person referred to in *subsection (1)(b)* of that section shall, if not previously destroyed, be destroyed, and the DNA profile generated from the sample in respect of the person shall, if not previously removed, be removed from the DNA Database System, not more than 3 months after the missing person in relation to whose disappearance the sample was taken is found or identified.
- (4) Subject to *subsections (7) to (10)*, a sample taken under *section 48* in relation to a missing person shall be destroyed, and the DNA profile generated from the sample in respect of the missing person shall be removed from the DNA Database System, not more than 3 months after that person is found or identified.
- (5) Subject to *subsections (7) to (9)*, a sample taken under *section 49* from an unknown person shall be destroyed, and the DNA profile generated from the sample in respect of the unknown person shall be removed from the DNA Database System, not more than 3 months after the unknown person is identified.
- (6) Subject to *subsections (7) to (10)*, a sample taken from the body of a deceased person under *section 50* shall be destroyed, and the DNA profile generated from the sample in respect of the person shall be removed from the DNA Database System, not more than 3 months after the person is identified.
- (7) Nothing in this section shall require the destruction of a sample, or the removal from the DNA Database System of the DNA profile generated from the sample, if the sample or the DNA profile or both are required for the purposes of—
  - (a) the investigation of an offence in connection with the disappearance of a missing person, the circumstances whereby an unknown person became seriously ill, or severely injured, and unable to identify himself or herself or the death of an unknown deceased person, as the case may be, or
  - (b) an inquest regarding the death of an unknown deceased person or, if appropriate, a missing person, if the person is deceased when he or she is found or identified.
- (8) Subject to *subsection (10)*, if a sample, or the DNA profile generated from the sample in respect of a person, or both are required for the purposes of the investigation of an offence referred to in *subsection (7)(a)*, the sample shall be destroyed, and the DNA profile shall be removed from the DNA Database System, not more than 3 months after the investigation of the offence is completed or any proceedings in respect of that offence are determined, whichever is the later.
- (9) The member of the Garda Síochána in charge of the investigation of an offence referred to in *subsection (7)(a)* shall determine, for the purposes of *subsection (8)*, when the investigation of that offence is completed.
- (10) If a sample, or the DNA profile generated from the sample in respect of a person, or both are required for the purposes of an inquest referred to in *subsection (7)(b)*, the sample shall be destroyed, and the DNA profile shall be removed from the DNA Database System, not more than 3 months after the conclusion of the inquest unless the coroner conducting that inquest orders otherwise.
- (11) This section shall, with any necessary modifications, apply to a sample that is regarded under *subsection (11) or (12) of section 48* as having been taken under that section.

- (12) This section shall, with any necessary modifications, apply to a sample that is regarded under *subsection (6) or (7) of section 50* as having been taken under that section.

## CHAPTER 5

### *Miscellaneous matters relating to destruction of samples and destruction, or removal from DNA Database System, of DNA profiles*

#### **Applications to District Court to retain certain samples and certain DNA profiles beyond retention period**

93. (1) If a judge of the District Court is satisfied, on an application in that behalf by the Commissioner made within the retention period under *section 80* and any extension of that period under an authorisation given under *section 81*, that there is good reason why a DNA profile in respect of a person generated from a sample taken from him or her under *section 11, 12, 13, 31 or 32* should not be removed from the DNA Database System in accordance with *section 80* within that retention period as so extended, the judge may make an order authorising the retention of the DNA profile in that System for such period as he or she considers appropriate.

(2) If a judge of the District Court is satisfied, on an application in that behalf by the Commissioner made within the retention period under *section 84*, that there is good reason why a DNA profile in respect of a person who was a child offender generated from a sample taken from him or her under *section 11, 12, 13 or 32* should not be removed from the DNA Database System in accordance with *section 84*, the judge may make an order authorising the retention of the DNA profile in that System for such period as he or she considers appropriate.

(3) If a judge of the District Court is satisfied, on an application in that behalf by a member of the Garda Síochána not below the rank of superintendent, that there is good reason relating to the investigation of a particular offence in connection with which a sample was taken under *section 27 or 29* why that sample and the DNA profile generated from it in respect of the person from whom it was taken should not be destroyed in accordance with *section 87(3)*, the judge may make an order authorising the retention of the sample or the DNA profile or both for such period as he or she considers appropriate.

(4) If—

(a) the Commissioner intends to make an application under *subsection (1) or (2)*, or

(b) a member of the Garda Síochána not below the rank of superintendent intends to make an application under *subsection (3)*,

the Commissioner or the member, as may be appropriate, shall inform, or cause to be informed, by notice in writing the person from whom the sample concerned was taken and, if that person is a protected person or a child, if appropriate, the person who gave consent to the taking of the sample concerned from the protected person or child, as the case may be, of that intention.

(5) If, on an application under *subsection (1), (2) or (3)*, the person from whom the sample concerned was taken, or any other person referred to in *subsection (4)*, applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to that person to be heard.

- (6) An application under this section shall be heard otherwise than in public.
- (7) In determining an application under this section, a judge of the District Court may make such order as to costs as the judge considers appropriate.

**Dismissal of charges, quashing of convictions and determination of proceedings**

94. (1) For the purposes of this Part, a charge against a person in respect of a relevant offence shall be regarded as dismissed when—

- (a) the time for bringing an appeal against the dismissal has expired,
- (b) any such appeal has been withdrawn or abandoned, or
- (c) on any such appeal, the dismissal is upheld.

(2) In this Part—

(a) references to a conviction of a person for a relevant offence or a sexual offence shall be construed as including references to a conviction of the person for such an offence after a re-trial for that offence, and

(b) references to a conviction of a person for a relevant offence or a sexual offence being quashed shall, subject to *subsection (3)*, be construed as references to where a court hearing an appeal against the conviction makes an order quashing the conviction and, if the court is the Court of Criminal Appeal, either—

(i) it does not order the person to be re-tried for the offence concerned, or

(ii) it does not substitute for the verdict a verdict of guilty of another offence that is a relevant offence or a sexual offence.

(3) A conviction of a person for a relevant offence or a sexual offence shall not be regarded as quashed for the purposes of this Part if an appeal is contemplated, or taken, under section 23 of the Criminal Procedure Act 2010 or, on hearing the appeal, the Supreme Court quashes the acquittal of the person or reverses the decision of the Court of Criminal Appeal, as the case may be, and orders the person to be re-tried for the relevant offence or the sexual offence, as the case may be.

(4) In this Part references to the proceedings in respect of an offence being determined shall be construed as references to where those proceedings are finally determined (including any appeal, whether by way of case stated or otherwise, rehearing or re-trial).

**Review of operation of this Part insofar as it relates to DNA Database System**

95. The Minister shall, not later than 6 years after the commencement of this section, review the operation of this Part insofar as it relates to the operation of the DNA Database System and, thereafter, the Minister may conduct similar reviews at such times as the Minister considers appropriate.

**Ministerial orders to change periods for destruction of samples or removal of DNA profiles from DNA Database System**

96. The Minister may by order under this section, if he or she considers it proper to do so following a review under *section 95* of the operation of this Part insofar as it relates to the operation of the DNA Database System, provide for all or any of the following:

- (a) that the period of 3 years specified in *subsection (7)(a) or (9)(a) of section 81* shall be decreased to such period as is specified in the order;
- (b) that the period of 6 years specified in *subsection (7)(b) or (9)(b) of section 81* shall be decreased to such period as is specified in the order;
- (c) that the period of 10 years specified in *section 88(2)* shall be decreased to such period as is specified in the order;
- (d) that the period of 10 years specified in *section 89(2)* shall be decreased to such period as is specified in the order;
- (e) that the period of 10 years specified in *section 90(2)* shall be decreased to such period as is specified in the order.

**Request to FSI or other person to destroy sample or destroy, or remove from DNA Database System, DNA profile**

97. Where a sample taken under this Act, other than *section 43 or 46*, from a person, is required by this Act to be destroyed, or the DNA profile in respect of the person generated from the sample is required by this Act to be destroyed or removed from the DNA Database System, the Commissioner shall request, or cause to be requested—

- (a) the Director of FSI or other person who holds the sample, to destroy the sample, or
- (b) the Director of FSI, to destroy the DNA profile in respect of the person or remove it from that System, as may be appropriate,

or both within the period permitted by this Act for the destruction of the sample concerned or the destruction of the DNA profile concerned or its removal from that System, as the case may be.

**Circumstances in which person to be informed of destruction of sample or destruction, or removal from DNA Database System, of DNA profile**

98. (1) If, in relation to an intimate sample or a non-intimate sample taken from a person, the retention period under *section 76* is extended on one or more occasions under *section 77*, the Commissioner shall, upon the expiration of that period (as so extended), cause—

- (a) the person from whom the sample concerned was taken, or
- (b) if that person is a protected person or a child, a parent or guardian of the person or child, as the case may be,

to be informed by notice in writing as soon as may be after the sample concerned has been destroyed under this Part of its destruction.

(2) If, in relation to the DNA profile of a person that is entered in the reference index of the DNA Database System—

- (a) the retention period under *section 80* is extended on one or more occasions under *section 81*, or
- (b) a judge of the District Court makes an order under *section 93(1)* authorising the retention of the DNA profile in that System for such period as he or she considers appropriate,

the Commissioner shall, upon the expiration of the period (as so extended) concerned, cause—

- (i) the person to whom the DNA profile relates, or
  - (ii) if that person is a protected person or a child, a parent or guardian of the person or child, as the case may be,
- to be informed by notice in writing as soon as may be after the removal of the DNA profile from that System of its removal.
- (3) The Commissioner shall, in relation to a sample taken under *section 27, 29, 44, 48, 49 or 50*, cause—
- (a) the person from whom the sample was taken if he or she applied for or requested—
    - (i) the destruction of the sample, or
    - (ii) the destruction, or removal from the DNA Database System, of his or her DNA profile, or both,
  - and
  - (b) if appropriate, any other person who applied for or requested—
    - (i) the destruction of the sample, or
    - (ii) the destruction, or such removal, of the DNA profile,
- or both on behalf of the person referred to in *paragraph (a)* or the deceased person from whose body the sample was taken, as may be appropriate,
- to be informed by notice in writing as soon as may be after the sample has been destroyed under this Part of its destruction, or the destruction of the DNA profile in respect of the person of its destruction or its removal from the DNA Database System under this Part of its removal from that System, or both.
- (4) The Commissioner shall inform, or cause to be informed, by notice in writing a person from whom a sample was taken under *section 41, 42 or 45* as soon as may be after the sample has been destroyed under this Part of its destruction, or the removal of the DNA profile in respect of the person from the DNA Database System under this Part of its removal from that System, or both.
- (5) The Director of FSI shall inform, or cause to be informed, by notice in writing a person from whom a sample was taken under *section 43 or 46* as soon as may be after the sample has been destroyed under this Part of its destruction, or the removal of the DNA profile in respect of the person from the DNA Database System under this Part of its removal from that System, or both.

#### **Application of this Part to Ombudsman Commission**

99. The references in this Part to the Commissioner shall, for the purposes of the application of this Part to the Ombudsman Commission, be construed as references to the Ombudsman Commission.

## **PART 11**

### **PROVISIONS RELATING TO FINGERPRINTS, PALM PRINTS AND PHOTOGRAPHS**

**Power of Garda Síochána to take fingerprints and palm prints of persons arrested for purpose of charge**

- 100.** (1) Where a person is arrested for the purpose of being charged with a relevant offence, a member of the Garda Síochána may take, or cause to be taken, the fingerprints and palm prints of the person in a Garda Síochána station before he or she is charged with the relevant offence concerned.
- (2) The power conferred by *subsection (1)* shall not be exercised unless a member of the Garda Síochána not below the rank of sergeant authorises it.
- (3) The provisions of subsection (1A) of section 6 and section 6A of the Act of 1984 shall apply to fingerprints and palm prints taken pursuant to this section as they apply to fingerprints and palm prints taken pursuant to the said section 6.
- (4) A person who obstructs or attempts to obstruct a member of the Garda Síochána acting under the power conferred by *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (5) The power conferred by this section is without prejudice to any other power exercisable by a member of the Garda Síochána to take, or cause to be taken, the fingerprints and palm prints of a person.
- (6) Sections 8 to 8I of the Act of 1984 shall, with the following and any other necessary modifications, apply to fingerprints and palm prints taken from a person pursuant to this section as they apply to fingerprints and palm prints taken from a person pursuant to section 6 or 6A of that Act:
- (a) references to an offence to which section 4 of the Act of 1984 applies shall be construed as references to a relevant offence;
- (b) references to section 6 or 6A of the Act of 1984 shall be construed as references to this section; and
- (c) references to the detention of the person under section 4 of the Act of 1984 shall be construed as references to the person being arrested for the purposes of being charged with a relevant offence under this section.

**Annotations**

**Editorial Notes:**

- E14** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(1), S.I. No. 662 of 2010.

**Amendment of section 3(1) of Act of 1984**

**101.** Section 3(1) of the Act of 1984 is amended by the insertion of the following definitions:

“ ‘Commissioner’ means the Commissioner of the Garda Síochána;

‘photograph’ includes a negative or any other image howsoever produced of a photograph;”.

**Amendment of section 6A of Act of 1984**

**102.** Section 6A of the Act of 1984 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) Without prejudice to the generality of section 6, a member of the Garda Síochána and the member or members of the Garda Síochána assisting that member may, where—

(a) a person is detained under section 4, and

(b) he or she fails or refuses to allow his or her photograph or fingerprints and palm prints to be taken pursuant to section 6,

use such force as is reasonably considered necessary—

(i) to take the photograph or fingerprints and palm prints, or

(ii) to prevent them from being lost, damaged or otherwise being made imperfect,

or both.”,

(b) in subsection (3), by the substitution of “Where it is intended to exercise the power conferred by subsection (1), one of the members of the Garda Síochána concerned shall inform the person” for “Where a member of the Garda Síochána intends to exercise a power conferred by subsection (1), he or she shall inform the person”,

(c) in subsection (4), by the substitution of “a member of the Garda Síochána not below the rank of inspector and that member shall determine the number of members of the Garda Síochána that is reasonably necessary for the purposes of subsection (1)” for “a member of the Garda Síochána not below the rank of inspector”, and

(d) in subsection (5), by the substitution of “recorded by electronic or similar means” for “video-recorded”.

#### **Destruction of fingerprints, palm prints and photographs**

**103.** The Act of 1984 is amended by the substitution of the following sections for section 8:

##### **“ Destruction of fingerprints, palm prints and photographs**

8. (1) A fingerprint, palm print or photograph of a person taken in pursuance of the powers conferred by section 6 or 6A shall, if not previously destroyed, be destroyed in accordance with this section and sections 8A to 8I.

(2) Subject to section 8A, a fingerprint, palm print or photograph of a person referred to in subsection (1) shall, if not previously destroyed, be destroyed in any of the following circumstances not later than the expiration of the period of 3 months from the date on which such circumstances first apply to the person:

(a) where proceedings for an offence to which section 4 applies—

(i) are not instituted against the person within the period of 12 months from the date of the taking of the fingerprint, palm print or photograph concerned, and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or

(ii) have been instituted and—

(I) the person is acquitted of the offence,

- (II) the charge against the person in respect of the offence is dismissed under section 4E of the Criminal Procedure Act 1967, or
  - (III) the proceedings for the offence are discontinued;
  - (b) the person is the subject of an order under section 1(1) of the Probation of Offenders Act 1907 in respect of the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken and he or she has not been convicted of an offence to which section 4 applies during the period of 3 years from the making of the order under that Act;
  - (c) subject to subsection (3), the person is the subject of an order under section 1(2) of the Probation of Offenders Act 1907 in respect of the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken and he or she has not been convicted of an offence to which section 4 applies during the period of 3 years from the making of the order under that Act;
  - (d) the person's conviction for the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken is quashed;
  - (e) the person's conviction for the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.
- (3) Subsection (2)(c) shall not apply to an order under section 1(2) of the Probation of Offenders Act 1907 discharged on the appeal of a person against conviction for the offence concerned if on appeal his or her conviction is affirmed.
- (4) For the purposes of this section the 'retention period', in relation to a fingerprint, palm print or photograph, means the period from the taking of the fingerprint, palm print or photograph, as the case may be, from a person to the latest date for the destruction of that fingerprint, palm print or photograph under subsection (2).

**Extension of retention period under section 8 for fingerprints, palm prints and photographs in certain circumstances**

- 8A. (1) A fingerprint, palm print or photograph taken from or of a person shall not be destroyed under section 8 in any case in which the Commissioner determines that any of the following circumstances apply:
- (a) a decision has not been taken whether or not to institute proceedings against the person for the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken;
  - (b) the investigation of that offence has not been concluded;
  - (c) the fingerprint, palm print or photograph concerned, and the results of any examination or analysis of it, are likely to be required for the prosecution of an offence connected with the event, incident or circumstances the subject of the offence concerned—
    - (i) for use as evidence in such proceedings,
    - (ii) for disclosure to, or use by, a defendant in such proceedings, or
    - (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings;



- (d) having regard to the matters specified in subsection (2), the Commissioner believes it is necessary to retain the fingerprint, palm print or photograph concerned in connection with the investigation of the offence concerned taking account of all the circumstances of the case and the reasons why—
    - (i) proceedings for that offence have not been instituted against the person, or
    - (ii) if such proceedings have been instituted against the person, they were determined without he or she being convicted of the offence concerned or he or she being the subject of an order under section 1(1) of the Probation of Offenders Act 1907;
  - (e) there are reasonable grounds for believing that the fingerprint, palm print or photograph of the person may be required in connection with the investigation of an offence to which section 4 applies, other than the offence in connection with which the fingerprint, palm print or photograph was taken, which the person is suspected of having committed.
- (2) The matters referred to in subsection (1)(d) to which the Commissioner shall have regard are the following:
- (a) whether the person concerned has any previous conviction for an offence similar in nature or gravity to the offence concerned in connection with which the fingerprint, palm print or photograph concerned was taken from or of him or her;
  - (b) the nature and seriousness of that offence;
  - (c) whether any alleged victim, or any intended victim, of that offence was—
    - (i) a child,
    - (ii) a vulnerable person, or
    - (iii) associated with the person,at the time of the commission, or alleged commission, of that offence; and
  - (d) any other matter that the Commissioner considers appropriate for the purposes of the determination.
- (3) If, in relation to a fingerprint, palm print or photograph taken from or of a person, the Commissioner determines that one of the paragraphs of subsection (1) applies, then, he or she may, during the retention period referred to in section 8, give an authorisation to extend that period by a period of 12 months.
- (4) The Commissioner may, while an authorisation under subsection (3) or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she determines that one of the paragraphs of subsection (1) applies.
- (5) Whenever the Commissioner gives an authorisation under subsection (3) or (4), he or she shall, in relation to a fingerprint, palm print or photograph taken from or of a person that is the subject of the authorisation, cause the person to be informed by notice in writing that the authorisation has been given under subsection (3) or (4), as may be appropriate, the date on

which that authorisation was given and of the right of appeal under subsection (6).

(6) The person to whom the authorisation concerned relates (in this section called 'the appellant') may, within the period of 3 months from the date of the notice under subsection (5) concerned, appeal to the District Court against that authorisation.

(7) An appeal under subsection (6) shall—

- (a) be on notice to the Commissioner, and
- (b) be heard otherwise than in public.

(8) If, on an appeal under subsection (6), the District Court—

- (a) confirms the authorisation concerned, or
- (b) allows the appeal,

the Commissioner shall give effect to the decision of the Court.

(9) The jurisdiction conferred on the District Court by this section shall be exercised by a judge of the District Court who is assigned to the district court district in which the appellant ordinarily resides or, if the appellant does not ordinarily reside in the State, by a judge of the District Court who is assigned to the district court district in which the fingerprint, palm print or photograph concerned was taken.

(10) The District Court may make such order as to costs as it considers appropriate on an appeal under subsection (6).

(11) In this section—

'child' means a person who has not attained the age of 18 years;

'civil partner' has the meaning it has in section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

'cohabitant', in relation to a person, means another person who is neither married to the person nor a civil partner of the person who is living with the person as a husband or wife, or as a civil partner, of the person;

'vulnerable person' means a person, other than a child, whose capacity to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, by another person is significantly impaired through—

- (a) a physical disability, illness or injury,
- (b) a disorder of the mind, whether as a result of mental illness or dementia,  
or
- (c) an intellectual disability.

(12) For the purposes of this section a person shall be regarded as associated with another person if—

- (a) he or she is a spouse or a former spouse of the person,
- (b) he or she is a civil partner or a former civil partner of the person,
- (c) he or she is a cohabitant or a former cohabitant of the person,
- (d) he or she is a relative of the person, or

(e) he or she has or has had an intimate personal relationship with the person for a significant period of time.

(13) Nothing in this section shall—

(a) prevent or restrict the exercise of powers conferred by section 6 or 6A, or

(b) pending the conclusion of proceedings under this section, prevent or restrict the use of the fingerprint, palm print or photograph concerned for the purposes of—

(i) this Act,

(ii) a criminal investigation, or

(iii) other proceedings.

**Destruction of fingerprints, palm prints and photographs in exceptional circumstances**

8B. (1) Notwithstanding sections 8 and 8A, if the Commissioner is satisfied that exceptional circumstances exist that justify the destruction of a fingerprint, palm print or photograph of a person, the fingerprint, palm print or photograph concerned shall be destroyed as soon as practicable after the application of those circumstances in relation to that fingerprint, palm print or photograph becomes known.

(2) The exceptional circumstances referred to in subsection (1) are the following:

(a) it is established, at any time after the detention of the person concerned under section 4 for the purposes of the investigation of an offence to which that section applies during which the fingerprint, palm print or photograph concerned was taken, that no such offence was committed;

(b) it is established that the detention of the person concerned under section 4 for the purposes of the investigation of an offence to which that section applies during which the fingerprint, palm print or photograph concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that offence; or

(c) it is determined by a court that the detention of the person concerned under section 4 for the purposes of the investigation of an offence to which that section applies during which the fingerprint, palm print or photograph concerned was taken was unlawful.

**Dismissal of charges, quashing of convictions and determination of proceedings**

8C. (1) For the purposes of section 8, a charge against a person in respect of an offence to which section 4 applies shall be regarded as dismissed when—

(a) the time for bringing an appeal against the dismissal has expired,

(b) any such appeal has been withdrawn or abandoned, or

(c) on any such appeal, the dismissal is upheld.

(2) In sections 8 and 8A, references to a conviction of a person for an offence to which section 4 applies shall be construed as including references to a conviction of the person for such an offence after a re-trial for that offence.

(3) In section 8, a reference to a conviction of a person for an offence to which section 4 applies being quashed shall, subject to subsection (4), be

construed as a reference to where a court hearing an appeal against the conviction makes an order quashing the conviction and, if the court is the Court of Criminal Appeal, either—

- (a) it does not order the person to be re-tried for the offence concerned, or
  - (b) it does not substitute for the verdict a verdict of guilty of another offence that is an offence to which section 4 applies.
- (4) A conviction of a person for an offence to which section 4 applies shall not be regarded as quashed for the purposes of section 8 if an appeal is contemplated, or taken, under section 23 of the Criminal Procedure Act 2010 or, on hearing the appeal, the Supreme Court quashes the acquittal of the person or reverses the decision of the Court of Criminal Appeal, as the case may be, and orders the person to be re-tried for the offence.
- (5) In section 8A, references to the proceedings in respect of an offence being determined shall be construed as references to where those proceedings are finally determined (including any appeal, whether by way of case stated or otherwise, rehearing or retrial).

**Circumstances in which person to be informed of destruction of fingerprint, palm print or photograph**

8D. If, in relation to a fingerprint, palm print or photograph taken from or of a person under section 6 or 6A, the retention period under section 8 is extended on one or more occasions under section 8A, the Commissioner shall, upon the expiration of that period (as so extended), cause the person from or of whom the fingerprint, palm print or photograph was taken to be informed by notice in writing as soon as may be after the fingerprint, palm print or photograph has been destroyed of its destruction.

**Application of certain sections to Garda Síochána Ombudsman Commission**

8E. The references in sections 8A, 8B, 8D and 8H to the Commissioner shall, for the purposes of the application of those sections to the Garda Síochána Ombudsman Commission, be construed as references to the Garda Síochána Ombudsman Commission.

**Delegation of functions of Commissioner under certain sections**

8F. (1) The Commissioner may, in writing, delegate any of his or her functions under sections 8A, 8B, 8D and 8H to—

- (a) members of the Garda Síochána specified by rank or name, or
  - (b) members of the civilian staff of the Garda Síochána by grade, position, name or otherwise.
- (2) A delegation under this section may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
  - (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the Commissioner at any time.
- (3) The delegation of a function under this section does not preclude the Commissioner from performing the function.
- (4) Where the functions of the Commissioner under a provision of sections 8A, 8B, 8D and 8H are delegated to a person, any references in that

provision to the Commissioner shall be construed as references to that person.

- (5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Commissioner.

#### **Service of notices**

8G. A notice that is required to be sent or given to a person under section 8A or 8D may be sent or given to the person in one of the following ways:

- (a) by delivering it to the person or his or her solicitor;
- (b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;
- (c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office.

#### **Records**

8H. (1) Subject to subsection (2), a person who is required under sections 8 to 8B to destroy, or cause to be destroyed, a fingerprint, palm print or photograph shall ensure that the fingerprint, palm print or photograph, every copy thereof and every record relating to the fingerprint, palm print or photograph insofar as it identifies the person from or of whom the fingerprint, palm print or photograph has been taken, are destroyed.

(2) Subsection (1) shall operate in a manner that permits the Commissioner to retain such records as may be required by him or her to show that section 8D has been complied with.

(3) In this section 'record', in relation to a fingerprint, palm print or photograph, includes a copy of a record.

#### **Application of sections 8 to 8H**

8I. Sections 8 to 8H shall apply to a fingerprint, palm print or photograph of a person taken in pursuance of the powers conferred by section 6 or 6A whether taken before or after the commencement of this section."

#### **Amendment of section 9 of Act of 1984**

104. Section 9 of the Act of 1984 is amended by—

- (a) the substitution of "Sections 5, 6A, 18, 19 and 19A, subsections (8), (8A) and (8B) of section 4 and subsections (1A), (2) and (3) of section 6" for "Sections 4(8), 4(8A), 4(8B), 5, 6(2), 6(3), 6A, 18, 19 and 19A",
- (b) the designation of that section (as amended by *paragraph (a)*) as subsection (1), and
- (c) the addition of the following subsection:

"(2) Sections 8 to 8I shall, with the following and any other necessary modifications, apply to fingerprints, palm prints and photographs, as may be appropriate, taken from or of a person pursuant to section 30 of the Act of 1939 or section 7 of the Criminal Law Act 1976 as they apply to fingerprints, palm prints and photographs taken from or of a person pursuant to section 6 or 6A:

- (a) references to an offence to which section 4 applies shall be construed as references to an offence to which section 4 applies or an offence in connection with which a person may be arrested and detained under section 30 of the Act of 1939;
- (b) references to section 6 or 6A shall be construed as references to section 30 of the Act of 1939 and section 7 of the Criminal Law Act 1976; and
- (c) references to the detention of the person under section 4 shall be construed as references to the detention of the person under section 30 of the Act of 1939.”.

**Amendment of section 28 of Act of 1984**

**105.** Section 28 of the Act of 1984 is amended by the substitution of the following subsection for subsection (3):

“(3) Sections 8 to 8I shall, with the following and any other necessary modifications, apply to fingerprints, palm prints or photographs taken from or of a person pursuant to this section as they apply to fingerprints, palm prints or photographs taken from or of a person pursuant to section 6 or 6A:

- (a) references to an offence to which section 4 applies shall be construed as references to an indictable offence;
- (b) references to section 6 or 6A shall be construed as references to this section; and
- (c) references to the detention of the person under section 4 shall be construed as references to the person being at a place, or attending at a Garda Síochána station, for the purpose of having his or her fingerprints, palm prints or photograph taken by a member of the Garda Síochána.”.

**Amendment of section 5 of Act of 1996**

**106.** Section 5 of the Act of 1996 is amended by—

- (a) the substitution of “Sections 5, 6A, 18, 19 and 19A, subsections (4), (7), (8), (8A), (8B) and (11) of section 4 and subsections (1) to (4) of section 6 of the Act of 1984” for “Sections 4(4), 4(7), 4(8), 4(8A), 4(8B), 4(11), 5, 6(1) to (4), 6A, 8, 18, 19 and 19A of the Act of 1984”,
- (b) the designation of that section (as amended by *paragraph (a)*) as subsection (1), and
- (c) the addition of the following subsection:

“(2) Sections 8 to 8I of the Act of 1984 shall, with the following and any other necessary modifications, apply to fingerprints, palm prints and photographs taken from or of a person detained under section 2 as they apply to fingerprints, palm prints and photographs taken from or of a person detained under section 4 of the Act of 1984:

- (a) references to an offence to which section 4 of the Act of 1984 applies shall be construed as references to an offence to which section 4 of the Act of 1984 applies or a drug trafficking offence; and

- (b) references to the detention of the person under section 4 of the Act of 1984 shall be construed as references to the detention of the person under section 2.”.

**Amendment of section 12 of Criminal Justice Act 2006**

**107.** Section 12 of the Criminal Justice Act 2006 is amended by the substitution of the following subsection for subsection (4):

“(4) Sections 8 to 8I of the Act of 1984 shall, with the following and any other necessary modifications, apply to photographs taken of a person pursuant to this section as they apply to photographs taken of a person pursuant to section 6 or 6A of the Act of 1984:

- (a) references to an offence to which section 4 of the Act of 1984 applies shall be construed as references to an offence in respect of which a person may be arrested by a member of the Garda Síochána under any power conferred on him or her by law;
- (b) references to section 6 or 6A of the Act of 1984 shall be construed as references to this section; and
- (c) references to the detention of the person under section 4 of the Act of 1984 shall be construed as references to the arrest of the person by a member of the Garda Síochána under any power conferred on him or her by law.”.

**Amendment of section 52 of Act of 2007**

**108.** Section 52 of the Act of 2007 is amended by—

- (a) the substitution of “Sections 5, 6A, 18, 19 and 19A, subsections (4), (7), (8), (8A), (8B) and (11) of section 4 and subsections (1) to (4) of section 6 of the Act of 1984” for “Sections 4(4), 4(7), 4(8), 4(8A), 4(8B), 4(11), 5, 6(1) to (4), 6A, 8, 18, 19 and 19A of the Act of 1984”,
- (b) the designation of that section (as amended by *paragraph (a)*) as subsection (1), and
- (c) the addition of the following subsection:

“(2) Sections 8 to 8I of the Act of 1984 shall, with the following and any other necessary modifications, apply to fingerprints, palm prints and photographs taken from or of a person detained under section 50 as they apply to fingerprints, palm prints and photographs taken from or of a person detained under section 4 of the Act of 1984:

- (a) references to an offence to which section 4 of the Act of 1984 applies shall be construed as references to an offence to which section 4 of the Act of 1984 applies or an offence to which section 50 applies; and
- (b) references to the detention of the person under section 4 of the Act of 1984 shall be construed as references to the detention of the person under section 50.”.

**PART 12**

INTERNATIONAL COOPERATION

CHAPTER 1

*Interpretation and other matters*

**Interpretation (Part 12)**

**109. (1)** In this Part—

“Agreement with Iceland and Norway” means the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA<sup>4</sup> on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, done at Stockholm on 26 November 2009 and at Brussels on 30 November 2009;

“authorised officer for dactyloscopic data” means the national contact point in relation to dactyloscopic data and any person who is appointed to be an authorised officer for dactyloscopic data under [section 126\(2\)](#);

“authorised officer for DNA data” means the national contact point in relation to DNA data and any person who is appointed to be an authorised officer for DNA data under [section 126\(1\)](#);

“automated fingerprint identification system” means—

- (a) in the case of the State, the database system maintained by the Garda Síochána for the recording, storage and comparison of dactyloscopic data, and
- (b) in the case of a designated state, the national automated fingerprint identification system by whatever name called established and kept by that designated state for the prevention, detection and investigation of criminal offences;

“Council Decision” means Council Decision 2008/615/JHA of 23 June 2008<sup>5</sup> on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;

“Council Framework Decision” means Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities;

“dactyloscopic data”, other than in *Chapter 8*, means fingerprint images, images of fingerprint latents, palm prints, palm print latents and templates of such images (coded minutiae), when they are stored and dealt with in an automated database;

“DNA analysis files”, in relation to a designated state, means the national DNA analysis files by whatever name called established and kept by that designated state for the investigation of criminal offences;

“designated state” means a Member State, Iceland, Norway or any other state designated under [section 110](#) ;

“European Union or international instrument” means any of the following European Union or international instruments or agreements, or provisions thereof, between the State and other states or another state insofar as they concern cooperation in relation to—

<sup>4</sup> O.J. No. L353, 31.12.2009, p.3.

<sup>5</sup> O.J. No. L210, 6.8.2008, p.1.



(a) automated searching for or automated comparison of DNA data or automated searching for dactyloscopic data, as the case may be, and

(b) the exchange of such data and the reference data relating to them,

by or between authorities which are responsible for the prevention, detection and investigation of criminal offences in the State and those other states or that other state, as the case may be:

(i) the Council Decision and the Implementing Council Decision;

(ii) the Agreement with Iceland and Norway;

F17[(iii) the Trade and Cooperation Agreement;]

(iii) a bilateral agreement between the State and a designated state, or a multilateral agreement between the State and other designated states, for that purpose; and

(iv) any reservation or declaration made in accordance with such an instrument or agreement;

“Head”, in relation to the Technical Bureau of the Garda Síochána, means the member of the Garda Síochána of the rank of chief superintendent, or of another rank, who is for the time being in charge of the Technical Bureau of the Garda Síochána;

“Implementing Council Decision” means Council Decision 2008/616/JHA of 23 June 2008<sup>6</sup> on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;

“Member State” means a Member State of the European Union (other than the State);

“national contact point”, in relation to a relevant European Union or international instrument, means—

(a) in the case of the State—

(i) the person referred to in *section 112* in relation to DNA data, or

(ii) the person referred to in *section 117* in relation to dactyloscopic data,

and

(b) in the case of a designated state, the authority or person designated by that designated state as its national contact point—

(i) in relation to DNA data, or

(ii) in relation to dactyloscopic data,

as the context requires;

“note” means the marking on a DNA profile in the DNA Database System indicating that there has already been a match for that DNA profile in a search and comparison under *section 113, 114, 115 or 116*;

“reference data”, subject to *subsection (2)*, means—

(a) in relation to a DNA profile of a person, the DNA profile of the person and a reference number but not any data from which the person can be directly identified, and

<sup>6</sup> O.J. No. L210, 6.8.2008, p.12.

(b) in relation to dactyloscopic data, dactyloscopic data and a reference number but not any data from which the subject of the data can be directly identified;

“relevant European Union or international instrument” means the European Union or international instrument in accordance with which automated searching for or automated comparison of DNA data or automated searching for dactyloscopic data, as the case may be, and the exchange of such data and the reference data relating to them, is being or is to be conducted;

“state”, in relation to a state other than the State, includes a territory, whether in the state or outside it—

(a) for whose external relations the state or its government is wholly or partly responsible, and

(b) to which the relevant European Union or international instrument applies or whose law provides for cooperation in relation to automated searching for or automated comparison of DNA data or automated searching for dactyloscopic data, as the case may be, and the exchange of such data and the reference data relating to them, and “designated state” and “Member State” shall be construed accordingly;

“Technical Bureau of the Garda Síochána” means the national unit of the Garda Síochána known as the Technical Bureau of the Garda Síochána;

F17[“Trade and Cooperation Agreement” means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, done at Brussels and London on 30 December 2020;]

“unidentified DNA profile” means a DNA profile obtained from traces collected during the investigation of criminal offences and belonging to a person not yet identified.

- (2) Reference data in relation to DNA profiles, or dactyloscopic data, which are unidentified and not attributed to any person shall indicate that they are unidentified and not attributed to any person.
- (3) A word or expression that is used in this Part and also in a relevant European Union or international instrument or the Council Framework Decision has, unless the context otherwise requires, the same meaning in this Part as it has in the relevant European Union or international instrument or the Council Framework Decision, as the case may be.
- (4) Judicial notice shall be taken of a European Union or international instrument.
- (5) The text of the Council Decision in the English language is for convenience of reference set out in *Schedule 2*.
- (6) The text of the Agreement with Iceland and Norway in the English language is for convenience of reference set out in *Schedule 3*.
- (7) The text of the Council Framework Decision in the English language is for convenience of reference set out in *Schedule 4*.

**Annotations**

**Amendments:**

- F17** Inserted (31.12.2020 at 11:00 p.m.) by *European Union (International Cooperation) Regulations 2020* (S.I. No. 721 of 2020), reg. 3(a), (b), in effect as per reg. 2.
- F18** Inserted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 86(a), not commenced as of date of revision.
- F19** Substituted by *Defence Forces (Evidence) Act 2022*(16/2022), s. 86(b),not commenced as of date of revision.

**Modifications (not altering text):**

- C11** Prospective amending provision: subs. (1) amended by insertion of definitions and amendment of definition of "note" by *Defence Forces (Evidence) Act 2022*(16/2022), s. 86(a), (b), not commenced as of date of revision.

F18["crime scene (Military Police) index" has the meaning it has in the Act of 2022;]

...

F18["reference (Military Police) index" has the meaning it has in the Act of 2022;]

...

"note" means the marking on a DNA profile in F19[the DNA Database System or the DNA (Military Police) Database System] indicating that there has already been a match for that DNA profile in a search and comparison under *section 113, 114, 115 or 116*;

**Designated state**

**110.** The Minister for Foreign Affairs and Trade, after consultation with the Minister, may by order designate a state (other than a Member State, Iceland or Norway) for the purposes of cooperation regarding automated searching for or automated comparison of DNA data or dactyloscopic data, as the case may be, and the exchange of such data and the reference data relating to them, by or between the State and that state under this Part, or specified provisions of it, in accordance with the relevant European Union or international instrument concerned.

**Annotations**

**Editorial Notes:**

- E15** Power pursuant to section exercised (31.12.2020 at 11.00 p.m.) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 110) (Designation of United Kingdom) Order 2020* (S.I. No. 722 of 2020), in effect as per art. 2.

**Application of Implementing Council Decision**

**111.** (1) If—

- (a) the Annex to the Implementing Council Decision, insofar as effect is given to it by this Part, is amended by an act (other than a Directive) adopted by an institution of the European Union, and
- (b) such amendment of that Annex relates to the common technical specifications to be observed by Member States and the State in connection with requests and responses in respect of searches and comparisons of DNA profiles and dactyloscopic data pursuant to the Council Decision,

the Minister may by order under this section declare that the references in this Part to the Implementing Council Decision are to be construed as references to the Implementing Council Decision with the Annex thereto as so amended.

(2) If any amendment referred to in subsection (1) of the Annex to the Implementing Council Decision is applied in bilateral relations between Iceland or Norway or both and each Member State of the European Union (including the State), then, the Minister may by order under this section declare that the reference in the definition of the Agreement with Iceland and Norway in *section 109(1)* to the Council Decision 2008/616/JHA<sup>7</sup> on the implementation of Council Decision 2008/615/JHA<sup>8</sup> on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, is to be construed as a reference to the Implementing Council Decision with the Annex thereto as so amended insofar as any such amendment applies to Iceland or Norway or both, as may be appropriate.

## CHAPTER 2

### *Automated searching for and automated comparison of DNA profiles*

#### **National contact point in relation to DNA data**

**112.** The Director of FSI is the national contact point in relation to DNA data for the purposes of this Chapter and shall perform in the State the functions of the national contact point provided for in a relevant European Union or international instrument insofar as they concern cooperation in relation to automated searching for or automated comparison of DNA data and the exchange of such data and the reference data relating to them.

#### **Automated searching of certain DNA data in DNA Database System**

**113.** (1) For the purposes of the investigation of criminal offences in a designated state, the national contact point shall allow the national contact point of that designated state access to the reference data in the DNA Database System in respect of DNA profiles entered in that System in—

- (a) the crime scene index, and
- (b) the reference index, other than DNA profiles entered in that index under *section 28*,

for the purpose of conducting an automated search of those reference data by comparing a DNA profile (whether identified or unidentified) in an individual case supplied by the national contact point of that designated state with the DNA profiles referred to in *paragraphs (a) and (b)* to ascertain whether there is a match between them.

(2) The national contact point shall ensure that, following a search by the comparison of DNA profiles by the national contact point of a designated state pursuant to *subsection (1)*, an automated response is sent from the DNA Database System to that national contact point comprising—

- (a) where a match of DNA profiles is found—
  - (i) a notification of the match, and

<sup>7</sup> O.J. No. L210, 6.8.2008, p.12.

<sup>8</sup> O.J. No. L210, 6.8.2008, p.1.

(ii) the reference data relating to the matching DNA profile in the DNA Database System,

or

(b) where a match of DNA profiles is not found, a notification to that effect.

(3) If, in relation to a DNA profile supplied by the national contact point of a designated state pursuant to *subsection (1)*, a match of DNA profiles is found, a note to that effect may be entered in the DNA Database System in relation to the matching DNA profile found in that System.

(4) In this section and *section 115* “individual case” means the investigation or prosecution of an offence or offences arising from a single event, incident or circumstances but includes a case where a search for more than one DNA profile is required.

#### Annotations

#### Amendments:

**F20** Substituted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 87(a), (b), (c), not commenced as of date of revision.

#### Modifications (not altering text):

**C12** Prospective amending provision: subss. (1), (3) substituted and subs. (2) amended by *Defence Forces (Evidence) Act 2022* (16/2022), s. 87(a), (b), (c), not commenced as of date of revision.

**113.** F20[(1) For the purposes of the investigation of criminal offences in a designated state, the national contact point shall allow the national contact point of that designated state access to—

(a) the reference data in the DNA Database System in respect of DNA profiles entered in that System in—

(i) the crime scene index, and

(ii) the reference index, other than DNA profiles entered in that index under *section 28*,

and

(b) the reference data in the DNA (Military Police) Database System in respect of DNA profiles entered in that System in—

(i) the crime scene (Military Police) index, and

(ii) the reference (Military Police) index, other than DNA profiles entered in that index under *section 24* of the Act of 2022,

for the purpose of conducting an automated search of those reference data by comparing a DNA profile (whether identified or unidentified) in an individual case supplied by the national contact point of that designated state with the DNA profiles referred to in *paragraphs (a)* and *(b)* to ascertain whether there is a match between them.]

(2) The national contact point shall ensure that, following a search by the comparison of DNA profiles by the national contact point of a designated state pursuant to *subsection (1)*, an automated response is sent from the F20[the DNA Database System or the DNA (Military Police) Database System, as the case may be,] to that national contact point comprising—

(a) where a match of DNA profiles is found—

(i) a notification of the match, and

(ii) the reference data relating to the matching DNA profile in F20[the DNA Database System or the DNA (Military Police) Database System, as the case may be,],

or

(b) where a match of DNA profiles is not found, a notification to that effect.

F20[(3) If, in relation to a DNA profile supplied by the national contact point of a designated state pursuant to *subsection (1)*, a match of DNA profiles is found, a note to that effect may be entered in the appropriate system in relation to the DNA profile for which a match is found in the DNA Database System or the DNA (Military Police) Database System, as the case may be.]

**Automated comparison of unidentified DNA profiles supplied by designated state with certain DNA profiles in DNA Database System**

114. (1) The national contact point may accede to a request from the national contact point of a designated state, for the purposes of the investigation of criminal offences in that designated state, to compare unidentified DNA profiles to be supplied by that national contact point with certain DNA profiles in the DNA Database System in accordance with this section.

(2) If a request under *subsection (1)* is acceded to, the national contact point shall allow the national contact point of the designated state concerned access to the reference data in the DNA Database System in respect of the DNA profiles entered in that System in—

(a) the crime scene index, and

(b) the reference index, other than DNA profiles entered in that index under *section 28*,

for the purposes of conducting an automated comparison of unidentified DNA profiles supplied in an automated way by the national contact point of that designated state with the DNA profiles referred to in *paragraphs (a) and (b)* to ascertain whether there is a match between any of them.

(3) The national contact point shall ensure that, following a comparison of DNA profiles by the national contact point of a designated state pursuant to *subsection (2)*, an automated response is sent from the DNA Database System to that national contact point comprising—

(a) where a match of DNA profiles is found—

(i) a notification of the match, and

(ii) the reference data relating to the matching DNA profile in the DNA Database System,

or

(b) where a match of DNA profiles is not found, a notification to that effect.

(4) If, following a comparison of DNA profiles pursuant to *subsection (2)*, a match of DNA profiles is found, a note to that effect may be entered in the DNA Database System in relation to the matching DNA profile found in that System.

**Annotations**

**Amendments:**

F21 Substituted by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 88(a), (b), (c), (d), not commenced as of date of revision.

**Modifications (not altering text):**

**C13** Prospective amending provision: subss. (1), (3) amended and subss. (2), (4) substituted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 88(a), (b), (c), (d), not commenced as of date of revision.

**114.** (1) The national contact point may accede to a request from the national contact point of a designated state, for the purposes of the investigation of criminal offences in that designated state, to compare unidentified DNA profiles to be supplied by that national contact point with certain DNA profiles in F21[the DNA Database System or the DNA (Military Police) Database System, as the case may be,] in accordance with this section.

F21[(2) If a request under *subsection (1)* is acceded to, the national contact point shall allow the national contact point of the designated state concerned access to—

(a) the reference data in the DNA Database System in respect of the DNA profiles entered in that System in—

(i) the crime scene index, and

(ii) the reference index, other than DNA profiles entered in that index under *section 28*,

and

(b) the reference data in the DNA (Military Police) Database System in respect of the DNA profiles entered in that System in—

(i) the crime scene (Military Police) index, and

(ii) the reference (Military Police) index, other than DNA profiles entered in that index under *section 24* of the Act of 2022,

for the purposes of conducting an automated comparison of unidentified DNA profiles supplied in an automated way by the national contact point of that designated state with the DNA profiles referred to in *paragraphs (a)* and *(b)* to ascertain whether there is a match between any of them.]

(3) The national contact point shall ensure that, following a comparison of DNA profiles by the national contact point of a designated state pursuant to *subsection (2)*, an automated response is sent from F21[the DNA Database System or the DNA (Military Police) Database System, as the case may be,] to that national contact point comprising—

(a) ...

(ii) the reference data relating to the matching DNA profile in F21[the DNA Database System or the DNA (Military Police) Database System, as the case may be,]

...

F21[(4) If, following a comparison of DNA profiles pursuant to *subsection (2)*, a match of DNA profiles is found, a note to that effect may be entered in the appropriate system in relation to the DNA profile for which a match is found in the DNA Database System or the DNA (Military Police) Database System, as the case may be.]

**Automated searching for certain DNA profiles in DNA analysis files of designated state**

**115.** (1) For the purposes of the investigation of criminal offences in the State, an authorised officer for DNA data may, in connection with an individual case, supply through the DNA Database System a DNA profile entered in—

(a) the crime scene index, or

(b) the reference index, other than DNA profiles entered in that index under *section 28*,

to the national contact point of a designated state for the purpose of conducting an automated search of the reference data in the DNA analysis files of that designated state by comparing the DNA profile concerned with the DNA profiles in those files to ascertain whether there is a match between them.

- (2) The automated response from the national contact point of the designated state concerned to a search by the comparison of DNA profiles pursuant to *subsection (1)*, namely—
- (a) where a match of DNA profiles is found—
- (i) a notification of the match, and
- (ii) the reference data relating to the matching DNA profile in the DNA analysis files of that designated state,
- or
- (b) where a match of DNA profiles is not found, a notification to that effect, shall be received by the national contact point.
- (3) If, in relation to a DNA profile supplied by the national contact point pursuant to *subsection (1)*, a match of DNA profiles is found in the DNA analysis files of the designated state concerned, a note to that effect may be entered in the DNA Database System in relation to the DNA profile so supplied.

**Annotations**

**Amendments:**

**F22** Substituted by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 89(a), (b), not commenced as of date of revision.

**Modifications (not altering text):**

**C14** Prospective amending provision: subs. (1) substituted and subs. (3) amended by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 89(a), (b), not commenced as of date of revision.

**115.** F22[(1) For the purposes of the investigation of criminal offences in the State, an authorised officer for DNA data may, in connection with an individual case—

(a) supply through the DNA Database System a DNA profile entered in—

(i) the crime scene index, or

(ii) the reference index, other than DNA profiles entered in that index under *section 28*,

or

(b) supply through the DNA (Military Police) Database System a DNA profile entered in—

(i) the crime scene (Military Police) index, or

(ii) the reference (Military Police) index, other than DNA profiles entered in that index under *section 24* of the Act of 2022,

to the national contact point of a designated state for the purpose of conducting an automated search of the reference data in the DNA analysis files of that designated state by comparing the DNA profile concerned with the DNA profiles in those files to ascertain whether there is a match between them.]

...



- (3) If, in relation to a DNA profile supplied by the national contact point pursuant to *subsection (1)*, a match of DNA profiles is found in the DNA analysis files of the designated state concerned, a note to that effect may be entered in F22[[the DNA Database System or the DNA \(Military Police\) Database System, as the case may be,](#)] in relation to the DNA profile so supplied.

**Automated comparison of DNA profiles in crime scene index with DNA profiles in DNA analysis files of designated state**

- 116.** (1) For the purposes of the investigation of criminal offences in the State, the national contact point may make a request to the national contact point of a designated state for access to the reference data in the DNA analysis files of that designated state for the purpose of comparing unidentified DNA profiles to be supplied by the national contact point with DNA profiles in those DNA analysis files in accordance with this section.
- (2) If a request under *subsection (1)* is acceded to, an authorised officer for DNA data may supply in an automated way all or any of the DNA profiles entered in the crime scene index of the DNA Database System to the national contact point of the designated state concerned for the purposes of conducting an automated comparison of those DNA profiles with the DNA profiles in the DNA analysis files of that designated state to ascertain whether there is a match between any of them.
- (3) The automated response from the national contact point of the designated state concerned to a comparison of DNA profiles pursuant to *subsection (2)*, namely—
- (a) where a match of DNA profiles is found—
- (i) a notification of the match, and
- (ii) the reference data relating to the matching DNA profile in the DNA analysis files of that designated state,
- or
- (b) where a match of DNA profiles is not found, a notification to that effect, shall be received by the national contact point.
- (4) If, following a comparison of DNA profiles under *subsection (2)*, a match of DNA profiles is found in the DNA analysis files of the designated state concerned, a note to that effect may be entered in the DNA Database System in relation to the DNA profile in the crime scene index of that System in respect of which the match was found.

**Annotations**

**Amendments:**

- F23** Substituted by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 90(a), (b), not commenced as of date of revision.

**Modifications (not altering text):**

- C15** Prospective amending provision: subs. (1) amended and subs. (4) substituted by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 90(a), (b), not commenced as of date of revision.

- (2) If a request under *subsection (1)* is acceded to, an authorised officer for DNA data may supply in an automated way all or any of the DNA profiles entered in the crime scene index of F23[[the DNA Database System, or the crime scene \(Military Police\) index of](#)

the DNA (Military Police) Database System,] to the national contact point of the designated state concerned for the purposes of conducting an automated comparison of those DNA profiles with the DNA profiles in the DNA analysis files of that designated state to ascertain whether there is a match between any of them.

...

F23[(4) If, following a comparison of DNA profiles under *subsection (2)*, a match of DNA profiles is found in the DNA analysis files of the designated state concerned, a note to that effect may be entered in the DNA Database System or the DNA (Military Police) Database System, as the case may be, in relation to the DNA profile, in respect of which the match was found, in—

(a) the crime scene index of the DNA Database System, or

(b) the crime scene (Military Police) index of the DNA (Military Police) Database System.]

### CHAPTER 3

#### *Automated searching for dactyloscopic data*

##### **National contact point in relation to dactyloscopic data**

**117.** The Head of the Technical Bureau of the Garda Síochána is the national contact point in relation to dactyloscopic data for the purposes of this Chapter and shall perform in the State the functions of the national contact point provided for in a relevant European Union or international instrument insofar as they concern cooperation in relation to automated searching for or automated comparison of dactyloscopic data and the exchange of such data and the reference data relating to them.

##### **Dactyloscopic data to which this Chapter applies**

**118.** In this Chapter “dactyloscopic data to which this Chapter applies” means—

(a) fingerprints and palm prints of a person taken, or caused to be taken, by a member of the Garda Síochána, or by a prison officer of a prison or a place of detention, under any enactment or rule of law for the purposes of the prevention, detection and investigation of criminal offences, including where the person is to be charged with an offence or has been found guilty of an offence,

(b) fingerprints and palm prints of an Irish citizen who is convicted of an offence in a place other than the State received by the Garda Síochána from a police force or other authority which is responsible for the prevention, detection or investigation of criminal offences in that place,

(c) fingerprints and palm prints of a person received by the Garda Síochána from the International Criminal Police Organisation (Interpol) in connection with the performance of its functions, or

(d) fingerprints and palm prints that are unidentified and not attributed to any person found at, or recovered from, a crime scene.

##### **Annotations**

##### **Amendments:**

**F24** Substituted by *Defence Forces (Evidence) Act 2022* (16/2022), s. 91, not commenced as of date of revision.

**Modifications (not altering text):**

**C16** Prospective amending provision: para. (a) amended by *Defence Forces (Evidence) Act 2022* (16/2022), s. 91, not commenced as of date of revision.

- (a) fingerprints and palm prints of a person taken, or caused to be taken, by F24[a member of the Garda Síochána or a member of the Military Police Corps,] or by a prison officer of a prison or a place of detention, under any enactment or rule of law for the purposes of the prevention, detection and investigation of criminal offences, including where the person is to be charged with an offence or has been found guilty of an offence,

**Automated searching of certain dactyloscopic data in automated fingerprint identification system**

**119.** (1) For the purposes of the prevention, detection and investigation of criminal offences in a designated state, the national contact point shall allow the national contact point of that designated state access to the reference data in the automated fingerprint identification system in respect of dactyloscopic data to which this Chapter applies for the purpose of conducting an automated search of those reference data by comparing dactyloscopic data (whether identified or unidentified) in an individual case supplied by the national contact point of that designated state with those dactyloscopic data in that system to ascertain whether there is a match between them.

(2) The national contact point shall ensure that, following a search by the comparison of dactyloscopic data by the national contact point of a designated state pursuant to *subsection (1)*, a response is sent to that national contact point, in an automated way or by such other means as is permitted by the relevant European Union or international instrument, comprising—

(a) where a match of dactyloscopic data is found—

(i) a notification of the match, and

(ii) the reference data relating to the matching dactyloscopic data in the automated fingerprint identification system,

for the purposes of confirming the match, or

(b) where a match of dactyloscopic data is not found, a notification to that effect.

(3) In this section and in *section 120* “individual case” means the investigation or prosecution of an offence or offences arising from a single event, incident or circumstances but includes a case where a search for more than one piece of dactyloscopic data is required.

**Automated searching for certain dactyloscopic data in automated fingerprint identification system of designated state**

**120.** (1) For the purposes of the prevention, detection and investigation of criminal offences in the State, an authorised officer for dactyloscopic data may, in connection with an individual case, supply dactyloscopic data to which this Chapter applies to the national contact point of a designated state for the purpose of conducting an automated search of the reference data in the automated fingerprint identification system of that designated state by comparing the dactyloscopic data concerned with the dactyloscopic data in that system to ascertain whether there is a match between them.

- (2) The response from the national contact point of the designated state concerned to a search by the comparison of dactyloscopic data pursuant to *subsection (1)*, sent in an automated way or by such other means as is permitted by the relevant European Union or international instrument, namely—
- (a) where a match of dactyloscopic data is found—
    - (i) a notification of the match, and
    - (ii) the reference data relating to the matching dactyloscopic data in the automated fingerprint identification system of that designated state,for the purposes of confirming the match, or
  - (b) where a match of dactyloscopic data is not found, a notification to that effect,
- shall be received by the national contact point.

**Delegation of certain functions of Head of Technical Bureau of Garda Síochána**

- 121.** (1) The Head of the Technical Bureau of the Garda Síochána may, in writing, delegate any of his or her functions as the national contact point in relation to dactyloscopic data under this Chapter to—
- (a) members of the Garda Síochána who are assigned to duties in the Technical Bureau of the Garda Síochána specified by rank or name, or
  - (b) members of the civilian staff of the Garda Síochána who are assigned to duties in the Technical Bureau of the Garda Síochána specified by grade, position, name or otherwise.
- (2) A delegation under this section may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
  - (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the Head of the Technical Bureau of the Garda Síochána at any time.
- (3) The delegation of a function under this section does not preclude the Head of the Technical Bureau of the Garda Síochána from performing the function.
- (4) Where any of the functions of the Head of the Technical Bureau of the Garda Síochána under a provision of this Chapter are delegated to a person any references in that provision to the Head of the Technical Bureau of the Garda Síochána shall be construed as references to that person.
- (5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Head of the Technical Bureau of the Garda Síochána.

CHAPTER 4

*Data protection*

#### Definitions (Chapter 4)

122. In this Chapter—

“Act of 1988” means the Data Protection Act 1988;

“Article 7 request” means a request made or received under Chapter 3 of Part 5 of the Act of 2008 pursuant to Article 7 of the Council Decision or that Article insofar as it is applied by Article 1 of the Agreement with Iceland and Norway;

“blocking”, in relation to data, has the meaning it has in section 1(1) of the Act of 1988;

“data”, “data controller”, “data subject” and “personal data” have the meanings they have in section 1(1) of the Act of 1988;

“data protection authority”, in relation to a designated state, means the authority in that designated state that is designated by that designated state to be the independent data protection authority of that designated state for the purposes of a European Union or international instrument;

“processing”, in relation to data, has the meaning it has in section 1(1) of the Act of 1988 and shall include the sending or receipt, as the case may be, of a notification under *section 113(2), 114(3), 115(2), 116(3), 119(2) or 120(2)*.

#### Annotations

##### Modifications (not altering text):

**C17** References to “personal data” and “processing” construed (25.05.2018) by *Data Protection Act 2018* (7/2018), ss. 165 and 166, S.I. No. 174 of 2018.

##### Reference to personal data in enactment

**165.** Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

- (a) the Data Protection Regulation, and
- (b) Part 5.

##### Reference to processing in enactment

**166.** Subject to this Act, a reference in any enactment to processing within the meaning of the Act of 1988 shall be construed as including a reference to processing within the meaning of—

- (a) the Data Protection Regulation, and
- (b) Part 5.

#### Application of Act of 1988

**123.** (1) The Act of 1988 shall, with the modifications specified in *subsection (2)* and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

- (a) *Chapter 2*,
- (b) *Chapter 3*, or
- (c) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) *Chapter 2* or the provisions of that Chapter,

(ii) *Chapter 3* or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in subsection (1) are the following, namely—

(a) in section 1(1), the insertion of the following definitions:

“ ‘Act of 2008’ means the Criminal Justice (Mutual Assistance) Act 2008;

‘Act of 2014’ means the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*;

‘Agreement with Iceland and Norway’, ‘Council Decision’, ‘dactyloscopic data’, ‘designated state’, ‘European Union or international instrument’, ‘Member State’ and ‘relevant European Union or international instrument’ have the meanings they have in *section 109* of the Act of 2014;

‘Article 7 request’ means a request made or received under Chapter 3 of Part 5 of the Act of 2008 pursuant to Article 7 of the Council Decision or that Article insofar as it is applied by Article 1 of the Agreement with Iceland and Norway;

‘Central Authority’ has the meaning it has in section 2(1) of the Act of 2008;

‘data protection authority’, in relation to a designated state, means the authority in that designated state that is designated by that designated state to be the independent data protection authority of that designated state for the purposes of a European Union or international instrument;

‘DNA’ means deoxyribonucleic acid;

‘national contact point’, in relation to a relevant European Union or international instrument, has the meaning it has in *section 109* of the Act of 2014;

‘processing’ has the meaning it has in this Act and shall include the sending or receipt, as the case may be, of a notification under *section 113(2), 114(3), 115(2), 116(3), 119(2) or 120(2)* of the Act of 2014.”

(b) in section 2, the insertion of the following subsections after subsection (1):

“(1A) A data controller (including a national contact point) shall in order to comply with subsection (1) (b) as respects personal data kept by him or her also comply with *section 125* of the Act of 2014 in respect of those data.

(1B) For the purposes of subparagraphs (i) and (ii) of subsection (1) (c), the processing of personal data supplied or received pursuant to—

(a) *Chapter 2 of Part 12 of the Act of 2014*, or

(b) *Chapter 3* of that Part of that Act,

is deemed to be a purpose compatible with the purpose for which those data were obtained.”,

(c) in section 2C, the substitution of the following subsection for subsection (1):

“(1) In determining appropriate security measures for the purposes of section 2(1)(d) (but without prejudice to the generality of that provision), a data controller—

(a) shall, in relation to the processing of personal data supplied or received pursuant to—

(i) *Chapter 2* of *Part 12* of the *Act of 2014*, or

(ii) *Chapter 3* of that Part of that Act,

comply with the technical specifications of the automated search and comparison procedure required by the relevant European Union or international instrument, and

(b) shall ensure that the measures provide a level of security appropriate to—

(i) the harm that might result from unauthorised or unlawful processing, accidental or unlawful destruction or accidental loss of, or damage to, or accidental alteration of, the data concerned, and

(ii) the nature of the data concerned.”,

(d) in section 4, the addition of the following subsection:

“(14) Notwithstanding section 5, this section applies to the processing of personal data supplied or received pursuant to—

(a) *Chapter 2* of *Part 12* of the *Act of 2014*,

(b) *Chapter 3* of that Part of that Act, or

(c) an Article 7 request.”,

(e) in section 7—

(i) the proviso shall not apply to a data controller in respect of personal data received or obtained by him or her from a body in a designated state pursuant to a European Union or international instrument,

(ii) the designation of the section (as modified by subparagraph (i)) as subsection (1) of that section, and

(iii) the addition of the following subsections:

“(2) A data controller shall not use the inaccuracy of personal data received by him or her from a body in a designated state pursuant to a European Union or international instrument as a ground to avoid or reduce his or her liability to the data subject concerned under subsection (1).

(3) Where—

(a) the Minister or the Commissioner of the Garda Síochána pays damages to a data subject under this section for damage caused to the data subject by reason of inaccurate data received by

the national contact point in relation to DNA data or the national contact point in relation to dactyloscopic data, as may be appropriate, from a body in a designated state pursuant to *Chapter 2 or 3 of Part 12* of the *Act of 2014*, or

- (b) the Minister, the Commissioner of the Garda Síochána or the Director of Public Prosecutions pays damages to a data subject under this section for damage caused to the data subject by reason of inaccurate data received by the Central Authority, the Garda Síochána or the Director of Public Prosecutions, as may be appropriate, from a body in a Member State or Iceland or Norway pursuant to an Article 7 request,

the Minister, the Commissioner of the Garda Síochána or the Director of Public Prosecutions, as the case may be, may seek a refund of the amount that he or she paid in damages to the data subject concerned from the body in the designated state concerned.

(4) Where—

- (a) a body in a designated state applies to the national contact point in relation to DNA data or the national contact point in relation to dactyloscopic data for a refund of damages paid by it, or on its behalf, on foot of a decision or finding of a court or other tribunal or the data protection authority in that designated state for damage caused to a data subject by reason of inaccurate data sent by the national contact point concerned to that body pursuant to *Chapter 2 or 3 of Part 12* of the *Act of 2014*, or
- (b) a body in a Member State or Iceland or Norway applies to the Minister or the Director of Public Prosecutions for a refund of damages paid by it, or on its behalf, on foot of a decision or finding of a court or other tribunal or the data protection authority in that Member State or Iceland or Norway, as the case may be, for damage caused to a data subject by reason of inaccurate data sent by the Minister or the Director of Public Prosecutions, as the case may be, to that body pursuant to an Article 7 request,

the Minister or the Commissioner of the Garda Síochána, as may be appropriate, in the circumstances referred to in paragraph (a), or the Minister or the Director of Public Prosecutions, as may be appropriate, in the circumstances referred to in paragraph (b), shall refund to the body in the designated state concerned the amount paid in damages by it, or on its behalf, to the data subject concerned.”,

(f) section 8(b) —

- (i) insofar as it relates to the purpose of detecting or investigating offences, shall not apply to the processing of data pursuant to *Chapter 2*,
- (ii) insofar as it relates to the purpose of preventing, detecting or investigating offences, shall not apply to the processing of personal data pursuant to *Chapter 3*, or
- (iii) insofar as it relates to the purpose of detecting or investigating offences or apprehending or prosecuting offenders, shall not apply to the processing of personal data pursuant to an Article 7 request,



which are or have been supplied by or to a data controller in the State pursuant to a European Union or international instrument, and

(g) in section 9, the insertion of the following subsection after subsection (1D):

“(1E) (a) The Commissioner shall be the competent data protection authority in the State for the purposes of a European Union or international instrument.

(b) The lawfulness of the processing of personal data supplied or received pursuant to—

(i) *Chapter 2 of Part 12 of the Act of 2014,*

(ii) *Chapter 3 of that Part of that Act, and*

(iii) *an Article 7 request,*

shall be monitored by the Commissioner.

(c) The performance by the Commissioner of his or her function under paragraph (b) shall include the carrying out of random checks on the processing of personal data referred to in that paragraph.

(d) The Commissioner may request the data protection authority of a designated state to perform its functions under the law of that designated state with regard to checking the lawfulness of the processing of personal data supplied by the State to that designated state pursuant to the relevant European Union or international instrument.

(e) The Commissioner may receive information from the data protection authority of a designated state arising from the performance by it of the functions referred to in paragraph (d) with regard to the processing of the personal data concerned.

(f) The Commissioner shall, at the request of the data protection authority of a designated state, perform his or her functions under paragraphs (a) to (c) of this subsection and he or she shall furnish information to that authority with regard to the processing of the personal data the subject of the request.”.

#### Annotations

#### Modifications (not altering text):

**C18** References to "personal data" and "processing" construed (25.05.2018) by *Data Protection Act 2018* (7/2018), ss. 165 and 166, S.I. No. 174 of 2018.

#### Reference to personal data in enactment

**165.** Subject to this Act, a reference in any enactment to personal data within the meaning of the Act of 1988 shall be construed as including a reference to personal data within the meaning of—

(a) the Data Protection Regulation, and

(b) Part 5.

#### Reference to processing in enactment

**166.** Subject to this Act, a reference in any enactment to processing within the meaning of the Act of 1988 shall be construed as including a reference to processing within the meaning of—

- (a) the Data Protection Regulation, and
- (b) Part 5.

#### Purposes for which data may be processed

**124.** (1) Subject to *subsection (3)*, data supplied by the national contact point of a designated state under *section 113, 114 or 119* may be processed only where it is necessary to do so for any of the following purposes:

- (a) comparing DNA profiles or dactyloscopic data, as the case may be, under those sections to ascertain whether there is a match between them;
- (b) providing responses, in an automated way or by such other means as is permitted by the relevant European Union or international instrument, to that national contact point in relation to searches or comparisons under those sections;
- (c) if appropriate, entering a note of a match of DNA profiles in the DNA Database System under *section 113(3) or 114(4)*;
- (d) recording the supply and receipt of the data under *section 127*.

(2) Data supplied by the national contact point of a designated state shall, if not previously destroyed, be destroyed immediately after the provision of a response referred to in *subsection (1)(b)* in relation to the data, unless further processing of the data is necessary—

- (a) in connection with a request for assistance under Chapter 3 of Part 5 of the Act of 2008 if a match of DNA profiles or dactyloscopic data, as the case may be, was found, or
- (b) for the purposes of recording the supply and receipt of the data under *section 127*.

(3) Data received by a national contact point pursuant to *section 115(2), 116(3) or 120(2)* may be processed only for the following purposes and otherwise shall be destroyed immediately after they are received:

- (a) if a match of DNA profiles or dactyloscopic data, as the case may be, is found, preparing and making a request for assistance under section 77 of the Act of 2008;
- (b) if appropriate, entering a note of a match of DNA profiles in the DNA Database System under *section 115(3) or 116(4)*;
- (c) recording the supply and receipt of the data under *section 127*.

#### Annotations

##### Amendments:

**F25** Substituted by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 92(a), (b), not commenced as of date of revision.

##### Modifications (not altering text):

**C19** Prospective amending provision: subss. (1)(c), (3)(b) amended by *Defence Forces (Evidence) Act 2022 (16/2022)*, s. 92(a), (b), not commenced as of date of revision.

- (c) if appropriate, entering a note of a match of DNA profiles in F25[[the DNA Database System or the DNA \(Military Police\) Database System, as the case may be](#)] under *section 113(3) or 114(4)*;

...

(3) ...

(b) if appropriate, entering a note of a match of DNA profiles in F25[[the DNA Database System or the DNA \(Military Police\) Database System, as the case may be](#)] under [section 115\(3\)](#) or [116\(4\)](#);

**C20** References to "processing" construed (25.05.2018) by *Data Protection Act 2018 (7/2018)*, s. 166, S.I. No. 174 of 2018.

**Reference to processing in enactment**

**166.** Subject to this Act, a reference in any enactment to processing within the meaning of the Act of 1988 shall be construed as including a reference to processing within the meaning of—

(a) the Data Protection Regulation, and

(b) Part 5.

**Correction of inaccurate data, destruction of incorrectly supplied data and storage of data**

**125. (1)** Whenever, whether on notification from a data subject or otherwise, it comes to the attention of a national contact point that data supplied under *Chapter 2* or *3* are either incorrect or should not have been supplied, the national contact point shall, as soon as practicable, inform the national contact point of the designated state concerned that received the data of that fact and request that national contact point to correct or destroy, as may be appropriate, the data concerned.

(2) Whenever, whether on notification from a data subject or otherwise, it comes to the attention of a data controller that data supplied pursuant to an Article 7 request are either incorrect or should not have been supplied, the data controller shall, as soon as practicable, inform the authority in the Member State concerned or Iceland or Norway, as the case may be, that received the data of that fact and request that authority to correct or destroy, as may be appropriate, the data concerned.

(3) If—

(a) a national contact point receives data under *Chapter 2* or *3* without requesting them, or

(b) a data controller receives data pursuant to an Article 7 request without requesting them,

the national contact point or the data controller, as the case may be, shall immediately check whether the data are necessary for the purpose for which they were supplied by the national contact point of the designated state concerned or the authority in the Member State concerned or Iceland or Norway, as may be appropriate.

(4) Whenever, whether on notification from a data subject or otherwise, it comes to the attention of a national contact point that data received under *Chapter 2* or *3* are either incorrect or should not have been supplied, the national contact point shall, after consultation with the national contact point of the designated state that supplied the data, correct or destroy, as may be appropriate, the data concerned.

(5) Whenever, whether on notification from a data subject or otherwise, it comes to the attention of a data controller that data received pursuant to an Article 7 request are either incorrect or should not have been supplied, the data controller shall, after consultation with the authority in the

Member State concerned or Iceland or Norway, as the case may be, that supplied the data, correct or destroy, as may be appropriate, the data concerned.

- (6) Subject to *subsection (8)*, a national contact point shall destroy data received pursuant to *Chapter 2* or *3* when they are no longer required for the purpose for which they were supplied and, in any event, shall do so not later than the expiration of the maximum period (if any) prescribed by the law of the designated state concerned and specified by the national contact point of that designated state at the time the data were supplied.
- (7) Subject to *subsection (8)* and notwithstanding section 77(7) of the Act of 2008, a data controller shall destroy data received pursuant to an Article 7 request when they are no longer required for the purpose for which they were supplied and, in any event, shall do so not later than the expiration of the maximum period (if any) prescribed by the law of the Member State concerned or Iceland or Norway, as the case may be, and specified by the authority in that Member State or Iceland or Norway, as the case may be, at the time the data were supplied.
- (8) Where, under *subsection (6)* or *(7)*, a national contact point or a data controller, as the case may be, reasonably believes that the destruction of the data concerned would prejudice the interests of the data subject, the data shall instead be blocked and those data may be supplied or otherwise further processed only for a purpose relating to the protection of those interests.
- (9)(a) If a data subject contests the accuracy of data supplied or received pursuant to *Chapter 2* or *3* and the accuracy of those data cannot be ascertained, the national contact point shall, as soon as reasonably practicable, inform the data subject accordingly.
- (b) If the data subject so requests, the national contact point shall note on those data that the accuracy of them cannot be ascertained, and such a note may be removed only if—
- (i) the data subject consents to its removal, or
  - (ii) the Data Protection Commissioner or the Circuit Court, on application made to the Commissioner or the Court in that behalf, is satisfied that the note may be removed.

**Annotations**

**Modifications (not altering text):**

**C21** Functions transferred and references to “Data Protection Commissioner” and “Office of the Data Protection Commission” construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 14(1), (2), in effect as per ss. 9, 14(4).

Note establishment of the Data Protection Commission (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 10(1), in effect as per s. 9.

**Transfer of functions of Data Protection Commissioner to Commission**

**14.** (1) All functions that, immediately before the establishment day, were vested in the Data Protection Commissioner are transferred to the Commission.

(2) A reference in any enactment or instrument under an enactment to the Data Protection Commissioner or to the Office of the Data Protection Commissioner shall be construed as a reference to the Commission.

...

### Authorised officers

126. (1) The national contact point in relation to DNA data may appoint in writing a member of the staff of FSI to be an authorised officer for DNA data for the purposes of *sections 115 and 116* and this Chapter.
- (2) The national contact point in relation to dactyloscopic data may appoint in writing a member of the Garda Síochána, or a member of the civilian staff of the Garda Síochána, who is assigned to duties in the Technical Bureau of the Garda Síochána to be an authorised officer for dactyloscopic data for the purposes of *section 120* and this Chapter.
- (3) An appointment to be an authorised officer for DNA data may be revoked in writing by the national contact point in relation to DNA data and, in any event, such an appointment shall cease upon the person ceasing to be a member of the staff of FSI.
- (4) An appointment to be an authorised officer for dactyloscopic data may be revoked in writing by the national contact point in relation to dactyloscopic data and, in any event, such an appointment shall cease upon the person ceasing to be assigned to duties in the Technical Bureau of the Garda Síochána.
- (5) The national contact point in relation to DNA data may provide particulars of the authorised officers for DNA data to the Data Protection Commissioner and shall do so if so requested by the Data Protection Commissioner.
- (6) The national contact point in relation to DNA data shall provide particulars of the authorised officers for DNA data to the national contact point in relation to DNA data of a designated state or the data protection authority in a designated state or both, if requested to do so by such national contact point or data protection authority, as the case may be.
- (7) The national contact point in relation to dactyloscopic data may provide particulars of the authorised officers for dactyloscopic data to the Data Protection Commissioner and shall do so if so requested by the Data Protection Commissioner.
- (8) The national contact point in relation to dactyloscopic data shall provide particulars of the authorised officers for dactyloscopic data to the national contact point in relation to dactyloscopic data of a designated state or the data protection authority in a designated state or both, if requested to do so by such national contact point or data protection authority, as the case may be.

#### Annotations

##### Modifications (not altering text):

- C22** Functions transferred and references to “Data Protection Commissioner” and “Office of the Data Protection Commission” construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 14(1), (2), in effect as per ss. 9, 14(4).

Note establishment of the Data Protection Commission (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 10(1), in effect as per s. 9.

##### Transfer of functions of Data Protection Commissioner to Commission

14. (1) All functions that, immediately before the establishment day, were vested in the Data Protection Commissioner are transferred to the Commission.
- (2) A reference in any enactment or instrument under an enactment to the Data Protection Commissioner or to the Office of the Data Protection Commissioner shall be construed as a reference to the Commission.

...

### Recording of automated supply of data

**127.** (1) The national contact point in relation to DNA data shall record, in accordance with *subsection (3)*, the supply and receipt of data, including whether or not a match of DNA profiles is found, pursuant to *sections 113, 114, 115 and 11*.

(2) The national contact point in relation to dactyloscopic data shall record, in accordance with *subsection (3)*, the supply and receipt of data, including whether or not a match of dactyloscopic data is found, pursuant to *sections 119 and 120*.

(3) The recording of the supply and receipt of data under *subsection (1) or (2)* shall be in a permanent legible form or be capable of being converted into a permanent legible form and shall include the following particulars in relation to the data:

(a) a description of the data supplied or received;

(b) the date and time of the supply or receipt of the data;

(c) the name or reference code of the national contact point concerned and the name or reference code of the national contact point of the designated state concerned; and

(d) in the case of data supplied pursuant to *section 115, 116 or 120* —

(i) the reason for the search or comparison concerned,

(ii) the identifier of the authorised officer for DNA data or the authorised officer for dactyloscopic data, as the case may be, who supplied the data for the purpose of conducting the search or comparison concerned, and

(iii) the identifier of the authorised officer for DNA data or the authorised officer for dactyloscopic data, as the case may be, who authorised the conduct of the search or comparison concerned.

(4) Records created under this section may be used only for the purposes of monitoring data protection and ensuring data security.

(5) The national contact point in relation to DNA data and the national contact point in relation to dactyloscopic data shall—

(a) retain the records created under this section for a period of 2 years from the time of their creation, and

(b) immediately after that period, destroy those records.

(6) Whenever requested to do so by the Data Protection Commissioner, the national contact point in relation to DNA data and the national contact point in relation to dactyloscopic data shall furnish the records created under this section to the Data Protection Commissioner as soon as practicable, but in any event not later than 4 weeks, after the receipt of a request to do so.

(7) The national contact point in relation to DNA data and the national contact point in relation to dactyloscopic data shall—

(a) using the records created under this section, carry out random checks on the lawfulness of the supply and receipt by them of data,

(b) retain the results of those random checks for a period of 18 months from the time they were carried out for the purposes of inspection by the Data Protection Commissioner, and

(c) immediately after that period, destroy those results.

(8) In this section—

“identifier”, in relation to an authorised officer, means the user identification or user certificate that is assigned to the authorised officer for the purposes of a European Union or international instrument;

“reference code”, in relation to a national contact point, means the reference code that is assigned to the national contact point for the purposes of a European Union or international instrument.

#### Annotations

#### Modifications (not altering text):

**C23** Functions transferred and references to “Data Protection Commissioner” and “Office of the Data Protection Commission” construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 14(1), (2), in effect as per ss. 9, 14(4).

Note establishment of the Data Protection Commission (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 10(1), in effect as per s. 9.

#### Transfer of functions of Data Protection Commissioner to Commission

**14.** (1) All functions that, immediately before the establishment day, were vested in the Data Protection Commissioner are transferred to the Commission.

(2) A reference in any enactment or instrument under an enactment to the Data Protection Commissioner or to the Office of the Data Protection Commissioner shall be construed as a reference to the Commission.

...

## CHAPTER 5

### *Amendments of Criminal Justice (Mutual Assistance) Act 2008*

#### **Amendment of section 2(1) of Act of 2008**

**128.** Section 2(1) of the Act of 2008 is amended—

(a) by the insertion of the following definitions:

‘2008 Council Decision’ means Council Decision 2008/615/JHA of 23 June 2008<sup>9</sup> on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;

‘2009 Agreement with Iceland and Norway’ means the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, done at Stockholm on 26 November 2009 and at Brussels on 30 November 2009<sup>10</sup>,”

<sup>9</sup> O.J. No. L210, 6.8.2008, p.1.

<sup>10</sup> O.J. No. L353, 31.12.2009, p.3.

(b) in the definition of “international instrument”, by the insertion of the following paragraphs after paragraph (g):

“(ga) Article 7 of the 2008 Council Decision;

(gb) Article 1 of the 2009 Agreement with Iceland and Norway insofar as it applies Article 7 of the 2008 Council Decision in bilateral relations between Iceland or Norway and each member state of the European Union and in relations between Iceland and Norway;”,

and

(c) by the substitution of the following paragraph for paragraph (a) of the definition of “member state”:

“(a) a member state of the European Union (other than the State), for the purposes of mutual assistance under the provisions of the 2000 Convention, 2001 Protocol, Articles 49 and 51 of the Schengen Convention, Framework Decision, 2005 Council Decision, Article 7 of the 2008 Council Decision or Article 1 of the 2009 Agreement with Iceland and Norway insofar as it applies Article 7 of the 2008 Council Decision in bilateral relations between Iceland or Norway and each member state of the European Union (other than the State) and in relations between Iceland and Norway, and”.

#### **Amendment of section 76 of Act of 2008**

**129.** Section 76 of the Act of 2008 is amended by—

(a) the insertion of the following definitions:

“ ‘ Act of 2014 ’ means the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*;

‘child’ means a person who has not attained the age of 18 years;

‘data controller’ has the meaning it has in section 1(1) of the Data Protection Act 1988;

‘DNA’ means deoxyribonucleic acid;

‘DNA profile’, in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a bodily sample or DNA sample from the person and that is capable of comparison with similar information derived from an examination and analysis of another sample of biological material for the purpose of determining whether or not that other sample could relate to that person;

‘DNA sample’, in relation to a person, means a sample of hair other than pubic hair of the person or a swab from the mouth (including the inside of the mouth) of the person;

‘guardian’, in relation to a child (including a protected person who is a child), has the meaning it has in the *Act of 2014*;

‘inadequately labelled’ and ‘insufficient’, in relation to a DNA sample, have the meanings they have in the *Act of 2014*;

‘non-coding part of DNA’, in relation to a person, means the chromosome regions of the person’s DNA that are not known to provide for any functional properties of the person;



‘parent’, in relation to a protected person or a child, has the meaning it has in the *Act of 2014*;

‘protected person’ means, subject to subsection (2), a person (including a child) who, by reason of a mental or physical disability—

(a) lacks the capacity to understand the general nature and effect of the taking of identification evidence from him or her, or

(b) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he or she consents to identification evidence being taken from him or her;

‘relevant offence’ has the meaning it has in the *Act of 2014*.”,

(b) the substitution of the following definition for the definition of “identification evidence”:

“ ‘identification evidence’, in relation to a person, means—

(a) a fingerprint, palm print or photograph of the person,

(b) a bodily sample from the person or the DNA profile of the person generated from such a sample, or

(c) a DNA sample from the person or the DNA profile of the person generated from such a sample,

and includes any related records;”,

(c) the designation of that section (as amended by *paragraphs (a) and (b)*) as subsection (1), and

(d) the addition of the following subsections after subsection (1):

“(2) The reference in the definition of ‘protected person’ in subsection (1) to a mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.

(3) In the application of this Chapter in relation to a protected person or a child who is married, the references in sections 79 and 79B to a parent or guardian of the person or child, as the case may be, shall be construed as references to his or her spouse.”.

#### **Amendment of section 77(5) of Act of 2008**

**130.** Section 77(5) of the Act of 2008 is amended by—

(a) the deletion of “and” at the end of paragraph (b),

(b) the insertion of the following paragraph after paragraph (b):

“(ba) in the case of a request pursuant to Article 7 of the 2008 Council Decision, or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, for the DNA profile of a person who is suspected of having committed the offence concerned whose DNA profile is not in the possession of the appropriate authority, a statement issued by the Commissioner of the Garda Síochána or the Director of Public Prosecutions, as may be appropriate, confirming that the requirements for the taking of a DNA sample from the person under the law of the State would be complied with if the person were in the State, and”.

**Amendment of section 78 of Act of 2008**

**131.** Section 78 of the Act of 2008 is amended by—

- (a) the deletion of “and” at the end of paragraph (a),
- (b) the substitution of the following paragraphs for paragraph (b):
  - “(b) a brief description of the conduct constituting the offence,
  - (c) a statement of the purpose for which the evidence is sought,
  - (d) a statement confirming that any evidence that may be furnished in response to the request will not, without the consent of the Minister, be used for any purpose other than that specified in the request, and
  - (e) in the case of a request pursuant to Article 7 of the 2008 Council Decision, or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, for the DNA profile of a person who is suspected of having committed the offence concerned whose DNA profile is not in the possession of the Garda Síochána—
    - (i) an investigation warrant in respect of the person, or
    - (ii) a statement issued by the competent authority in the member state concerned in connection with a criminal investigation in that member state confirming that the requirements for the taking of a DNA sample from the person under the law of that member state would be complied with if the person were in that member state.”,
- (c) the designation of that section (as amended by *paragraphs (a) and (b)*) as subsection (1), and
- (d) the addition of the following subsection:

“(2) In this section—

‘competent authority’, in relation to a member state, means the authority in the member state that is competent to issue an investigation warrant or statement for the purposes of Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway;

‘investigation warrant’ means a warrant or order issued by the competent authority in a member state requiring a person to have identification evidence, other than fingerprints, palm prints or photographs, taken from him or her for the purposes of a criminal investigation, or criminal proceedings, in that member state.”.

**Amendment of section 79 of Act of 2008**

**132.** Section 79 of the Act of 2008 is amended—

- (a) in subsection (1), by the substitution of the following paragraphs for paragraphs (b) and (c):
  - “(b) that the purpose for which the evidence is sought specified in the request, or any other purpose for which the consent of the Minister is sought, is one in respect of which the evidence could be obtained in the State if the criminal proceedings for, or the criminal investigation of, the offence concerned in the designated state concerned were being conducted in the State, and
- (c) that the evidence—

(i) will be returned by the requesting authority—

(I) when no longer required for the purpose specified in the request (or any other purpose for which the consent of the Minister has been obtained), unless the Minister indicates otherwise, or

(II) when requested by the Minister for the purposes of destroying the evidence—

(A) to comply with a request to do so by or on behalf of the person to whom the identification evidence relates, or

(B) in accordance with section 4 of the Criminal Justice (Forensic Evidence) Act 1990, *Part 10* of the *Act of 2014* or any statutory provision providing for the destruction of fingerprints, palm prints or photographs of persons, as may be appropriate,

or

(ii) will be dealt with in accordance with subsections (10) and (11).”,

(b) in subsection (2), by—

(i) the substitution of “the identification evidence requested is not in the possession of the Garda Síochána and subject to section 79A, the Commissioner shall instruct” for “the identification evidence requested is not in the possession of the Garda Síochána, the Commissioner shall instruct”,

(ii) the deletion of “and” at the end of paragraph (c), and

(iii) the substitution of the following paragraphs for paragraph (d):

“(d) that, if he or she does consent to provide it, it may be given in evidence in any proceedings in that state, and

(e) that the evidence may be destroyed in accordance with this section.”,

(c) in subsection (3), by the substitution of “Subject to subsections (11H) to (11Q), if the person consents to provide the evidence” for “If the person consents to provide the evidence”,

(d) in subsection (8), by the insertion of “, if appropriate,” after “and the record shall”,

(e) in subsection (9) (b), by the substitution of “taken under subsection (3) or section 79A” for “taken under subsection (3)”,

(f) by the insertion of the following subsections after subsection (9):

“(9A) When transmitting the identification evidence to the requesting authority, the Minister may specify conditions regarding the use of the evidence.

(9B) Subject to subsections (10) and (11) —

(a) any identification evidence taken under subsection (3) or section 79A that is transmitted to the requesting authority and returned by that authority when no longer required for the purpose specified in the request (or any other purpose for which the consent of the Minister had been obtained) shall be destroyed as soon as practicable after its return, and

- (b) a DNA sample that is taken from a person under section 79A, and the DNA profile of the person generated from the sample, shall be destroyed when the Central Authority receives confirmation from the requesting authority that it has received the DNA profile of the person generated from the sample.
- (9C) The provisions of *subsections (7), (8), (9) and (11) of section 3*, and *section 97*, of the *Act of 2014* insofar as they apply to the destruction of samples and DNA profiles of persons under that Act shall apply, with any necessary modifications, in relation to the destruction of identification evidence, other than fingerprints, palm prints or photographs of persons, under subsection (9B).
- (9D) The provisions of section 8H of the Criminal Justice Act 1984 insofar as they apply to the destruction of fingerprints, palm prints or photographs of persons shall apply, with any necessary modifications, in relation to the destruction of fingerprints, palm prints or photographs of persons under subsection (9B).”,
- (g) by the substitution of the following subsection for subsection (10):
- “(10) When transmitting the identification evidence to the requesting authority the Central Authority shall, if subsection (1) (c) (i) does not apply and subject to subsection (11), obtain an assurance that the evidence, as well as the record of any analysis of the evidence, or any other record relating to it, that may be made in the requesting state, will be destroyed when no longer required for the purpose specified in the request concerned (or any other purpose for which the consent of the Minister is obtained) and, in any event, not later than the expiration of the period of 3 months from the date on which any of the following circumstances first apply to the person the subject of that request:
- (a) proceedings for an offence are not instituted against that person within the period of 12 months from the taking of the identification evidence concerned from him or her and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found;
  - (b) proceedings for an offence have been instituted against that person and he or she is acquitted or the charge against him or her is dismissed or the proceedings are discontinued;
  - (c) that person—
    - (i) in proceedings for an offence, is the subject of an order corresponding to or in the nature of a probation order under section 1(1) or (2) of the Probation of Offenders Act 1907, other than an order corresponding to or in the nature of an order under the said section 1(2) that is discharged on the appeal of that person against conviction for the offence if on appeal his or her conviction is affirmed, and
    - (ii) has not been convicted of an offence during the period of 3 years from the making of an order referred to in subparagraph (i);
  - (d) that person is convicted of an offence and the conviction is quashed; or
  - (e) that person is convicted of an offence and the conviction is declared to be a miscarriage of justice under the law of that state corresponding to section 2 of the Criminal Procedure Act 1993.”,

(h) by the substitution of the following subsection for subsection (11):

“(11) The Minister may, at the request of the requesting authority and having consulted the Commissioner, direct that the retention period in respect of identification evidence transmitted to the requesting authority be extended in accordance with an order made under subsection (11A).”.

(i) by the insertion of the following subsections after subsection (11):

“(11A) If a judge of the District Court is satisfied, on an application in that behalf by the Commissioner, that there is good reason why identification evidence transmitted pursuant to a request should not be destroyed by the requesting authority in accordance with subsection (10), or a request to do so under subsection (11R), the judge may make an order authorising the retention of the identification evidence for such purpose permitted by this section for such period as he or she considers appropriate.

(11B) If the Commissioner intends to make an application under subsection (11A), he or she shall inform by notice in writing the person from whom the identification evidence concerned was taken, and any person who gave consent to the taking of that identification evidence from that person, of that intention.

(11C) If, on an application under subsection (11A), the person from whom the identification evidence was taken, or any other person who gave consent to the taking of that identification evidence from that person, applies to be heard by the judge of the District Court, an order shall not be made under that subsection unless a reasonable opportunity has been given to that person to be heard.

(11D) An application under subsection (11A) shall be made to a judge of the District Court who is assigned to the district court district in which the person from whom the identification evidence concerned was taken resides.

(11E) An application under subsection (11A) shall be heard otherwise than in public.

(11F) In determining an application under subsection (11A), a judge of the District Court may make such order as to costs as the judge considers appropriate.

(11G) A notice under subsection (11B) may be sent or given to a person in one of the following ways:

(a) by delivering it to the person or his or her solicitor;

(b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor’s office;

(c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor’s office.

(11H) Subject to subsection (11I), in this section ‘consent’ means—

(a) subject to paragraph (b), in the case of a person who has attained the age of 18 years, the consent in writing of the person,

- (b) in the case of a protected person—
  - (i) the consent in writing of a parent or guardian of the person, or
  - (ii) an order of the District Court under section 79B authorising the taking of the identification evidence concerned from the person,
- (c) in the case of a child (other than a protected person)—
  - (i) who has attained the age of 14 years, the consent in writing of the child and either—
    - (I) the consent in writing of a parent or guardian of the child, or
    - (II) an order of the District Court under section 79B authorising the taking of the identification evidence concerned from the child,
  - (ii) who has not attained the age of 14 years, either—
    - (I) the consent in writing of a parent or guardian of the child, or
    - (II) an order of the District Court under section 79B authorising the taking of the identification evidence concerned from the child.
- (11I) Where, in relation to the criminal proceedings for, or the criminal investigation of, the offence concerned in the designated state concerned, identification evidence is to be taken from a protected person or a child, the consent in writing of a parent or guardian of the protected person or child shall not be sought from a parent or guardian of the protected person or child, as the case may be, if—
  - (a) he or she is the victim of that offence in circumstances in which the protected person or child, as the case may be, is suspected of having committed that offence,
  - (b) he or she has been arrested in respect of that offence,
  - (c) a member not below the rank of inspector has reasonable grounds for suspecting him or her of complicity in that offence, or
  - (d) a member not below the rank of inspector has reasonable grounds for believing that he or she is likely to obstruct the course of justice.
- (11J) Subsection (11I) shall not prevent a parent or guardian of a protected person or a child who does not fall under paragraph (a), (b), (c) or (d) of that subsection from giving the consent required.
- (11K) Before a member seeks the consent in writing of a parent or guardian of a protected person to the taking of identification evidence from the person, the member shall inform the parent or guardian of the matters referred to in subsection (2) in relation to the person.
- (11L) Before a member seeks the consent in writing of a parent or guardian of a child to the taking of identification evidence from the child, the member shall inform the parent or guardian of the matters referred to in subsection (2) in relation to the child.
- (11M) If a person withdraws a consent he or she had given to the taking of identification evidence under this section (or if the withdrawal of

that consent can reasonably be inferred from the conduct of the person) before or during the taking of the identification evidence, that withdrawal of consent shall be treated as a refusal to give consent to the taking of that identification evidence.

(11N) A withdrawal of consent under subsection (11M) shall be recorded in writing by a member as soon as practicable after such withdrawal.

(11O) Subject to subsections (11R) and (11S), the consent of a person to the taking of identification evidence under this section may not be withdrawn after the identification evidence has been taken.

(11P) In this section references to a person giving his or her consent in writing to the taking of identification evidence under this section (whether from the person himself or herself or another person) shall include references to—

(a) the person signing a document, or

(b) in case the person is unable to write, the person making his or her mark on a document,

to indicate his or her consent.

(11Q) The identification evidence concerned shall, if it is reasonably practicable to do so, be taken from a protected person or a child in the presence of the person who gave consent under this section for the taking of that identification evidence from the protected person or child, as the case may be, unless the protected person or child indicates that he or she does not wish to have that person present.

(11R) If the identification evidence taken under this section and transmitted pursuant to a request relates to a person who was not, at the time the evidence was taken, suspected of having committed the offence concerned in the designated state concerned, the person, or another person who gave consent to the taking of the identification evidence from the person, may by notice in writing sent or given to the Commissioner request the destruction of the evidence.

(11S) The Commissioner shall, following the receipt of a notice under subsection (11R), inform the Minister of it and the Minister shall, subject to an order made under subsection (11A), request the requesting authority to which the identification evidence concerned was transmitted to destroy the evidence as soon as practicable and, in any event, to do so not more than 4 months after the receipt by the Commissioner of the notice under subsection (11R).

(11T) In this section and in section 79A a reference to identification evidence in the possession of the Garda Síochána shall include a reference to identification evidence in the possession of Forensic Science Ireland of the Department of Justice and Equality.”

and

(j) by the substitution of the following subsection for subsection (12):

“(12) In this section ‘retention period’ means—

(a) in the case of identification evidence, other than a fingerprint, palm print or photograph of a person, the period from the taking of the evidence concerned from the person to the latest date for the destruction of that evidence under subsection (10), and

(b) in the case of identification evidence consisting of a fingerprint, palm print or photograph of a person (including any related records)—

(i) 6 years from the taking of the evidence concerned from the person, or

(ii) if the person falls under paragraph (d) or (e) of subsection (10), 3 months from the quashing of the conviction concerned or the declaration that the conviction concerned is a miscarriage of justice, as the case may be,

whichever is the later.”.

**Request pursuant to Article 7 of 2008 Council Decision or that Article as applied by 2009 Agreement with Iceland and Norway**

**133.** The Act of 2008 is amended by the insertion of the following section after section 79:

“ **79A.** (1) If the request for obtaining identification evidence for use in a member state under section 78—

(a) is pursuant to Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, and

(b) is for the DNA profile of a person who is suspected of having committed the offence concerned,

then, following compliance with section 79(1), this section shall apply to the request if the identification evidence sought pursuant to the request is not in the possession of the Garda Síochána.

(2) The Commissioner shall instruct a member of the Garda Síochána to inform the person whose DNA profile is sought pursuant to the request that—

(a) his or her DNA profile has been requested by the member state concerned for the purposes of criminal proceedings, or a criminal investigation, in that member state,

(b) if he or she consents to provide a DNA sample from which his or her DNA profile may be generated, the DNA profile will be transmitted to the member state concerned in accordance with this Chapter,

(c) the DNA profile of the person may be given in evidence in any proceedings in the member state concerned, and

(d) if he or she does not consent to provide a DNA sample, an application may be made to a judge of the District Court under subsection (5) for an order under that subsection.

(3) If the person concerned consents to provide a DNA sample, a member of the Garda Síochána may take, or cause to be taken, a DNA sample from him or her.

(4) If the person concerned does not consent to provide a DNA sample, an application may be made for an order under subsection (5).

(5) A judge of the District Court may, on an application in that behalf by a member of the Garda Síochána not below the rank of superintendent, make an order—



- (a) authorising the Garda Síochána to send a notice to the person concerned requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice for the purpose of having a DNA sample taken from him or her, and
  - (b) in the event of his or her failure or refusal to comply with the notice, authorising the Garda Síochána to arrest the person concerned and detain him or her in a Garda Síochána station for a period not exceeding 4 hours from the time the person concerned is arrested for that purpose,
- if the judge is satisfied that—
- (i) the request concerned complies with section 79(1), and
  - (ii) the conduct alleged to constitute the offence concerned would, if it took place in the State, constitute a relevant offence, and
  - (iii) the person concerned has not consented to the taking of a DNA sample from him or her pursuant to the request concerned.
- (6) If an order is made under subsection (5), a notice pursuant to the order may be sent by a member of the Garda Síochána to the person concerned.
- (7) A notice under subsection (6) shall, in the case of a child, also be sent to a parent or guardian of the child and, if the member of the Garda Síochána sending the notice knows or believes that the person concerned to whom the notice is being sent is a protected person, the member shall also send the notice to a parent or guardian of the person.
- (8) If the person concerned to whom a notice is sent under subsection (6) fails or refuses to comply with the notice, a member of the Garda Síochána may arrest that person and detain him or her in a Garda Síochána station for such period as is authorised by the order made under subsection (5) concerned for the purpose of having a DNA sample taken from him or her.
- (9) If—
- (a) the person concerned, in compliance with a notice sent to him or her under subsection (6), attends at the Garda Síochána station named in the notice, or
  - (b) he or she fails or refuses to comply with a notice sent to him or her under subsection (6) and he or she is arrested and detained in a Garda Síochána station,
- for the purpose of having a DNA sample taken from him or her, a member of the Garda Síochána may, subject to subsection (11), take, or cause to be taken, a DNA sample from him or her.
- (10) The provisions of *sections 10(1), 14, 23 and 24, subsections (3) to (7) of section 21 and subsections (3) to (7) of section 22*, of the *Act of 2014* insofar as they relate to the taking of a non-intimate sample (within the meaning of that Act) from a person shall apply, with any necessary modifications, to the taking of a DNA sample from a person under subsection (9), (13) or (17), as may be appropriate.
- (11) Before a member of the Garda Síochána takes, or causes to be taken, a DNA sample from a person under subsection (9), (13) or (17), the member shall, as may be appropriate, inform the person of the following:
- (a) that the DNA profile of the person has been requested by the member state concerned for the purposes of criminal proceedings, or a criminal investigation, in that member state;

- (b) that an order has been made by a judge of the District Court under subsection (5) authorising the sending of a notice to the person requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice, or, in the event of his or her failure or refusal to comply with the notice, the arrest and detention of the person in a Garda Síochána station for the period specified in the order, for the purpose of having a DNA sample taken from him or her;
  - (c) in a case in which a DNA sample already taken from the person has proved to be insufficient or was inadequately labelled—
    - (i) that that DNA sample has proved to be insufficient or was inadequately labelled, as may be appropriate, and
    - (ii) that another DNA sample may be taken from the person under subsection (13) or (17), as the case may be;
  - (d) that the DNA sample will be used to generate a DNA profile in respect of the person and that the DNA profile will be transmitted to the member state concerned in accordance with this Chapter;
  - (e) that the DNA profile of the person generated from the DNA sample may be given in evidence in any proceedings in the member state concerned;
  - (f) that the provisions of *sections 10(1), 14, 23 and 24, subsections (3) to (7) of section 21 and subsections (3) to (7) of section 22*, of the *Act of 2014* insofar as they relate to the taking of a non-intimate sample (within the meaning of that Act) from a person shall apply, with any necessary modifications, to the taking of the DNA sample from the person; and
  - (g) that the DNA sample, and the DNA profile of the person generated from the sample, may be destroyed in accordance with section 79.
- (12) Where a DNA sample taken from a person under subsection (3) proves to be insufficient or is inadequately labelled, this section insofar as it relates to the taking of a DNA sample from the person shall apply, with any necessary modifications, to the taking of a second or further sample from the person.
- (13) Where—
- (a) a person is arrested and detained under subsection (8), and
  - (b) a DNA sample taken from the person during the period of detention proves to be insufficient or is inadequately labelled,
- a second DNA sample may be taken from the person in accordance with subsections (9) to (11) while he or she is so detained.
- (14) When a DNA sample or, if appropriate, a second DNA sample has been taken from a person who is detained under subsection (8), the person shall be released from custody forthwith unless his or her detention is authorised apart from this section.
- (15) Where—
- (a) a DNA sample is taken from a person who is detained under subsection (8),
  - (b) the person is released from that detention, and
  - (c) the DNA sample proves to be insufficient or is inadequately labelled,

a member of the Garda Síochána not below the rank of superintendent may apply to a judge of the District Court for an order under subsection (16).

(16) A judge of the District Court may, on an application in that behalf under subsection (15), make an order—

(a) authorising the Garda Síochána to send a notice to the person concerned requiring him or her to attend at a named Garda Síochána station on a day, and at a time of day or between times of day, specified in the notice for the purpose of having a second DNA sample taken from him or her, and

(b) in the event of his or her failure to comply with the notice, authorising the Garda Síochána to arrest the person concerned and detain him or her in a Garda Síochána station for a period not exceeding 4 hours from the time the person concerned is arrested for that purpose,

if the judge is satisfied that—

(i) the first DNA sample concerned was taken from the person concerned in accordance with this section,

(ii) the first DNA sample concerned taken from the person concerned has proved to be insufficient or was inadequately labelled, as the case may be, and

(iii) the member state concerned is still seeking the DNA profile of the person concerned pursuant to the request concerned.

(17) If an order is made under subsection (16) for the purpose of having a second DNA sample taken from the person, subsections (6) to (9) shall, with any necessary modifications, apply to the taking of the second DNA sample from him or her.

(18) When a second DNA sample has been taken from a person who is detained pursuant to an order under subsection (16), the person shall be released from custody forthwith unless his or her detention is authorised apart from this section.

(19) If a second DNA sample is taken from a person under subsection (13), the references in subsections (15) to (18) —

(a) to a first DNA sample shall be construed as references to a second DNA sample, and

(b) to a second DNA sample shall be construed as references to a third DNA sample,

taken, or to be taken, from the person.

(20) Subsections (4), (7), (8), (9), (9A), (10), (11) and (11A) to (11Q) of section 79 shall apply in respect of a request to which this section applies.

(21) An application under subsection (4) or (15) shall be made to a judge of the District Court who is assigned to the district court district in which the person whose DNA profile is being sought pursuant to the request concerned resides.

(22) If—

(a) the conduct alleged to constitute the offence concerned would not, if it took place in the State, constitute a relevant offence, or

- (b) the request is for the DNA profile of a person who is not suspected of having committed the offence concerned in the member state concerned, then, section 79 and not this section shall apply to the request.”.

**Application for court order authorising taking of identification evidence from protected person or child under Act of 2008**

**134.** The Act of 2008 is amended by the insertion of the following section after section 79A (inserted by *section 133*):

“ **79B.** (1) If—

- (a) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian of a protected person or child, as the case may be, for the purposes of ascertaining whether or not he or she consents to the taking of the identification evidence concerned from the person or child, as the case may be, under section 79,
- (b) subject to subsection (11J) of section 79, the circumstances referred to in subsection (11I) of that section exist in relation to a parent or guardian of a protected person or child, as the case may be, or
- (c) a protected person or child, as the case may be, does not have, or a member of the Garda Síochána not below the rank of inspector cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether the person or child, as the case may be, has, a living parent or guardian from whom consent to the taking of the identification evidence concerned from the person or child, as the case may be, may be sought under section 79,

a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be.

(2) A member of the Garda Síochána who intends to make an application under subsection (1) shall inform the protected person or child, as the case may be, concerned of that intention.

(3) A judge of the District Court may order—

- (a) that an application under subsection (1) shall be heard otherwise than in public, or
- (b) that a parent or guardian of the protected person or child, as the case may be, concerned to whom section 79(11I) applies shall be excluded from the Court during the hearing of the application,

or both if—

(i) on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, the judge is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the criminal proceedings, or the criminal investigation, for the offence concerned in the designated state concerned in connection with which the identification evidence concerned has been sought pursuant to the request, or

(ii) the judge considers that it is otherwise desirable in the interests of justice to do so.

(4) A judge of the District Court shall, for the purposes of determining an application under subsection (1) —

(a) be satisfied that the request for the identification evidence concerned complies with section 79(1), and

(b) have regard to—

(i) the nature and seriousness of the offence concerned in the designated state concerned,

(ii) in so far as they can be ascertained, the wishes of the protected person or child, as the case may be, concerned regarding whether the identification evidence concerned should be taken from him or her, and

(iii) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the protected person or child, as the case may be, concerned, to make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned,

before making an order under this section.

(5) If, on an application under subsection (1), a parent or guardian of the protected person or child, as the case may be, concerned applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that person or child, as the case may be, to be heard.

(6) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned in accordance with section 79.

(7) An application under subsection (1) shall be made to a judge of the District Court who is assigned to the district court district in which the protected person or child concerned resides.”.

**Recording of supply and receipt of data for requests pursuant to Article 7 of 2008 Council Decision or that Article as applied by 2009 Agreement with Iceland and Norway**

**135.** The Act of 2008 is amended by the insertion of the following section after section 79B (inserted by *section 134*):

“ **79C.** (1) The Central Authority shall record, in accordance with subsection (2), the supply and receipt of data—

(a) in the case of requests under section 77, and

(b) in the case of requests referred to in section 78,

that are made pursuant to Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway.

(2) The recording of the supply and receipt of data under subsection (1) shall be in a permanent legible form or be capable of being converted into a permanent legible form and shall include the following particulars in relation to the data:

(a) a description of the data supplied or received;

(b) the reason for the request concerned;

- (c) the date the data were supplied or received;
  - (d) the name or reference code of the Central Authority and the name or reference code of the appropriate authority within the meaning of section 77 concerned or of the authority which supplied or received the data, as the case may be.
- (3) Records created under this section may be used only for the purposes of monitoring data protection and ensuring data security.
- (4) The Central Authority shall—
- (a) retain the records created under this section for a period of 2 years from the time of their creation, and
  - (b) immediately after that period, destroy those records.
- (5) Whenever requested to do so by the Data Protection Commissioner, the Central Authority shall furnish the records created under this section to the Data Protection Commissioner as soon as practicable, but in any event not later than 4 weeks, after the receipt of a request to do so.
- (6) The Central Authority shall—
- (a) using the records created under this section, carry out random checks on the lawfulness of the supply and receipt of data,
  - (b) retain the results of those random checks for a period of 18 months from the time that they were carried out for the purposes of inspection by the Data Protection Commissioner, and
  - (c) immediately after that period, destroy those results.
- (7) A data controller who supplies or receives data—
- (a) in the case of requests under section 77, or
  - (b) in the case of requests referred to in section 78,
- that are made pursuant to Article 7 of the 2008 Council Decision, or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway, shall furnish such of the particulars specified in subsection (2) in relation to those data as the data controller has, as soon as reasonably practicable, to the Central Authority for the purposes of enabling the Central Authority to comply with this section.
- (8) In this section ‘reference code’, in relation to the Central Authority or other authority, means the reference code that is assigned to the Central Authority or that other authority, as the case may be, for the purposes of the 2008 Council Decision or the 2009 Agreement with Iceland and Norway.”.

**Annotations**

**Modifications (not altering text):**

- C24** Functions transferred and references to “Data Protection Commissioner” and “Office of the Data Protection Commission” construed (25.05.2018) by *Data Protection Act 2018 (7/2018)*, s. 14(1), (2), in effect as per ss. 9, 14(4).

Note establishment of the Data Protection Commission (25.05.2018) by *Data Protection Act 2018 (7/2018)*, s. 10(1), in effect as per s. 9.

**Transfer of functions of Data Protection Commissioner to Commission**

14. (1) All functions that, immediately before the establishment day, were vested in the Data Protection Commissioner are transferred to the Commission.

(2) A reference in any enactment or instrument under an enactment to the Data Protection Commissioner or to the Office of the Data Protection Commissioner shall be construed as a reference to the Commission.

...

#### **Amendment of section 107 of Act of 2008**

136. Section 107 of the Act of 2008 is amended by the addition of the following subsection:

“(4) This section is without prejudice to the application of *Chapter 4 of Part 12 of the Act of 2014* to requests made or received under Chapter 3 of Part 5 pursuant to Article 7 of the 2008 Council Decision or that Article insofar as it is applied by Article 1 of the 2009 Agreement with Iceland and Norway.”.

#### **Amendment of section 108 of Act of 2008**

137. Section 108 of the Act of 2008 is amended by the insertion of “, 79A(5) or (16) ” after “of a power conferred by section 74(8), 75(9)”.

#### **Amendment of section 109 of Act of 2008**

138. Section 109 of the Act of 2008 is amended by the insertion of the following subsection after subsection (1):

“(1A) Without prejudice to the generality of subsection (1), regulations may be made by the Minister for the purposes of Chapter 3 of Part 5 regarding the obtaining or transmission of identification evidence within the meaning of that Chapter.”.

### CHAPTER 6

#### *Amendments of International Criminal Court Act 2006*

#### **Amendment of section 50 of Act of 2006**

139. Section 50 of the Act of 2006 is amended—

(a) in subsection (1), by—

(i) the substitution of “In this section and in section 50A” for “In this section”,

(ii) the insertion of the following definitions:

“ ‘ *Act of 2014* ’ means the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*;

‘DNA’ means deoxyribonucleic acid;

‘DNA profile’, in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a bodily sample from the person and that is capable of comparison with similar information derived from an examination and analysis of another

sample of biological material for the purpose of determining whether or not that other sample could relate to that person;

‘guardian’, in relation to a child (including a protected person who is a child), has the meaning it has in the *Act of 2014*;

‘non-coding part of DNA’, in relation to a person, means the chromosome regions of the person’s DNA that are not known to provide for any functional properties of the person;

‘nurse’ means a person whose name is entered for the time being in the nurses’ division of the register of nurses and midwives established under section 46 of the Nurses and Midwives Act 2011;

‘parent’, in relation to a protected person or child, has the meaning it has in the *Act of 2014*;

‘protected person’ means, subject to subsection (1A), a person (including a child) who, by reason of a mental or physical disability—

(a) lacks the capacity to understand the general nature and effect of the taking of identification evidence from him or her, or

(b) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he or she consents to identification evidence being taken from him or her;

‘retention period’ means—

(a) in the case of identification evidence, other than a fingerprint, palm print, iris identification or photograph of a person, the period from the taking of the evidence concerned to the latest date for the destruction of that evidence under subsection (12), and

(b) in the case of identification evidence consisting of a fingerprint, palm print, iris identification or photograph of a person (including any related records)—

(i) 6 years from the taking of the evidence concerned from the person, or

(ii) if the person falls under paragraph (c) or (d) of subsection (12), 3 months from the quashing or reversing, as the case may be, of the conviction concerned,

whichever is the later.”

(iii) the substitution of the following definition for the definition of “consent”:

“ ‘consent’, subject to subsections (1B) and (1J), means—

(a) subject to paragraph (b), in the case of a person who has attained the age of 18 years, the consent in writing of the person,

(b) in the case of a protected person—

(i) the consent in writing of a parent or guardian of the person, or



- (ii) an order of the District Court under section 50A authorising the taking of the identification evidence concerned from the person,
  - (c) in the case of a child (other than a protected person)—
    - (i) who has attained the age of 14 years, the consent in writing of the child and either—
      - (I) the consent in writing of a parent or guardian of the child, or
      - (II) an order of the District Court under section 50A authorising the taking of the identification evidence concerned from the child,
    - (ii) who has not attained the age of 14 years, either—
      - (I) the consent in writing of a parent or guardian of the child, or
      - (II) an order of the District Court under section 50A authorising the taking of the identification evidence concerned from the child;”,
- and
- (iv) the substitution of the following definition for the definition of “identification evidence”:
    - “ ‘identification evidence’, in relation to a person, means—
      - (a) a fingerprint, palm print, iris identification or photograph of the person, or
      - (b) a bodily sample from the person or the DNA profile of the person generated from such a sample,
    - and includes any related records.”,
  - (b) by the insertion of the following subsections after subsection (1):
    - “(1A) The reference in the definition of ‘protected person’ in subsection (1) to a mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.
    - (1B) Where, in relation to the ICC offence concerned, identification evidence is to be taken from a protected person or a child, the consent in writing of a parent or guardian of the protected person or child shall not be sought from a parent or guardian of the protected person or child, as the case may be, if—
      - (a) he or she is the victim of that offence in circumstances in which the protected person is suspected of having committed that offence,
      - (b) he or she has been arrested in respect of that offence,
      - (c) a member of the Garda Síochána (in this section called ‘a member’) not below the rank of inspector has reasonable grounds for suspecting him or her of complicity in that offence, or

- (d) a member not below the rank of inspector has reasonable grounds for believing that he or she is likely to obstruct the course of justice.
- (1C) Subsection (1B) shall not prevent a parent or guardian of a protected person or a child who does not fall under paragraph (a), (b), (c) or (d) of that subsection from giving the consent required.
- (1D) Before a member seeks the consent in writing of a parent or guardian of a protected person to the taking of identification evidence from the person, the member shall inform the parent or guardian of the matters referred to in subsection (4) in relation to the person.
- (1E) Before a member seeks the consent in writing of a parent or guardian of a child to the taking of identification evidence from the child, the member shall inform the parent or guardian of the matters referred to in subsection (4) in relation to the child.
- (1F) If a person withdraws a consent he or she had given to the taking of identification evidence under this section (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of the identification evidence, that withdrawal of consent shall be treated as a refusal to give consent to the taking of that identification evidence.
- (1G) A withdrawal of consent under subsection (1F) shall be recorded in writing by a member as soon as practicable after such withdrawal.
- (1H) Subject to subsections (1L) and (1M), the consent of a person to the taking of identification evidence under this section may not be withdrawn after the identification evidence has been taken.
- (1I) In this section references to a person giving his or her consent in writing to the taking of identification evidence under this section (whether from the person himself or herself or another person) shall include references to—
- (a) the person signing a document, or
  - (b) in case the person is unable to write, the person making his or her mark on a document,
- to indicate his or her consent.
- (1J) In the application of this section and section 50A in relation to a protected person or a child who is married, the references to a parent or guardian of the person or child, as the case may be, shall be construed as references to his or her spouse.
- (1K) The identification evidence concerned shall, if it is reasonably practicable to do so, be taken from a protected person or a child in the presence of the person who gave consent under this section for the taking of that identification evidence from the protected person or child, as the case may be, unless the protected person or child indicates that he or she does not wish to have that person present.
- (1L) If identification evidence taken under this section and transmitted pursuant to a request relates to a person who was not, at the time the evidence was taken, suspected of having committed the ICC offence concerned, the person, or another person who gave consent to the taking of the identification evidence from the person, may by notice in writing sent or given to the Commissioner request the destruction of the evidence.

- (1M) The Commissioner shall, following the receipt of a notice under subsection (1L), inform the Minister of it and the Minister shall, subject to an order made under subsection (13A), request the Court to which the evidence concerned was transmitted to destroy the evidence as soon as practicable and, in any event, to do so not more than 4 months after the receipt by the Commissioner of the notice under subsection (1L).
- (1N) In this section a reference to identification evidence in the possession of the Garda Síochána shall include a reference to identification evidence in the possession of Forensic Science Ireland of the Department of Justice and Equality.”
- (c) in subsection (3), by the substitution of the following paragraph for paragraph (b):
- “(b) that the evidence—
- (i) will be returned by the Court—
    - (I) when no longer required for that purpose, unless the Minister indicates otherwise, or
    - (II) when requested by the Minister for the purposes of destroying the evidence—
      - (A) to comply with a request to do so by or on behalf of the person to whom the identification evidence relates, or
      - (B) in accordance with section 4 of the Criminal Justice (Forensic Evidence) Act 1990, *Part 10* of the *Act of 2014* or any statutory provision providing for the destruction of fingerprints, palm prints or photographs of persons, as may be appropriate,
- or
- (ii) will be dealt with in accordance with subsections (12) and (13).”
- (d) in subsection (4), by—
- (i) the deletion of “of the Garda Síochána (a ‘member’)”,
  - (ii) the deletion of “and” at the end of paragraph (c), and
  - (iii) the substitution of the following paragraphs for paragraph (d):
- “(d) that, if he or she does consent to provide it, it may be given in evidence in proceedings before the Court, and
- (e) that the evidence may be destroyed in accordance with this section.”
- (e) in subsection (5), by the substitution of “Subject to subsections (1B) to (1K), if a person consents to provide the evidence” for “If the person consents to provide the evidence”,
- (f) in subsection (7), by the insertion of “or nurse” after “may be taken under this section only by a doctor”,
- (g) by the insertion of the following subsections after subsection (11):
- “(11A) Subject to subsections (12) and (13), any identification evidence taken under subsection (5) that is transmitted to the Court and

returned by it when no longer required for the purpose specified in the request shall be destroyed as soon as practicable after its return.

(11B) The provisions of *subsections (7), (8), (9) and (11) of section 3*, and *section 97*, of the *Act of 2014* insofar as they apply to the destruction of samples and DNA profiles of persons under that Act shall apply, with any necessary modifications, in relation to the destruction of identification evidence, other than fingerprints, palm prints, iris identifications or photographs of persons, under subsection (11A).

(11C) The provisions of section 8H of the Criminal Justice Act 1984 insofar as they apply to the destruction of fingerprints, palm prints or photographs of persons shall apply, with any necessary modifications, in relation to the destruction of fingerprints, palm prints, iris identifications or photographs of persons under subsection (11A).”,

(h) by the substitution of the following subsection for subsection (12):

“(12) When transmitting the identification evidence to the Court the Minister shall, if subsection (3) (b) (i) does not apply and subject to subsection (13), obtain an assurance that the evidence, as well as the record of any analysis of the evidence, or any other record relating to it, that may be made by the Court, will be destroyed when no longer required for the purpose specified in the request concerned and, in any event, not later than the expiration of the period of 3 months from the date on which any of the following circumstances first apply to the person the subject of that request:

(a) proceedings for an ICC offence are not instituted against that person within the period of 12 months from the taking of the identification evidence concerned from him or her and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found;

(b) proceedings for an ICC offence have been instituted against that person and he or she is acquitted or the charge against him or her is dismissed or the proceedings are discontinued;

(c) that person is convicted of an ICC offence and the conviction is quashed; or

(d) that person is convicted of an ICC offence and the conviction is reversed following an application pursuant to Article 84.”,

(i) by the substitution of the following subsection for subsection (13):

“(13) The Minister may, at the request of the Court and having consulted the Commissioner, direct that the retention period in respect of identification evidence transmitted to the Court be extended in accordance with an order made under subsection (13A).”,

and

(j) by the insertion of the following subsections after subsection (13):

“(13A) If a judge of the District Court is satisfied, on an application in that behalf by the Commissioner, that there is good reason why identification evidence transmitted pursuant to a request should not be destroyed by the Court in accordance with subsection (12), or a request to do so under subsection (1L), the judge may make an order authorising the retention of the identification evidence for such purpose permitted by this section for such period as he or she considers appropriate.

(13B) If the Commissioner intends to make an application under subsection (13A), he or she shall inform by notice in writing the person from whom the identification evidence concerned was taken, and any person who gave consent to the taking of that identification evidence from that person, of that intention.

(13C) If, on an application under subsection (13A), the person from whom the identification evidence was taken, or any other person who gave consent to the taking of that identification evidence from that person, applies to be heard by the judge of the District Court, an order shall not be made under that subsection unless a reasonable opportunity has been given to that person to be heard.

(13D) An application under subsection (13A) shall be made to a judge of the District Court who is assigned to the district court district in which the person from whom the identification evidence concerned was taken resides.

(13E) An application under subsection (13A) shall be heard otherwise than in public.

(13F) In determining an application under subsection (13A), a judge of the District Court may make such order as to costs as the judge considers appropriate.

(13G) A notice under subsection (13B) may be sent or given to a person in one of the following ways:

- (a) by delivering it to the person or his or her solicitor;
- (b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;
- (c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office."

**Application for court order authorising taking of identification evidence from protected person or child under Act of 2006**

**140.** The Act of 2006 is amended by the insertion of the following section after section 50:

" **50A.** (1) If—

- (a) a member of the Garda Síochána is unable, having made reasonable efforts to do so, to contact a parent or guardian of a protected person or child, as the case may be, for the purposes of ascertaining whether or not he or she consents to the taking of the identification evidence concerned from the person or child, as the case may be, under section 50,
- (b) subject to subsection (1C) of section 50, the circumstances referred to in subsection (1B) of that section exist in relation to a parent or guardian of a protected person or child, as the case may be, or
- (c) a protected person or child, as the case may be, does not have, or a member of the Garda Síochána not below the rank of inspector cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether the person or child, as the case may be, has, a living

parent or guardian from whom consent to the taking of the identification evidence concerned from the person or child, as the case may be, may be sought under section 50,

a member of the Garda Síochána not below the rank of inspector may apply to a judge of the District Court for an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be.

(2) A member of the Garda Síochána who intends to make an application under subsection (1) shall inform the protected person or child, as the case may be, concerned of that intention.

(3) A judge of the District Court may order—

(a) that an application under subsection (1) shall be heard otherwise than in public, or

(b) that a parent or guardian of the protected person or child, as the case may be, concerned to whom section 50(1B) applies shall be excluded from the Court during the hearing of the application,

or both if—

(i) on an application in that behalf by a member of the Garda Síochána not below the rank of inspector, the judge is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the investigation or prosecution of the ICC offence concerned in connection with which the identification evidence concerned has been sought pursuant to the request, or

(ii) the judge considers that it is otherwise desirable in the interests of justice to do so.

(4) A judge of the District Court shall, for the purposes of determining an application under subsection (1) —

(a) be satisfied that the request for the identification evidence concerned complies with subsections (2) and (3) of section 50, and

(b) have regard to—

(i) the nature and seriousness of the ICC offence concerned being investigated or prosecuted by the Court,

(ii) in so far as they can be ascertained, the wishes of the protected person or child, as the case may be, concerned regarding whether the identification evidence concerned should be taken from him or her, and

(iii) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the protected person or child, as the case may be, concerned, to make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned,

before making an order under this section.

(5) If, on an application under subsection (1), a parent or guardian of the protected person or child, as the case may be, concerned applies to be heard by the judge of the District Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that person or child, as the case may be, to be heard.

- (6) A judge of the District Court may, if he or she considers it appropriate to do so, make an order authorising the taking of the identification evidence concerned from the protected person or child, as the case may be, concerned in accordance with section 50.
- (7) An application under subsection (1) shall be made to a judge of the District Court who is assigned to the district court district in which the protected person or child concerned resides.”.

## CHAPTER 7

### *Police cooperation*

#### **Definition**

**141.** In this Chapter “law enforcement agency” means—

- (a) a police force or other authority in a place other than the State which is responsible for the prevention, detection or investigation of criminal offences in relation to that place, or
- (b) the International Criminal Police Organisation (Interpol).

#### **Transmission of DNA profiles from missing and unknown persons index of DNA Database System to law enforcement agency**

**142.** (1) Subject to *subsections (2) and (3)*, the Commissioner may obtain from the Director of FSI and transmit a DNA profile of a person that is entered in the missing and unknown persons index of the DNA Database System to a law enforcement agency for the purpose of the law enforcement agency conducting a search by comparing the DNA profile with DNA profiles held by it and informing the Commissioner of the outcome of that search with a view to—

- (a) finding or identifying the missing person,
- (b) identifying the seriously ill, or severely injured, person who is unable by reason of the illness or injury to identify himself or herself, or
- (c) identifying the body of the unknown deceased person,

as may be appropriate.

(2) A DNA profile transmitted by the Commissioner under *subsection (1)* to a law enforcement agency shall be used by the law enforcement agency only for the purpose specified in that subsection.

(3) When transmitting a DNA profile of a person under *subsection (1)* to a law enforcement agency, the Commissioner may specify conditions regarding—

- (a) the number and frequency of searches that may be conducted by the law enforcement agency to compare the DNA profile with DNA profiles held by it, and

(b) the arrangements for the return, or destruction, of the DNA profile.

#### **Receipt of DNA profiles in respect of missing persons, etc., from law enforcement agency in designated state**

**143.** (1) Subject to *subsections (2) and (3)*, the Commissioner may receive from a law enforcement agency in a designated state (including the

International Criminal Police Organisation (Interpol)) a DNA profile of a person who is—

- (a) a missing person,
- (b) a seriously ill, or severely injured, person who is unable by reason of the illness or injury to identify himself or herself, or
- (c) an unknown deceased person,

and may transmit the DNA profile to the Director of FSI to enter it, in accordance with the request of the law enforcement agency, in the missing and unknown persons index of the DNA Database System for the purpose of conducting a search by comparing the DNA profile with DNA profiles in that System under *section 68* and informing that law enforcement agency of the outcome of the search with a view to finding or identifying the person, as may be appropriate.

- (2) If, on a comparison of a DNA profile entered in the DNA Database System under *subsection (1)* with other DNA profiles in that System in accordance with *section 68* a match of DNA profiles is found, the Commissioner shall inform the law enforcement agency that supplied the DNA profile of the match.
- (3) The Commissioner may, in relation to a matching DNA profile referred to in *subsection (2)*, provide particulars of the identity of the person to whom the matching DNA profile relates to the law enforcement agency concerned.
- (4) A DNA profile entered in the DNA Database System under *subsection (1)* —
  - (a) may be removed from that System following a comparison of it with other DNA profiles in that System under *section 68*, or
  - (b) may be retained in that System for the purpose of conducting such number of comparisons of it with other DNA profiles in that System under that section, and at such frequency, as may be specified by or agreed with the law enforcement agency that supplied the DNA profile to the Commissioner.
- (5) A DNA profile entered in the DNA Database System under *subsection (1)* shall be removed from that System in accordance with any condition to do so specified by the law enforcement agency that supplied the DNA profile to the Commissioner.

**Receipt of DNA profiles from law enforcement agency in place other than designated state**

- 144.** (1) Subject to *subsections (2) and (3)*, the Commissioner may receive a DNA profile of a person from a law enforcement agency in a place other than a designated state (including the International Criminal Police Organisation (Interpol))—
- (a) for the purposes of the investigation of criminal offences in that place, or
  - (b) for the purpose of—
    - (i) finding or identifying a missing person,
    - (ii) identifying a seriously ill, or severely injured, person who is unable by reason of the illness or injury to identify himself or herself, or
    - (iii) identifying the body of an unknown deceased person,



and may transmit the DNA profile to the Director of FSI to enter it, in accordance with the request of the law enforcement agency, in the crime scene index, the reference index or, as may be appropriate, the missing and unknown persons index of the DNA Database System for the purpose of conducting a search by comparing the DNA profile with DNA profiles in that System under *section 68* and informing that law enforcement agency of the outcome of the search.

- (2) If, on a comparison of a DNA profile entered in the DNA Database System under *subsection (1)* with other DNA profiles in that System in accordance with *section 68* a match of DNA profiles is found, the Commissioner shall inform the law enforcement agency that supplied the DNA profile of the match.
- (3) If the matching DNA profile referred to in *subsection (2)* is in respect of a missing person, a seriously ill, or severely injured, person or a deceased person, the Commissioner may provide particulars of the identity of the person to the law enforcement agency concerned.
- (4) A DNA profile entered in the DNA Database System under *subsection (1)*
  - (a) may be removed from that System following a comparison of it with other DNA profiles in that System under *section 68*, or
  - (b) may be retained in that System for the purpose of conducting such number of comparisons of it with other DNA profiles in that System under that section, and at such frequency, as may be specified by or agreed with the law enforcement agency that supplied the DNA profile to the Commissioner.
- (5) A DNA profile entered in the DNA Database System under *subsection (1)* shall be removed from that System in accordance with any condition to do so specified by the law enforcement agency that supplied the DNA profile to the Commissioner.

#### **Receipt of crime scene evidence from law enforcement agency**

- 145.** (1) The Commissioner may arrange for evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency to be compared with intimate samples and non-intimate samples taken under this Act for the purposes of the investigation of criminal offences in a place (whether within or outside the State).
- (2) The Commissioner may provide to the law enforcement agency that supplied the evidence from a crime scene under *subsection (1)* information relating to the results of any comparison of it with intimate samples and non-intimate samples taken under this Act other than information relating to the identity of any person from whom an intimate sample or a non-intimate sample was taken under this Act.
- (3) The Director of FSI shall compare, or arrange for the comparison of, any evidence sent to him or her by the Commissioner under *subsection (1)* with any intimate samples or non-intimate samples taken under this Act that are in his or her possession.

#### **Saver**

- 146.** This Chapter shall not affect the operation of section 28 of the Garda Síochána Act 2005 or the Act of 2008.

CHAPTER 8

*Recognition of accredited forensic service providers carrying out laboratory activities*

**Definitions (Chapter 8)**

**147.** In this Chapter—

“accredited”, in relation to a forensic service provider carrying out laboratory activities, means the forensic service provider is accredited by a national accreditation body as complying with the standard EN ISO/IEC 17025 entitled “General requirements for the competence of testing and calibration laboratories”;

“dactyloscopic data” means fingerprint images, images of fingerprint latents, palm prints, palm print latents and templates of such images (coded minutiae);

“forensic service provider” means any organisation, whether public or private, that carries out laboratory activities at the request of competent law enforcement or judicial authorities in the State or a Member State;

“Irish National Accreditation Board” means the committee commonly known by that name established pursuant to section 10 of the Industrial Development Act 1993;

“laboratory activities” means measures taken in a laboratory when locating and recovering traces on items, as well as developing, analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence;

“national accreditation body” means—

- (a) in the case of the State, the Irish National Accreditation Board, and
- (b) in the case of a Member State, the sole body in the Member State that performs accreditation with authority derived from the Member State in accordance with Regulation (EC) No. 765/2008;

“results”, in relation to laboratory activities, means any analytical outputs and directly associated interpretation.

**Recognition of accredited forensic service providers carrying out laboratory activities in Member States**

**148.** (1) The results of an accredited forensic service provider carrying out the laboratory activities referred to in *subsection (2)* in a Member State shall be recognised by the authorities in the State which are responsible for the prevention, detection and investigation of criminal offences as being as reliable as the results of an accredited forensic service provider carrying out such laboratory activities in the State.

(2) The laboratory activities to which *subsection (1)* applies are those that result in the generation of—

- (a) DNA profiles, or
- (b) dactyloscopic data.

PART 13

MISCELLANEOUS

**Sample may be taken from person even if bodily sample taken previously**

**149.** For the avoidance of doubt it is hereby declared that, subject to *sections 25, 30, 38, 39, 47 and 51*, a sample may be taken from a person under a provision of this Act even if a bodily sample had been taken from the person under—

- (a) the *Criminal Justice (Forensic Evidence) Act 1990* or otherwise prior to the commencement of this section, or
- (b) the same or another provision of this Act previously.

**Authorised persons**

**150.** (1) A member of the Garda Síochána not below the rank of superintendent may appoint in writing a person (other than a member of the Garda Síochána) to be an authorised person for the purposes of *Parts 3, 5 and 6* (in this Act called an “authorised person”).

(2) An authorised person may perform the functions conferred on an authorised person by *Parts 3, 5 and 6*.

(3) An authorised person shall be furnished with a warrant of appointment and shall, when performing a function under *Parts 3 and 6*, if requested by a person affected, produce the warrant of appointment or a copy of it to the person.

(4) An appointment to be an authorised person under this section may be revoked in writing by a member of the Garda Síochána not below the rank of superintendent.

**Authorised members of staff of children detention schools**

**151.** (1) The Director of a children detention school may appoint in writing a member of the staff of the school to be an authorised member of the staff for the purposes of *Part 4* (in this Act called an “authorised member of the staff”).

(2) An authorised member of the staff of a children detention school may perform the functions conferred on such a member of the staff of the school by *Part 4*.

(3) An appointment to be an authorised member of the staff of a children detention school may be revoked in writing by the Director of the school.

**Delegation of functions of Commissioner under this Act**

**152.** (1) The Commissioner may, in writing, delegate any of his or her functions under this Act to—

- (a) members of the Garda Síochána specified by rank or name, or
- (b) members of the civilian staff of the Garda Síochána by grade, position, name or otherwise.

(2) A delegation under this section may—

- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,

- (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the Commissioner at any time.
- (3) The delegation of a function under this section does not preclude the Commissioner from performing the function.
- (4) Where the functions of the Commissioner under a provision of this Act are delegated to a person, any references in that provision to the Commissioner shall be construed as references to that person.
- (5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Commissioner.

**Delegation of functions of governor of prison or place of detention or Director of children detention school under this Act**

- 153.** (1) The governor of a prison or a place of detention may, in writing, delegate any of his or her functions under this Act to a prison officer of the prison or the place of detention, as the case may be, specified by grade, name or otherwise.
- (2) The Director of a children detention school may, in writing, delegate any of his or her functions under this Act to a member of the staff of the school specified by grade, name or otherwise.
- (3) A delegation under this section may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
  - (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the governor of a prison or a place of detention or the Director of a children detention school, as the case may be, at any time.
- (4) The delegation of a function under this section does not preclude the governor of a prison or a place of detention or the Director of a children detention school, as the case may be, from performing the function.
- (5) Where the functions of the governor of a prison or a place of detention or the Director of a children detention school under a provision of this Act are delegated to a person, any references in that provision to the governor of a prison or a place of detention or the Director of a children detention school, as the case may be, shall be construed as references to that person.
- (6) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the governor of the prison or place of detention or the Director of the children detention school, as the case may be, concerned.
- (7) The Director of a children detention school shall inform the board of management of the school of a delegation under this section but, if he or she does not do so, it shall not affect the validity of the delegation or of any act or thing done pursuant to it.
- (8) In this section “board of management”, in relation to a children detention school, shall be construed in accordance with section 164 of the Act of 2001.

**Delegation of functions of Director of FSI under this Act**

- 154.** (1) The Director of FSI may, in writing, delegate any of his or her functions under this Act to members of the staff of FSI specified by grade, name or otherwise.
- (2) A delegation under this section may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
  - (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the Director of FSI at any time.
- (3) The delegation of a function under this section does not preclude the Director of FSI from performing the function.
- (4) Where the functions of the Director of FSI under a provision of this Act are delegated to a member of the staff of FSI, any references in that provision to the Director of FSI shall be construed as references to that member of staff.
- (5) An act or thing done by a member of the staff of FSI pursuant to a delegation under this section has the same force and effect as if done by the Director of FSI.

**Further provisions regarding taking of samples under this Act or certain identification evidence under Act of 2008 or Act of 2006**

- 155.** (1) A sample under this Act or identification evidence under the Act of 2008 or the Act of 2006—
- (a) shall be taken from a person in circumstances affording reasonable privacy to the person, and
  - (b) shall not be taken from a person in the presence or view of a person whose presence is not necessary for the purposes of the taking of the sample or that identification evidence, as the case may be, or required or permitted by this Act or each of those Acts, as the case may be.
- (2) Nothing in this Act authorises the taking of a sample or such identification evidence from a person in a cruel, inhuman or degrading manner.
- (3) A sample shall not be taken under *Part 2* from a person who is in custody under any of the provisions referred to in *section 9(1)* while he or she is being questioned under that provision and, if questioning has not been completed before the sample is to be taken, it shall be suspended while the sample is being taken.
- (4) In this section “identification evidence” —
- (a) in the case of the Act of 2008, has the meaning given to it by section 76 of that Act other than a fingerprint, palm print or photograph of a person, and
  - (b) in the case of the Act of 2006, has the meaning given to it by section 50 of that Act other than a fingerprint, palm print, iris identification or photograph of a person.

**Regulations regarding taking of samples**

- 156.** (1) Subject to this Act, the Minister shall make regulations relating to the taking of samples under this Act.
- (2) (a) Without prejudice to the generality of *subsection (1)*, the regulations shall, in relation to the taking of samples under *Part 4* from child offenders, prescribe arrangements regarding the timing of the taking of such samples from child offenders having regard to—
- (i) the desirability, where appropriate, of taking such samples while child offenders are detained in a children detention school or a place of detention,
  - (ii) in the case of child offenders who are so detained, the desirability of taking such samples at as late a date as is practicable consistent with the requirements of this Act regarding the taking of such samples, and
  - (iii) the need for child offenders to be of an age at which they have the capacity to understand the general nature and effect of the taking of such samples from them.
- (b) Regulations under this subsection may prescribe different arrangements regarding the taking of samples under *Part 4* from child offenders of different ages and in respect of child offenders who are detained in a children detention school or a place of detention and those who are not so detained.
- (3) Without prejudice to the generality of *subsection (1)*, the regulations may prescribe all or any of the following:
- (a) the manner in which samples may be taken under this Act;
  - (b) the location and physical conditions in which samples may be taken under this Act;
  - (c) the persons (including members of the Garda Síochána, prison officers, authorised members of the staff of a children detention school or authorised persons), and the number of such persons, who may be present when samples are taken, or to be taken, under this Act;
  - (d) the manner in which, and by whom, the following shall be recorded in the records of a Garda Síochána station or, in the case of the Ombudsman Commission, the records of the Ombudsman Commission:
    - (i) an authorisation given by a member of the Garda Síochána under this Act;
    - (ii) a consent given, a refusal to give consent or a withdrawal of consent by a person (or child) under this Act;
    - (iii) the giving of information to a person (or child) by a member of the Garda Síochána or an authorised person under this Act;
    - (iv) a notice sent or given by a member of the Garda Síochána, or sent or given to a member of the Garda Síochána, under this Act;
    - (v) an application or a request relating to the destruction of a sample, or the removal of a DNA profile from the DNA Database System, or both made under *Part 10*;
    - (vi) a notice sent or given by the Commissioner to a person (or child) under *section 98*;

- (vii) particulars of the location, time and manner of the taking of a sample authorised to be taken by a member of the Garda Síochána under this Act;
- (e) the manner in which, and by whom, the following shall be recorded in the records of a prison:
  - (i) an authorisation given by the governor of the prison;
  - (ii) the giving of information to an offender by a prison officer under *Part 4*;
  - (iii) particulars of the location, time and manner of the taking of a sample by a prison officer under this Act;
- (f) the manner in which, and by whom, the following shall be recorded in the records of a children detention school:
  - (i) an authorisation given by the Director of the school under this Act;
  - (ii) the giving of information to a child offender by an authorised member of the staff of the school under *Part 4*;
  - (iii) particulars of the location, time and manner of the taking of a sample by an authorised member of the staff of the school under this Act;
- (g) the manner in which, and by whom, the following shall be recorded in the records of a place of detention:
  - (i) an authorisation given by the governor of the place of detention under this Act;
  - (ii) the giving of information to a child offender by a prison officer in a place of detention under *Part 4*;
  - (iii) particulars of the location, time and manner of the taking of a sample by a prison officer in a place of detention under this Act.

#### Annotations

#### Editorial Notes:

- E16** Power pursuant to section exercised (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 156) Regulations 2015* (S.I. No. 528 of 2015), in effect as per reg. 1(2).

#### Codes of practice

**157.** (1) The Commissioner shall, as soon as practicable after the commencement of this section and following consultation with the Director of FSI, prepare for submission to the Minister a draft code of practice for the purposes of providing practical guidance as to the procedures regarding the taking of samples by—

- (a) members of the Garda Síochána,
- (b) authorised persons, or
- (c) other persons who are prescribed for the purpose of taking samples under *section 35, 49* or *50*,

from persons or bodies of deceased persons, as the case may be, under this Act or causing such samples to be taken.

- (2) The Ombudsman Commission shall, as soon as practicable after the commencement of this section and following consultation with the Director of FSI, prepare for submission to the Minister a draft code of practice for the purposes of providing practical guidance as to the procedures regarding the taking by designated officers of the Ombudsman Commission within the meaning of Part 4 of the Act of 2005 of samples from persons under this Act or causing such samples to be taken.
- (3) The Director General of the Irish Prison Service of the Department of Justice and Equality shall, as soon as practicable after the commencement of this section and following consultation with the Director of FSI, prepare for submission to the Minister a draft code of practice for the purposes of providing practical guidance as to the procedures regarding the taking by prison officers of samples from persons under this Act or causing such samples to be taken.
- (4) The Director of FSI shall, as soon as practicable after the commencement of this section, prepare for submission to the Minister a draft code of practice for the purpose of providing practical guidance as to the procedures regarding the taking by persons who are authorised in writing by the Director of FSI of samples from persons under this Act or causing such samples to be taken.
- (5) The National Director of the Irish Youth Justice Service of the Department of Children and Youth Affairs shall, as soon as practicable after the commencement of this section and following consultation with the Director of FSI, prepare for submission to the Minister a draft code of practice for the purposes of providing practical guidance as to the procedures regarding the taking by authorised members of the staff of children detention schools of samples from children under this Act or causing such samples to be taken.
- (6) A code of practice prepared under this section shall be submitted to the Minister for approval.
- (7) The Minister may approve, or approve subject to modifications, a code of practice submitted to the Minister under *subsection (6)* and, when a code of practice has been so approved, it shall apply and have effect in accordance with its terms.
- (8) (a) A code of practice approved under this section may be amended or revoked.  
(b) Amendments to such a code of practice, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.  
(c) If it is proposed to revoke a code of practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.
- (9) The Minister may approve, or approve subject to modifications, an amended code of practice submitted to the Minister under *subsection (8)(b)* and, when such a code of practice has been so approved, it shall apply and have effect in accordance with its terms.
- (10) The Minister may approve the revocation of a code of practice.
- (11) A code of practice, or an amended code of practice, approved by the Minister under this section shall be made publicly available by the Commissioner or other person or body who prepared it.



### Protocols

**158.** (1) As soon as practicable after the commencement of this section, the Director of FSI, the Commissioner and the Ombudsman Commission shall, by written protocols, make arrangements concerning the following matters:

- (a) the transmission of samples taken under this Act by the Garda Síochána or the Ombudsman Commission to FSI;
- (b) the reporting by the Director of FSI of the results of searches of the DNA Database System to the Garda Síochána or the Ombudsman Commission, as may be appropriate;
- (c) the operation of *Part 10*.

(2) As soon as practicable after the commencement of this section, the Director of FSI, the Director General of the Irish Prison Service of the Department of Justice and Equality and the National Director of the Irish Youth Justice Service of the Department of Children and Youth Affairs shall, by written protocols, make arrangements concerning the transmission of samples taken under this Act from persons in prisons, places of detention and children detention schools to FSI.

### Disclosure of information

**159.** (1) Without prejudice to the [Official Secrets Act 1963](#) and subject to [section 69](#), a person who has, or has had, access to information relating to a sample taken from a person (or child) under this Act, or information in the DNA Database System, shall not disclose the information except for one or more of the following purposes:

- (a) the purposes of the investigation of an offence or an inquiry relating to a missing person, an unknown person or an unknown deceased person;
- (b) the purpose of a decision whether to institute proceedings for an offence;
- (c) the purposes of criminal proceedings;
- (d) the purpose of determining whether it is necessary to take a sample under this Act;
- (e) the purposes of an inquest under the Coroners Act 1962;
- (f) the purpose of making the information available to the person to whom the information relates;
- (g) the purposes of a review of an alleged miscarriage of justice under section 2 of the Criminal Procedure Act 1993;
- (h) the purposes of administering the DNA Database System;
- (i) the purposes of automated searching and automated comparison of DNA profiles in the DNA Database System in accordance with *Chapter 2 of Part 12*;
- (j) the purposes of a request under Chapter 3 of Part 5 of the Act of 2008 or a request under section 50 of the Act of 2006;
- (k) the purposes of compliance with section 8 or 9 of the Europol Act 2012;
- (l) the purposes of *Chapter 7 of Part 12*;

- (m) the purposes of an investigation of a complaint concerning the conduct of a member of the Garda Síochána by the Ombudsman Commission;
  - (n) the purposes of the performance by the Committee of its functions under this Act;
  - (o) the purposes of the performance by the Data Protection Commissioner of his or her functions under the [Data Protection Act 1988](#);
  - (p) the purposes of civil proceedings (including disciplinary proceedings) regarding the manner in which a sample was taken under this Act;
  - (q) the disclosure of the information to any person if the person to whom the information relates consents to its disclosure to that person;
  - (r) any other purpose that is prescribed.
- (2) A person who intentionally or recklessly discloses information in contravention of this section shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

#### Annotations

#### Modifications (not altering text):

**C25** Functions transferred and references to “Data Protection Commissioner” and “Office of the Data Protection Commission” construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 14(1), (2), in effect as per ss. 9, 14(4).

Note establishment of the Data Protection Commission (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 10(1), in effect as per s. 9.

#### Transfer of functions of Data Protection Commissioner to Commission

**14.** (1) All functions that, immediately before the establishment day, were vested in the Data Protection Commissioner are transferred to the Commission.

(2) A reference in any enactment or instrument under an enactment to the Data Protection Commissioner or to the Office of the Data Protection Commissioner shall be construed as a reference to the Commission.

...

#### Editorial Notes:

**E17** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(1), S.I. No. 662 of 2010.

#### Offences and penalties

**160.** (1) A person who obstructs or attempts to obstruct any member of the Garda Síochána or other person acting under powers conferred by *Part 2* other than [section 11](#) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €30,000 or imprisonment for a term not exceeding 3 years or both.

- (2) A person who obstructs or attempts to obstruct a member of the Garda Síochána, a prison officer of a prison or a place of detention or an authorised member of the staff of a children detention school acting under powers conferred by *section 11, 31, 32 or 34* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (3) A person who—
- (a) obstructs a member of the Garda Síochána in the exercise of his or her powers under *section 35*, or
  - (b) does not comply, or obstructs compliance, with an order made by a judge of the District Court under that section,
- shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (4) A person who obstructs or attempts to obstruct the Committee in the performance of its functions under *Part 9* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (5) The application of this section to a child is without prejudice to section 108 of the Act of 2001.

**Annotations**

**Editorial Notes:**

- E18** A class A fine means a fine not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(1), S.I. No. 662 of 2010.

**Authorisations under this Act**

- 161.** (1) An authorisation given under—
- (a) *section 11(2), 12(2)(a), 13(2), 20(1)(b)(i), 24(3), 25(3)(i), 29(2), 34(2), 48(3) or 50(2)*,
  - (b) *subsection (4) or (5) of section 21*,
  - (c) *subsection (4) or (5) of section 22*,
  - (d) *subsection (5) or (7)(a) of section 31*,
  - (e) *subsection (5) or (7)(a) of section 32*,
  - (f) *paragraph (a), (b) or (c) of section 36(3)*, or
  - (g) *subsection (7)(a) or (8)(a) of section 38* ,
- may be given orally but, if it is given orally, it shall be confirmed in writing as soon as practicable.
- (2) The Minister may prescribe the form of any authorisation referred to in *subsection (1)*.

**Evidence of certain authorisations under this Act**

**162.** (1) In any criminal proceedings, a certificate to which an authorisation given under *Part 2* other than *section 11*, or a copy of such an authorisation, is annexed—

(a) purporting to be signed by a member of the Garda Síochána, and

(b) stating that—

(i) he or she gave the authorisation concerned, and

(ii) if appropriate, the grounds on which that authorisation was given,

shall be admissible as evidence of the matters stated in the certificate.

(2) In any criminal proceedings, the court may—

(a) if it considers that the interests of justice so require, direct that oral evidence be given of the matters stated in a certificate under this section, and

(b) adjourn the proceedings to a later date for the purpose of receiving the oral evidence.

(3) The Minister may prescribe the form of a certificate under this section.

**Annotations**

**Editorial Notes:**

**E19** Power pursuant to section exercised (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Certificates) Regulations 2015* (S.I. No. 526 of 2015).

**Service of notices**

**163.** A notice that is required to be sent or given to a person under this Act may be sent or given to the person in one of the following ways:

(a) by delivering it to the person or his or her solicitor;

(b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;

(c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office.

**Non-compliance by member of Garda Síochána with this Act, regulations thereunder or code of practice**

**164.** (1) A failure to observe any provision of this Act or of any regulations made thereunder or a code of practice, on the part of any member of the Garda Síochána in the performance by him or her of any function under this Act, shall not of itself render that member liable to any criminal or civil proceedings or (without prejudice to the power of the court to exclude evidence at its discretion) shall not of itself affect the admissibility of any evidence thereby obtained.

- (2) A failure on the part of any member of the Garda Síochána to observe any provision of this Act or of any regulations made thereunder or a code of practice shall render that member liable to disciplinary proceedings.

**Non-application of Act**

- 165.** (1) Except as provided for in this Act, nothing in this Act shall affect the operation of any provision of any other enactment relating to—
- (a) a requirement on a person to provide a bodily sample under that enactment,
  - (b) any power exercisable by a member of the Garda Síochána or other person under that enactment, or
  - (c) the performance by a person or body (including the Medical Bureau of Road Safety) of any functions of the person or body under that enactment.
- (2) If a DNA profile is generated from a bodily sample taken from a person under any provision of another enactment, it shall not be entered in the DNA Database System, other than in the crime scene index of the investigation division, unless it is provided for in this Act.

**Re-arrest in case of match of DNA profiles**

**166.** The reference to a member of the Garda Síochána not below the rank of superintendent in each of the provisions specified in column (3) of the Table to this section of the enactments specified in column (2) of that Table shall be construed as a reference to a member of the Garda Síochána not below the rank of inspector if the reason or one of the reasons for seeking the arrest of the person concerned for—

- (a) the offence in relation to which he or she was detained under section 30 of the Act of 1939, section 4 of the Act of 1984, section 2 of the Act of 1996 or section 50 of the Act of 2007, as the case may be, or
- (b) any other offence of which, at the time of the first arrest, the member of the Garda Síochána by whom he or she was arrested suspected, or ought reasonably to have suspected, him or her of having committed,

is that the Garda Síochána have, since the person's release, obtained the results of the forensic testing of a sample taken under the Criminal Justice (Forensic Evidence) Act 1990 or otherwise or under *Part 2* from the person while he or she was detained under section 30 of the Act of 1939, section 4 of the Act of 1984, section 2 of the Act of 1996 or section 50 of the Act of 2007, as the case may be, and those results indicate a match of the person's DNA profile with a DNA profile generated from a sample taken from the crime scene in respect of the offence for which the arrest of the person is sought.

Table

Number and Year	Short Title	Provision amended
(1)	(2)	(3)
No. 13 of 1939	Offences Against the State Act 1939	Section 30A(1).
No. 22 of 1984	Criminal Justice Act 1984	Section 10(1).
No. 29 of 1996	Criminal Justice (Drug Trafficking) Act 1996	Section 4(1).

No. 29 of 2007 Criminal Justice Act 2007 Section 51(1).

**Exercise of certain power by judge of District Court outside district court district**

**167.** Section 32A of the *Courts (Supplemental Provisions) Act 1961* shall apply, with any necessary modifications, to the exercise by a judge of the District Court of the power conferred by *section 25(10)*.

**Procedures that may be used for transmission of certain samples for forensic testing**

- 168.** (1) A relevant sample may be placed in a tamper-evident container.
- (2) Whenever a relevant sample is placed in a tamper-evident container under *subsection (1)*, the tamper-evident container shall be sealed immediately.
- (3) The person who, under *subsection (2)*, seals a tamper-evident container containing a relevant sample shall—
- (a) ensure that a unique number for the purpose of facilitating the identification of the sample is marked on the tamper-evident container,
- (b) ensure that particulars regarding the type of sample concerned are recorded on the tamper-evident container or on the relevant sample or anything attached to or enclosing it, and
- (c) record his or her name, and the date of sealing the tamper-evident container, thereon.
- (4) Where the procedures referred to in *subsections (1) to (3)* have been completed, a member of the Garda Síochána shall forward, or cause to be forwarded, the sealed tamper-evident container containing the relevant sample concerned for forensic testing.
- (5) In any criminal proceedings, it shall be presumed until the contrary is shown, that *subsections (1) to (4)* have been complied with in relation to a relevant sample.
- (6) In this section and in *section 169* —

“crime scene sample” means any substance or material (or a sample thereof) found at, or recovered from, a crime scene with a view to having it forensically tested;

“forensic testing”, in relation to a relevant sample, means the examination and analysis of the sample and the carrying out of biochemical or other scientific tests and techniques used in connection with the detection and investigation of crime or the identification of persons or bodies, as may be appropriate, on the sample and, if appropriate, includes the generation of a DNA profile from the sample in respect of a person;

“relevant sample” means—

- (a) an intimate sample,
- (b) a non-intimate sample, or
- (c) a crime scene sample;

“tamper-evident container”, in relation to a relevant sample, means a container, whether comprising a tube, envelope, bag or other receptacle, into which the sample is placed and which—

- (a) is marked with a unique number for the purpose of facilitating the identification of the sample,
- (b) is sealable after the sample is placed in it without interfering with the integrity of the sample, and
- (c) once sealed cannot be opened, whether by cutting, tearing or other means, without leaving visible evidence of having been opened or of an attempt having been made to do so.

#### Provisions relating to evidence in proceedings regarding certain samples

##### 169. F26[...]

#### Annotations

#### Amendments:

- F26** Repealed (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 58, S.I. No. 525 of 2023, art. 3(e).

#### Editorial Notes:

- E20** Power pursuant to section exercised (20.11.2015) by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Certificates) Regulations 2015* (S.I. No. 526 of 2015).

#### Amendment of Misuse of Drugs Act 1984

**170.** The Misuse of Drugs Act 1984 is amended by the substitution of the following section for section 10:

“**10.** In any proceedings for an offence under the Principal Act or section 5 of this Act, notwithstanding *section 169* of the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* the production of a certificate purporting to be signed by an officer of Forensic Science Ireland of the Department of Justice and Equality and relating to—

- (a) the receipt, handling, transmission or storage, or
- (b) an examination, inspection, test or analysis,

as the case may be, specified in the certificate of a controlled drug or other substance, product or preparation so specified shall, until the contrary is proved, be evidence of any fact thereby certified without proof of any signature thereon or that any such signature is that of such officer.”.

#### Amendment of section 6(4) of Act of 1984

**171.** Section 6(4) of the Act of 1984 is amended by the substitution of “a class A fine” for “a fine not exceeding €3,000”.

#### Change of name of Forensic Science Laboratory of Department of Justice and Equality

**172.** The part of the Department of Justice and Equality known as the Forensic Science Laboratory before the passing of this Act shall, on and after that passing, be known as Forensic Science Ireland and references in any enactment to the Forensic Science Laboratory of that Department of State shall be construed accordingly.

## SCHEDULE 1

*DNA Database System Oversight Committee**Section 71**Membership of Committee*

1. (1) The Committee shall comprise 6 members, being a chairperson and 5 ordinary members.
- (2) The Director of FSI shall be an ex officio member of the Committee.
- (3) The chairperson and ordinary members (other than the Director of FSI) of the Committee shall be appointed by the Minister.
- (4) The chairperson of the Committee shall be a judge of the High Court or the Circuit Court or a former judge of the High Court or the Circuit Court.
- (5) F27[...]
- (6) The Minister shall, in so far as practicable, ensure that there is an equal balance of men and women amongst the persons who are appointed to be ordinary members of the Committee.
- (7) When appointing persons to be ordinary members of the Committee, the Minister shall have regard to the desirability of their having obtained qualifications, experience or expertise in science, F28[human rights, data protection] or any other field which the Minister considers appropriate having regard to the functions of the Committee under this Act.

*Terms and conditions of office of members of Committee*

2. (1) The term of office of a member of the Committee (other than the Director of FSI) shall be such period, not exceeding 4 years, as the Minister may determine at the time of his or her appointment.
- (2) Subject to this paragraph, a member of the Committee shall be eligible for re-appointment.
- (3) The Minister may at any time, for stated reasons, terminate the membership of any member of the Committee.
- (4) A member of the Committee may resign his or her membership of the Committee by notice in writing sent or given to the Minister, and the resignation shall take effect on the day on which the Minister receives the notice.
- (5) The members of the Committee shall, subject to the provisions of this Schedule, hold office upon such terms and conditions as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine.
- (6) The chairperson of the Committee other than a serving judge and the ordinary members of the Committee, other than the Director of FSI F27[...], shall be paid such remuneration (if any) as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine.
- (7) The chairperson and ordinary members of the Committee shall be paid such allowances for expenses as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine.



*Vacancies in membership of Committee*

3. (1) If a member of the Committee dies, resigns or ceases to be a member of the Committee, the Minister may appoint a person to be a member of the Committee to fill the vacancy so occasioned.
- (2) A member of the Committee who is appointed to fill any such vacancy holds office for the remainder of the term of office of the replaced member of the Committee.
- (3) The Committee may act notwithstanding one or more vacancies in its membership.

*Meetings and procedures of Committee*

4. (1) The Committee shall hold such and so many meetings as may be necessary for the performance of its functions and may make such arrangements for the conduct of its meetings and business (including the establishment of subcommittees and fixing of a quorum for meetings) as it considers appropriate.
- (2) Subject to the provisions of this Schedule, the Committee shall regulate its own procedure by rules or otherwise.
- (3) At a meeting of the Committee—
  - (a) the chairperson of the Committee shall, if present, be the chairperson of the meeting, or
  - (b) if and for so long as the chairperson of the Committee is not present or if that office is vacant, the members of the Committee who are present shall choose one of their number to be chairperson of the meeting.

*Funds, facilities and services for Committee*

5. (1) The Minister shall, with the consent of the Minister for Public Expenditure and Reform, provide the Committee with such funds, facilities and services (including secretarial services) as the Minister, following consultation with the chairperson of the Committee, considers appropriate for the performance by the Committee of its functions under this Act.
- (2) The Committee may, with the approval of the Minister, engage such consultants or advisers with scientific or technical expertise as the Committee considers necessary for the performance of its functions under this Act.

**Annotations****Amendments:**

- F27** Deleted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 81(a), (c), S.I. No. 525 of 2023, art. 3(g).
- F28** Substituted (1.11.2023) by *Criminal Justice (Miscellaneous Provisions) Act 2023* (24/2023), s. 81(b), S.I. No. 525 of 2023, art. 3(g).

**Modifications (not altering text):**

- C26** Functions transferred and references to “Data Protection Commissioner” and “Office of the Data Protection Commission” construed (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 14(1), (2), in effect as per ss. 9, 14(4).

Note establishment of the Data Protection Commission (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 10(1), in effect as per s. 9.

**Transfer of functions of Data Protection Commissioner to Commission**

14. (1) All functions that, immediately before the establishment day, were vested in the Data Protection Commissioner are transferred to the Commission.

(2) A reference in any enactment or instrument under an enactment to the Data Protection Commissioner or to the Office of the Data Protection Commissioner shall be construed as a reference to the Commission.

...

SCHEDULE 2

*Text of Council Decision 2008/615/JHA of 23 June 2008*

*Section 109*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1) (a) and (b), Article 31(1) (a), Article 32 and Article 34(2) (c) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden,

Having regard to the Opinion of the European Parliament<sup>1</sup>

Whereas:

- (1) Following the entry into force of the Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, crossborder crime and illegal migration hereinafter (Prüm Treaty), this initiative is submitted, in consultation with the European Commission, in compliance with the provisions of the Treaty on European Union, with the aim of incorporating the substance of the provisions of the Prüm Treaty into the legal framework of the European Union.
- (2) The conclusions of the European Council meeting in Tampere in October 1999 confirmed the need for improved exchange of information between the competent authorities of the Member States for the purpose of detecting and investigating offences.
- (3) In the Hague Programme for strengthening freedom, security and justice in the European Union of November 2004, the European Council set forth its conviction that for that purpose an innovative approach to the cross-border exchange of law enforcement information was needed.

<sup>1</sup> Opinion of 10 June 2007 (not yet published in the Official Journal).

- (4) The European Council accordingly stated that the exchange of such information should comply with the conditions applying to the principle of availability. This means that a law enforcement officer in one Member State of the Union who needs information in order to carry out his duties can obtain it from another Member State and that the law enforcement authorities in the Member State that holds this information will make it available for the declared purpose, taking account of the needs of investigations pending in that Member State.
- (5) The European Council set 1 January 2008 as the deadline for achieving this objective in the Hague Programme.
- (6) Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union<sup>2</sup> already lays down rules whereby the Member States' law enforcement authorities may exchange existing information and intelligence expeditiously and effectively for the purpose of carrying out criminal investigations or criminal intelligence operations.
- (7) The Hague Programme for strengthening freedom, security and justice states also that full use should be made of new technology and that there should also be reciprocal access to national databases, while stipulating that new centralised European databases should be created only on the basis of studies that have shown their added value.
- (8) For effective international cooperation it is of fundamental importance that precise information can be exchanged swiftly and efficiently. The aim is to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. For the joint use of data these procedures should be subject to accountability and incorporate appropriate guarantees as to the accuracy and security of the data during transmission and storage as well as procedures for recording data exchange and restrictions on the use of information exchanged.
- (9) These requirements are satisfied by the Prüm Treaty. In order to meet the substantive requirements of the Hague Programme for all Member States within the time-scale set by it, the substance of the essential parts of the Prüm Treaty should become applicable to all Member States.
- (10) This Decision therefore contains provisions which are based on the main provisions of the Prüm Treaty and are designed to improve the exchange of information, whereby Member States grant one another access rights to their automated DNA analysis files, automated dactyloscopic identification systems and vehicle registration data. In the case of data from national DNA analysis files and automated dactyloscopic identification systems, a hit/no hit system should enable the searching Member State, in a second step, to request specific related personal data from the Member State administering the file and, where necessary, to request further information through mutual assistance procedures, including those adopted pursuant to Framework Decision 2006/960/JHA.
- (11) This would considerably speed up existing procedures enabling Member States to find out whether any other Member State, and if so, which, has the information it needs.
- (12) Cross-border data comparison should open up a new dimension in crime fighting. The information obtained by comparing data should open up new investigative approaches for Member States and thus play a crucial role in assisting Member States' law enforcement and judicial authorities.

<sup>2</sup> O.J. No. L386, 29.12.2006, p.89.

- (13) The rules are based on networking Member States' national databases.
- (14) Subject to certain conditions, Member States should be able to supply personal and non-personal data in order to improve the exchange of information with a view to preventing criminal offences and maintaining public order and security in connection with major events with a cross-border dimension.
- (15) In the implementation of Article 12, Member States may decide to give priority to combating serious crime bearing in mind the limited technical capacities available for transmitting data.
- (16) In addition to improving the exchange of information, there is a need to regulate other forms of closer cooperation between police authorities, in particular by means of joint security operations (e.g. joint patrols).
- (17) Closer police and judicial cooperation in criminal matters must go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, to be guaranteed by special data protection arrangements, which should be tailored to the specific nature of different forms of data exchange. Such data protection provisions should take particular account of the specific nature of cross-border online access to databases. Since, with online access, it is not possible for the Member State administering the file to make any prior checks, a system ensuring post hoc monitoring should be in place.
- (18) The hit/no hit system provides for a structure of comparing anonymous profiles, where additional personal data is exchanged only after a hit, the supply and receipt of which is governed by national law, including the legal assistance rules. This set-up guarantees an adequate system of data protection, it being understood that the supply of personal data to another Member State requires an adequate level of data protection on the part of the receiving Member States.
- (19) Aware of the comprehensive exchange of information and data resulting from closer police and judicial cooperation, this Decision seeks to warrant an appropriate level of data protection. It observes the level of protection designed for the processing of personal data in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Additional Protocol of 8 November 2001 to the Convention and the principles of Recommendation No R (87) 15 of the Council of Europe Regulating the Use of Personal Data in the Police Sector.
- (20) The data protection provisions contained in this Decision also include data protection principles which were necessary due to the lack of a Framework Decision on data protection in the Third Pillar. This Framework Decision should be applied to the entire area of police and judicial cooperation in criminal matters under the condition that its level of data protection is not lower than the protection laid down in the Council of Europe Convention for the Protection of Individuals with regard to automatic Processing of Personal Data of 28 January 1981 and its additional Protocol of 8 November 2001 and takes account of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers to Member States regulating the use of personal data in the police sector, also where data are not processed automatically.
- (21) Since the objectives of this Decision, in particular the improvement of information exchange in the European Union, cannot be sufficiently achieved by the Member States in isolation owing to the cross-border nature of crime fighting and security issues so that the Member States are

obliged to rely on one another in these matters, and can therefore be better achieved at European Union level, the Council may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty establishing the European Community, to which Article 2 of the Treaty on European Union refers. In accordance with the principle of proportionality pursuant to Article 5 of the EC Treaty, this Decision does not go beyond what is necessary to achieve those objectives.

(22) This Decision respects the fundamental rights and observes the principles set out in particular in the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

## Chapter 1

### GENERAL ASPECTS

#### *Article 1*

#### **Aim and scope**

By means of this Decision, the Member States intend to step up cross-border cooperation in matters covered by Title VI of the Treaty, particularly the exchange of information between authorities responsible for the prevention and investigation of criminal offences. To this end, this Decision contains rules in the following areas:

- (a) provisions on the conditions and procedure for the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data (Chapter 2);
- (b) provisions on the conditions for the supply of data in connection with major events with a cross-border dimension (Chapter 3);
- (c) provisions on the conditions for the supply of information in order to prevent terrorist offences (Chapter 4);
- (d) provisions on the conditions and procedure for stepping up cross-border police cooperation through various measures (Chapter 5).

## Chapter 2

### ONLINE ACCESS AND FOLLOW-UP REQUESTS

#### *SECTION 1*

#### **DNA profiles**

#### *Article 2*

#### **Establishment of national DNA analysis files**

1. Member States shall open and keep national DNA analysis files for the investigation of criminal offences. Processing of data kept in those files, under this Decision, shall be carried out in accordance with this Decision, in compliance with the national law applicable to the processing.
2. For the purpose of implementing this Decision, the Member States shall ensure the availability of reference data from their national DNA analysis files as referred to in the first sentence of paragraph 1. Reference data shall only include DNA profiles established from the non-coding part of

DNA and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual (unidentified DNA profiles) shall be recognisable as such.

3. Each Member State shall inform the General Secretariat of the Council of the national DNA analysis files to which Articles 2 to 6 apply and the conditions for automated searching as referred to in Article 3(1) in accordance with Article 36.

*Article 3*

**Automated searching of DNA profiles**

1. For the investigation of criminal offences, Member States shall allow other Member States' national contact points as referred to in Article 6, access to the reference data in their DNA analysis files, with the power to conduct automated searches by comparing DNA profiles. Searches may be conducted only in individual cases and in compliance with the requesting Member State's national law.
2. Should an automated search show that a DNA profile supplied matches DNA profiles entered in the receiving Member State's searched file, the national contact point of the searching Member State shall receive in an automated way the reference data with which a match has been found. If no match can be found, automated notification of this shall be given.

*Article 4*

**Automated comparison of DNA profiles**

1. For the investigation of criminal offences, the Member States shall, by mutual consent, via their national contact points, compare the DNA profiles of their unidentified DNA profiles with all DNA profiles from other national DNA analysis files' reference data. Profiles shall be supplied and compared in automated form. Unidentified DNA profiles shall be supplied for comparison only where provided for under the requesting Member State's national law.
2. Should a Member State, as a result of the comparison referred to in paragraph 1, find that any DNA profiles supplied match any of those in its DNA analysis files, it shall, without delay, supply the other Member State's national contact point with the reference data with which a match has been found.

*Article 5*

**Supply of further personal data and other information**

Should the procedures referred to in Articles 3 and 4 show a match between DNA profiles, the supply of further available personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State.

*Article 6*

**National contact point and implementing measures**

1. For the purposes of the supply of data as referred to in Articles 3 and 4, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.

2. Details of technical arrangements for the procedures set out in Articles 3 and 4 shall be laid down in the implementing measures as referred to in Article 33.

*Article 7*

**Collection of cellular material and supply of DNA profiles**

Where, in ongoing investigations or criminal proceedings, there is no DNA profile available for a particular individual present within a requested Member State's territory, the requested Member State shall provide legal assistance by collecting and examining cellular material from that individual and by supplying the DNA profile obtained, if:

- (a) the requesting Member State specifies the purpose for which this is required;
- (b) the requesting Member State produces an investigation warrant or statement issued by the competent authority, as required under that Member State's law, showing that the requirements for collecting and examining cellular material would be fulfilled if the individual concerned were present within the requesting Member State's territory; and
- (c) under the requested Member State's law, the requirements for collecting and examining cellular material and for supplying the DNA profile obtained are fulfilled.

*SECTION 2*

***Dactyloscopic data***

*Article 8*

**Dactyloscopic data**

For the purpose of implementing this Decision, Member States shall ensure the availability of reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offences. Reference data shall only include dactyloscopic data and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual (unidentified dactyloscopic data) must be recognisable as such.

*Article 9*

**Automated searching of dactyloscopic data**

1. For the prevention and investigation of criminal offences, Member States shall allow other Member States' national contact points, as referred to in Article 11, access to the reference data in the automated fingerprint identification systems which they have established for that purpose, with the power to conduct automated searches by comparing dactyloscopic data. Searches may be conducted only in individual cases and in compliance with the requesting Member State's national law.
2. The confirmation of a match of dactyloscopic data with reference data held by the Member State administering the file shall be carried out by the national contact point of the requesting Member State by means of the automated supply of the reference data required for a clear match.

*Article 10*

**Supply of further personal data and other information**

Should the procedure referred to in Article 9 show a match between dactyloscopic data, the supply of further available personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State.

*Article 11***National contact point and implementing measures**

1. For the purposes of the supply of data as referred to in Article 9, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.
2. Details of technical arrangements for the procedure set out in Article 9 shall be laid down in the implementing measures as referred to in Article 33.

*SECTION 3***Vehicle registration data***Article 12***Automated searching of vehicle registration data**

1. For the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the searching Member State, as well as in maintaining public security, Member States shall allow other Member States' national contact points, as referred to in paragraph 2, access to the following national vehicle registration data, with the power to conduct automated searches in individual cases:

(a) data relating to owners or operators; and

(b) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number. Searches may be conducted only in compliance with the searching Member State's national law.

2. For the purposes of the supply of data as referred to in paragraph 1, each Member State shall designate a national contact point for incoming requests. The powers of the national contact points shall be governed by the applicable national law. Details of technical arrangements for the procedure shall be laid down in the implementing measures as referred to in Article 33.

**Chapter 3****MAJOR EVENTS***Article 13***Supply of non-personal data**

For the prevention of criminal offences and in maintaining public order and security for major events with a cross-border dimension, in particular for sporting events or European Council meetings, Member States shall, both upon request and of their own accord, in compliance with the supplying



Member State's national law, supply one another with any non-personal data required for those purposes.

*Article 14*

**Supply of personal data**

1. For the prevention of criminal offences and in maintaining public order and security for major events with a cross-border dimension, in particular for sporting events or European Council meetings, Member States shall, both upon request and of their own accord, supply one another with personal data if any final convictions or other circumstances give reason to believe that the data subjects will commit criminal offences at the events or pose a threat to public order and security, in so far as the supply of such data is permitted under the supplying Member State's national law.
2. Personal data may be processed only for the purposes laid down in paragraph 1 and for the specified events for which they were supplied. The data supplied must be deleted without delay once the purposes referred to in paragraph 1 have been achieved or can no longer be achieved. The data supplied must in any event be deleted after not more than a year.

*Article 15*

**National contact point**

For the purposes of the supply of data as referred to in Articles 13 and 14, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.

**Chapter 4**

**MEASURES TO PREVENT TERRORIST OFFENCES**

*Article 16*

**Supply of information in order to prevent terrorist offences**

1. For the prevention of terrorist offences, Member States may, in compliance with national law, in individual cases, even without being requested to do so, supply other Member States' national contact points, as referred to in paragraph 3, with the personal data and information specified in paragraph 2, in so far as is necessary because particular circumstances give reason to believe that the data subjects will commit criminal offences as referred to in Articles 1 to 3 of Council Framework Decision 2002/475/JHA of 13 June 2002<sup>3</sup> on combating terrorism.
2. The data to be supplied shall comprise surname, first names, date and place of birth and a description of the circumstances giving rise to the belief referred to in paragraph 1.
3. Each Member State shall designate a national contact point for exchange of information with other Member States' national contact points. The powers of the national contact points shall be governed by the applicable national law.
4. The supplying Member State may, in compliance with national law, impose conditions on the use made of such data and information by the receiving Member State. The receiving Member State shall be bound by any such conditions.

<sup>3</sup>O.J. No. L164, 22.6.2002, p.3.

## Chapter 5

**OTHER FORMS OF COOPERATION***Article 17***Joint operations**

1. In order to step up police cooperation, the competent authorities designated by the Member States may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials (officers) from other Member States participate in operations within a Member State's territory.
2. Each Member State may, as a host Member State, in compliance with its own national law, and with the seconding Member State's consent, confer executive powers on the seconding Member States' officers involved in joint operations or, in so far as the host Member State's law permits, allow the seconding Member States' officers to exercise their executive powers in accordance with the seconding Member State's law. Such executive powers may be exercised only under the guidance and, as a rule, in the presence of officers from the host Member State. The seconding Member States' officers shall be subject to the host Member State's national law. The host Member State shall assume responsibility for their actions.
3. Seconding Member States' officers involved in joint operations shall be subject to the instructions given by the host Member State's competent authority.
4. Member States shall submit declarations as referred to in Article 36 in which they lay down the practical aspects of cooperation.

*Article 18***Assistance in connection with mass gatherings, disasters and serious accidents**

Member States' competent authorities shall provide one another with mutual assistance, in compliance with national law, in connection with mass gatherings and similar major events, disasters and serious accidents, by seeking to prevent criminal offences and maintain public order and security by:

- (a) notifying one another as promptly as possible of such situations with a cross-border impact and exchanging any relevant information;
- (b) taking and coordinating the necessary policing measures within their territory in situations with a cross-border impact;
- (c) as far as possible, dispatching officers, specialists and advisers and supplying equipment, at the request of the Member State within whose territory the situation has arisen.

*Article 19***Use of arms, ammunition and equipment**

1. Officers from a seconding Member State who are involved in a joint operation within another Member State's territory pursuant to Article 17 or 18 may wear their own national uniforms there. They may carry such arms, ammunition and equipment as they are allowed to under the

seconding Member State's national law. The host Member State may prohibit the carrying of particular arms, ammunition or equipment by a seconding Member State's officers.

2. Member States shall submit declarations as referred to in Article 36 in which they list the arms, ammunition and equipment that may be used only in legitimate self-defence or in the defence of others. The host Member State's officer in actual charge of the operation may in individual cases, in compliance with national law, give permission for arms, ammunition and equipment to be used for purposes going beyond those specified in the first sentence. The use of arms, ammunition and equipment shall be governed by the host Member State's law. The competent authorities shall inform one another of the arms, ammunition and equipment permitted and of the conditions for their use.
3. If officers from a Member State make use of vehicles in action under this Decision within another Member State's territory, they shall be subject to the same road traffic regulations as the host Member State's officers, including as regards right of way and any special privileges.
4. Member States shall submit declarations as referred to in Article 36 in which they lay down the practical aspects of the use of arms, ammunition and equipment.

#### *Article 20*

##### **Protection and assistance**

Member States shall be required to provide other Member States' officers crossing borders with the same protection and assistance in the course of those officers' duties as for their own officers.

#### *Article 21*

##### **General rules on civil liability**

1. Where officials of a Member State are operating in another Member State pursuant to Article 17, their Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. In the case provided for in paragraph 1, the Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
4. Where officials of a Member State are operating in another Member State pursuant to Article 18, the latter Member State shall be liable in accordance with its national law for any damage caused by them during their operations.
5. Where the damage referred to in paragraph 4 results from gross negligence or wilful misconduct, the host Member State may approach the seconding Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the latter.
6. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain, in the

case provided for in paragraph 1, from requesting reimbursement of damages it has sustained from another Member State.

*Article 22*

**Criminal liability**

Officers operating within another Member State's territory under this Decision, shall be treated in the same way as officers of the host Member State with regard to any criminal offences that might be committed by, or against them, save as otherwise provided in another agreement which is binding on the Member States concerned.

*Article 23*

**Employment relationship**

Officers operating within another Member State's territory, under this Decision, shall remain subject to the employment law provisions applicable in their own Member State, particularly as regards disciplinary rules.

**Chapter 6**

**GENERAL PROVISIONS ON DATA PROTECTION**

*Article 24*

**Definitions and scope**

1. For the purposes of this Decision:

- (a) "processing of personal data" shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, alignment, combination, blocking, erasure or destruction of data. Processing within the meaning of this Decision shall also include notification of whether or not a hit exists;
- (b) "automated search procedure" shall mean direct access to the automated files of another body where the response to the search procedure is fully automated;
- (c) "referencing" shall mean the marking of stored personal data without the aim of limiting their processing in future;
- (d) "blocking" shall mean the marking of stored personal data with the aim of limiting their processing in future.

2. The following provisions shall apply to data which are or have been supplied pursuant to this Decision, save as otherwise provided in the preceding Chapters.

*Article 25*

**Level of data protection**

1. As regards the processing of personal data which are or have been supplied pursuant to this Decision, each Member State shall guarantee a level of protection of personal data in its national law at least equal to that resulting from the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981

and its Additional Protocol of 8 November 2001 and in doing so, shall take account of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe to the Member States regulating the use of personal data in the police sector, also where data are not processed automatically.

2. The supply of personal data provided for under this Decision may not take place until the provisions of this Chapter have been implemented in the national law of the territories of the Member States involved in such supply. The Council shall unanimously decide whether this condition has been met.
3. Paragraph 2 shall not apply to those Member States where the supply of personal data as provided for in this Decision has already started pursuant to the Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (Prüm Treaty).

#### *Article 26*

##### **Purpose**

1. Processing of personal data by the receiving Member State shall be permitted solely for the purposes for which the data have been supplied in accordance with this Decision. Processing for other purposes shall be permitted solely with the prior authorisation of the Member State administering the file and subject only to the national law of the receiving Member State. Such authorisation may be granted provided that processing for such other purposes is permitted under the national law of the Member State administering the file.
2. Processing of data supplied pursuant to Articles 3, 4 and 9 by the searching or comparing Member State shall be permitted solely in order to:
  - (a) establish whether the compared DNA profiles or dactyloscopic data match;
  - (b) prepare and submit a police or judicial request for legal assistance in compliance with national law if those data match;
  - (c) record within the meaning of Article 30.

The Member State administering the file may process the data supplied to it in accordance with Articles 3, 4 and 9 solely where this is necessary for the purposes of comparison, providing automated replies to searches or recording pursuant to Article 30. The supplied data shall be deleted immediately following data comparison or automated replies to searches unless further processing is necessary for the purposes mentioned under points (b) and (c) of the first subparagraph.

3. Data supplied in accordance with Article 12 may be used by the Member State administering the file solely where this is necessary for the purpose of providing automated replies to search procedures or recording as specified in Article 30. The data supplied shall be deleted immediately following automated replies to searches unless further processing is necessary for recording pursuant to Article 30. The searching Member State may use data received in a reply solely for the procedure for which the search was made.

#### *Article 27*

**Competent authorities**

Personal data supplied may be processed only by the authorities, bodies and courts with responsibility for a task in furtherance of the aims mentioned in Article 26. In particular, data may be supplied to other entities only with the prior authorisation of the supplying Member State and in compliance with the law of the receiving Member State.

*Article 28***Accuracy, current relevance and storage time of data**

1. The Member States shall ensure the accuracy and current relevance of personal data. Should it transpire ex officio or from a notification by the data subject, that incorrect data or data which should not have been supplied have been supplied, this shall be notified without delay to the receiving Member State or Member States. The Member State or Member States concerned shall be obliged to correct or delete the data. Moreover, personal data supplied shall be corrected if they are found to be incorrect. If the receiving body has reason to believe that the supplied data are incorrect or should be deleted the supplying body shall be informed forthwith.
2. Data, the accuracy of which the data subject contests and the accuracy or inaccuracy of which cannot be established shall, in accordance with the national law of the Member States, be marked with a flag at the request of the data subject. If a flag exists, this may be removed subject to the national law of the Member States and only with the permission of the data subject or based on a decision of the competent court or independent data protection authority.
3. Personal data supplied which should not have been supplied or received shall be deleted. Data which are lawfully supplied and received shall be deleted:
  - (a) if they are not or no longer necessary for the purpose for which they were supplied; if personal data have been supplied without request, the receiving body shall immediately check if they are necessary for the purposes for which they were supplied;
  - (b) following the expiry of the maximum period for keeping data laid down in the national law of the supplying Member State where the supplying body informed the receiving body of that maximum period at the time of supplying the data.

Where there is reason to believe that deletion would prejudice the interests of the data subject, the data shall be blocked instead of being deleted in compliance with national law. Blocked data may be supplied or used solely for the purpose which prevented their deletion.

*Article 29***Technical and organisational measures to ensure data protection and data security**

1. The supplying and receiving bodies shall take steps to ensure that personal data is effectively protected against accidental or unauthorised destruction, accidental loss, unauthorised access, unauthorised or accidental alteration and unauthorised disclosure.

2. The features of the technical specification of the automated search procedure are regulated in the implementing measures as referred to in Article 33 which guarantee that:
  - (a) state-of-the-art technical measures are taken to ensure data protection and data security, in particular data confidentiality and integrity;
  - (b) encryption and authorisation procedures recognised by the competent authorities are used when having recourse to generally accessible networks; and
  - (c) the admissibility of searches in accordance with Article 30(2), (4) and (5) can be checked.

*Article 30*

**Logging and recording: special rules governing automated and non-automated supply**

1. Each Member State shall guarantee that every non-automated supply and every non-automated receipt of personal data by the body administering the file and by the searching body is logged in order to verify the admissibility of the supply. Logging shall contain the following information:
  - (a) the reason for the supply;
  - (b) the data supplied;
  - (c) the date of the supply; and
  - (d) the name or reference code of the searching body and of the body administering the file.
2. The following shall apply to automated searches for data based on Articles 3, 9 and 12 and to automated comparison pursuant to Article 4:
  - (a) only specially authorised officers of the national contact points may carry out automated searches or comparisons. The list of officers authorised to carry out automated searches or comparisons shall be made available upon request to the supervisory authorities referred to in paragraph 5 and to the other Member States;
  - (b) each Member State shall ensure that each supply and receipt of personal data by the body administering the file and the searching body is recorded, including notification of whether or not a hit exists. Recording shall include the following information:
    - (i) the data supplied;
    - (ii) the date and exact time of the supply; and
    - (iii) the name or reference code of the searching body and of the body administering the file.

The searching body shall also record the reason for the search or supply as well as an identifier for the official who carried out the search and the official who ordered the search or supply.

3. The recording body shall immediately communicate the recorded data upon request to the competent data protection authorities of the relevant Member State at the latest within four weeks following receipt of the request. Recorded data may be used solely for the following purposes:

- (a) monitoring data protection;
  - (b) ensuring data security.
4. The recorded data shall be protected with suitable measures against inappropriate use and other forms of improper use and shall be kept for two years. After the conservation period the recorded data shall be deleted immediately.
  5. Responsibility for legal checks on the supply or receipt of personal data lies with the independent data protection authorities or, as appropriate, the judicial authorities of the respective Member States. Anyone can request these authorities to check the lawfulness of the processing of data in respect of their person in compliance with national law. Independently of such requests, these authorities and the bodies responsible for recording shall carry out random checks on the lawfulness of supply, based on the files involved.

The results of such checks shall be kept for inspection for 18 months by the independent data protection authorities. After this period, they shall be immediately deleted. Each data protection authority may be requested by the independent data protection authority of another Member State to exercise its powers in accordance with national law. The independent data protection authorities of the Member States shall perform the inspection tasks necessary for mutual cooperation, in particular by exchanging relevant information.

#### *Article 31*

##### **Data subjects' rights to information and damages**

1. At the request of the data subject under national law, information shall be supplied in compliance with national law to the data subject upon production of proof of his identity, without unreasonable expense, in general comprehensible terms and without unacceptable delays, on the data processed in respect of his person, the origin of the data, the recipient or groups of recipients, the intended purpose of the processing and, where required by national law, the legal basis for the processing. Moreover, the data subject shall be entitled to have inaccurate data corrected and unlawfully processed data deleted. The Member States shall also ensure that, in the event of violation of his rights in relation to data protection, the data subject shall be able to lodge an effective complaint to an independent court or a tribunal within the meaning of Article 6(1) of the European Convention on Human Rights or an independent supervisory authority within the meaning of Article 28 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995<sup>4</sup> on the protection of individuals with regard to the processing of personal data and on the free movement of such data and that he is given the possibility to claim for damages or to seek another form of legal compensation. The detailed rules for the procedure to assert these rights and the reasons for limiting the right of access shall be governed by the relevant national legal provisions of the Member State where the data subject asserts his rights.
2. Where a body of one Member State has supplied personal data under this Decision, the receiving body of the other Member State cannot use the inaccuracy of the data supplied as grounds to evade its liability vis-à-vis the injured party under national law. If damages are awarded against the receiving body because of its use of inaccurate transfer data, the body

<sup>4</sup>O.J. No. L281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No. 1882/2003 (O.J. No. L284, 31.10.2003, p.1).



which supplied the data shall refund the amount paid in damages to the receiving body in full.

*Article 32*

**Information requested by the Member States**

The receiving Member State shall inform the supplying Member State on request of the processing of supplied data and the result obtained.

Chapter 7

**IMPLEMENTING AND FINAL PROVISIONS**

*Article 33*

**Implementing measures**

The Council, acting by a qualified majority and after Consulting the European Parliament, shall adopt measures necessary to implement this Decision at the level of the Union.

*Article 34*

**Costs**

Each Member State shall bear the operational costs incurred by its own authorities in connection with the application of this Decision. In special cases, the Member States concerned may agree on different arrangements.

*Article 35*

**Relationship with other instruments**

1. For the Member States concerned, the relevant provisions of this Decision shall be applied instead of the corresponding provisions contained in the Prüm Treaty. Any other provision of the Prüm Treaty shall remain applicable between the contracting parties of the Prüm Treaty.
2. Without prejudice to their commitments under other acts adopted pursuant to Title VI of the Treaty:
  - (a) Member States may continue to apply bilateral or multilateral agreements or arrangements on cross-border cooperation which are in force on the date this Decision is adopted in so far as such agreements or arrangements are not incompatible with the objectives of this Decision;
  - (b) Member States may conclude or bring into force bilateral or multilateral agreements or arrangements on cross-border cooperation after this Decision has entered into force in so far as such agreements or arrangements provide for the objectives of this Decision to be extended or enlarged.
3. The agreements and arrangements referred to in paragraphs 1 and 2 may not affect relations with Member States which are not parties thereto.
4. Within four weeks of this Decision taking effect Member States shall inform the Council and the Commission of existing agreements or arrangements within the meaning of paragraph 2(a) which they wish to continue to apply.
5. Member States shall also inform the Council and the Commission of all new agreements or arrangements within the meaning of paragraph 2(b) within

three months of their signing or, in the case of instruments which were signed before adoption of this Decision, within three months of their entry into force.

6. Nothing in this Decision shall affect bilateral or multilateral agreements or arrangements between Member States and third States.
7. This Decision shall be without prejudice to existing agreements on legal assistance or mutual recognition of court decisions.

*Article 36*

**Implementation and declarations**

1. Member States shall take the necessary measures to comply with the provisions of this Decision within one year of this Decision taking effect, with the exception of the provisions of Chapter 2 with respect to which the necessary measures shall be taken within three years of this Decision and the Council Decision on the implementation of this Decision taking effect.
2. Member States shall inform the General Secretariat of the Council and the Commission that they have implemented the obligations imposed on them under this Decision and submit the declarations foreseen by this Decision. When doing so, each Member State may indicate that it will apply immediately this Decision in its relations with those Member States which have given the same notification.
3. Declarations submitted in accordance with paragraph 2 may be amended at any time by means of a declaration submitted to the General Secretariat of the Council. The General Secretariat of the Council shall forward any declarations received to the Member States and the Commission.
4. On the basis of this and other information made available by Member States on request, the Commission shall submit a report to the Council by 28 July 2012 on the implementation of this Decision accompanied by such proposals as it deems appropriate for any further development.

*Article 37*

**Application**

This Decision shall take effect 20 days following its publication in the Official Journal of the European Union.

Done at Luxembourg, 23 June 2008.

*For the Council*

*The President*

*I. JARC*

SCHEDULE 3

*Text of Agreement Between the European Union and Iceland and Norway on the Application of Council Decision 2008/615/JHA of 23 June 2008 and Council Decision 2008/616/JHA of 23 June 2008*

*Section 109*

THE EUROPEAN UNION,

on the one hand, and

ICELAND,

and

NORWAY,

on the other hand,

hereinafter referred to as ‘the Contracting Parties’,

WISHING to improve police and judicial cooperation between the Member States of the European Union and Iceland and Norway, without prejudice to the rules protecting individual freedom,

CONSIDERING that current relationships between the Contracting Parties, in particular the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter’s association with the implementation, application and development of the Schengen acquis, demonstrate close cooperation in the fight against crime,

POINTING OUT the Contracting Parties’ common interest in ensuring that police cooperation between the Member States of the European Union and Iceland and Norway is carried out in a fast and efficient manner compatible with the basic principles of their national legal systems, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950,

RECOGNISING that Council Framework Decision 2006/960/JHA of 18 December 2006<sup>1</sup> on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union already lays down rules whereby the law enforcement authorities of the Member States of the European Union and Iceland and Norway may exchange existing information and intelligence expeditiously and effectively for the purpose of carrying out criminal investigations or criminal intelligence operations,

RECOGNISING that, in order to stimulate international cooperation in this area, it is of fundamental importance that precise information can be exchanged swiftly and efficiently. The aim is to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. For the joint use of data these procedures should be subject to accountability and incorporate appropriate guarantees as to the accuracy and security of the data during transmission and storage as well as procedures for recording data exchange and restrictions on the use of information exchanged,

CONSIDERING that Iceland and Norway have expressed their wish to enter into an agreement enabling them to apply certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating

<sup>1</sup> O.J. No. L386, 29.12.2006, p.89.

terrorism and cross-border crime, and the Annex thereto, in relations with each other and with the Member States of the European Union,

CONSIDERING that the European Union also considers it necessary to enter into such an agreement,

POINTING OUT that this Agreement therefore contains provisions which are based on the main provisions of Decision 2008/615/JHA and Decision 2008/616/JHA, and the Annex thereto, and are designed to improve the exchange of information whereby Member States of the European Union and Iceland and Norway grant one another access rights to their automated DNA analysis files, automated dactyloscopic identification systems and vehicle registration data. In the case of data from national DNA analysis files and automated dactyloscopic identification systems, a hit/no hit system should enable the searching State, in a second step, to request specific related personal data from the State administering the file and, where necessary, to request further information through mutual assistance procedures, including those adopted pursuant to Framework Decision 2006/960/JHA,

CONSIDERING that these provisions would considerably speed up existing procedures enabling Member States, Iceland and Norway to find out whether another State, and if so, which, has the information it needs,

CONSIDERING that cross-border data comparison will open up a new dimension in crime fighting. The information obtained by comparing data will open up new investigative approaches and thus play a crucial role in assisting States' law enforcement and judicial authorities,

CONSIDERING that the rules are based on networking States' national databases,

CONSIDERING that subject to certain conditions, States should be able to supply personal and non-personal data in order to improve the exchange of information with a view to preventing criminal offences and maintaining public order and security in connection with major events with a cross-border dimension,

RECOGNISING that in addition to improving the exchange of information, there is a need to regulate other forms of closer cooperation between police authorities, in particular by means of joint security operations (e.g. joint patrols),

CONSIDERING that closer police and judicial cooperation in criminal matters must go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, to be guaranteed by special data protection arrangements, which should be tailored to the specific nature of different forms of data exchange. Such data protection provisions should take particular account of the specific nature of cross-border on-line access to databases. Since, with on-line access, it is not possible for the State administering the file to make any prior checks, a system ensuring post hoc monitoring should be in place,

CONSIDERING that the hit/no hit system provides for a structure of comparing anonymous profiles, where additional personal data is exchanged only after a hit, the supply and receipt of which is governed by national law, including the legal assistance rules. This set-up guarantees an adequate system of data protection, it being understood that the supply of personal data to another State requires an adequate level of data protection on the part of the receiving State,

AWARE OF the comprehensive exchange of information and data resulting from closer police and judicial cooperation, this Agreement seeks to warrant an appropriate level of data protection. It observes the level of protection designed for the processing of personal data in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Additional Protocol of 8 November 2001 to the Convention and the principles of Recommendation No R (87) 15 of the Council of Europe Regulating the Use of Personal Data in the Police Sector,

TAKING AS A BASIS the mutual confidence of the Member States of the European Union and Iceland and Norway in the structure and operation of their legal systems,

RECOGNISING that the provisions of bilateral and multilateral agreements remain applicable for all matters not covered by this Agreement,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

#### *Article 1*

##### **Object and purpose**

1. Subject to the provisions of this Agreement, the content of Articles 1-24, 25(1), 26-32 and 34 of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, shall be applicable in bilateral relations between Iceland or Norway and each of the Member States of the European Union and in relations between Iceland and Norway.
2. Subject to the provisions of this Agreement, the content of Articles 1-19 and 21 of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto except its chapter 4, point 1, shall be applicable in the relations referred to in paragraph 1.
3. The declarations made by Member States in accordance with Decisions 2008/616/JHA and 2008/615/JHA shall also be applicable in their relations with Iceland and Norway.

#### *Article 2*

##### **Definitions**

1. "Contracting Parties" shall mean the European Union and Iceland and Norway.
2. "Member State" shall mean a Member State of the European Union.
3. "State" shall mean a Member State, Iceland or Norway.

#### *Article 3*

##### **Uniform application and interpretation**

1. The Contracting Parties, in order to achieve the objective of arriving at as uniform an application and interpretation as possible of the provisions referred to in Article 1, shall keep under constant review the development of the case-law of the Court of Justice of the European Communities, as well as the development of the case-law of the competent courts of Iceland and Norway relating to such provisions. To this end a mechanism shall be set up to ensure regular mutual exchange of such case-law.

2. Iceland and Norway shall be entitled to submit statements of case or written observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provisions referred to in Article 1.

*Article 4*

**Dispute settlement**

Any dispute between either Iceland or Norway and a Member State regarding the interpretation or the application of this Agreement or of any of the provisions referred to in Article 1 and amendments thereto may be referred by a Party to the dispute to a meeting of representatives of the governments of the Member States and of Iceland and Norway, with a view to its speedy settlement.

*Article 5*

**Amendments**

1. Where it is necessary to amend the provisions of Decision 2008/615/JHA referred to in Article 1(1), and/or the provisions of Decision 2008/616/JHA including the Annex thereto, referred to in Article 1(2), the European Union shall inform Iceland and Norway at the earliest possible occasion and collect any comments they may have.
2. Iceland and Norway shall be notified of any amendment of the provisions of Decision 2008/615/JHA referred to in Article 1(1), and any amendment of the provisions of Decision 2008/616/JHA including the Annex thereto, referred to in Article 1(2) by the depository as soon as the amendment is adopted.

Iceland and Norway shall decide independently whether to accept the content of the amendment and to implement it into their internal legal order. These decisions shall be notified to the depository within three months of the date of notification.

3. If the content of the amendment can be binding on Iceland or Norway only after fulfilment of constitutional requirements, Iceland or Norway shall inform the depository of this at the time of its notification. Iceland or Norway shall promptly, and at the latest six months from the notification by the depository, inform the depository in writing upon fulfilment of all constitutional requirements. From the date laid down for the entry into force of the amendment for Iceland or Norway and until the information upon fulfilment of constitutional requirements, Iceland or Norway shall provisionally apply, where possible, the content of such act or measure.
4. If either Iceland or Norway, or both, do not accept the amendment, this Agreement shall be suspended from the date on which the amendment is to be implemented in relation to the State or States which have not accepted the amendment. A meeting of the Contracting Parties shall be convened to examine all further possibilities with a view to continue the good functioning of this Agreement, including the possibility to take notice of equivalence of legislation. Suspension shall be terminated as soon as the State or States concerned notifies its/their acceptance of the amendment or if the Contracting Parties agree to reinstate the Agreement with respect to the State or States concerned.
5. If, after a period of six months of suspension, the Contracting Parties have not agreed to reinstate the Agreement, it shall cease to apply to the State which has not accepted the amendment.

6. Paragraphs 4 and 5 do not apply to amendments relating to Chapters 3, 4 or 5 of Decision 2008/615/JHA or Article 17 of Decision 2008/616/JHA, in respect of which Iceland or Norway, or both, have notified the depositary that they do not accept the amendment stating the reasons thereof. In that case, and without prejudice to Article 10, the content of the relevant provisions in their version prior to amendment shall continue to be applicable in the relations with the State or States having made the notification.

*Article 6*

**Review**

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall in particular address the practical implementation, interpretation and development of the Agreement and shall also include issues such as the consequences of development of the European Union relating to the subject-matter of this Agreement.

*Article 7*

**Relationship with other instruments**

1. Iceland and Norway may continue to apply bilateral or multilateral agreements or arrangements on cross-border cooperation with Member States that are in force on the date this Agreement is adopted in so far as such agreements or arrangements are not incompatible with the objectives of this Agreement. Iceland and Norway shall notify the depositary of any such agreements or arrangements which will continue to apply.
2. Iceland and Norway may conclude or bring into force additional bilateral or multilateral agreements or arrangements on cross-border cooperation with Member States after this Agreement has entered into force insofar as such agreements or arrangements provide for the objectives of this Agreement to be extended or enlarged. Iceland and Norway shall notify the depositary of any such new agreement or arrangement within three months of signing or, in the case of instruments that were signed before the entry into force of the Agreement, within three months of their entry into force.
3. The agreements and arrangements referred to in paragraphs 1 and 2 may not affect relations with States that are not parties thereto.
4. This Agreement shall be without prejudice to existing agreements on legal assistance or mutual recognition of court decisions.

*Article 8*

**Notifications, declarations and entry into force**

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound by this Agreement.
2. The European Union may express its consent to be bound by this Agreement even if the decisions referred to in Article 25(2) of Decision 2008/615/JHA have not yet been taken in respect of all the Member States to which that provision applies.
3. Article 5(1) and (2) shall apply provisionally as from the time of signature of this Agreement.

4. With respect to amendments adopted after the signature of this Agreement but before its entry into force, the period of three months referred to in the last sentence of Article 5(2) shall start to run from the day of entry into force of this Agreement.
5. When giving their notification under paragraph 1 or, if so provided, at any time thereafter, Iceland and Norway shall make the declarations provided for in this Agreement.
6. This Agreement shall enter into force between the European Union and Iceland on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of consent by or on behalf of the European Union and Iceland to be bound by the Agreement have been fulfilled.
7. This Agreement shall enter into force between the European Union and Norway on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of consent by or on behalf of the European Union and Norway to be bound by the Agreement have been fulfilled.
8. As soon as this Agreement is in force between the European Union and Iceland and the European Union and Norway, it shall also be in force between Iceland and Norway.
9. The supply by Member States of personal data under this Agreement may not take place until the provisions of Chapter 6 of Decision 2008/615/JHA have been implemented in the national law of the States involved in such supply.
10. In order to verify whether this is the case for Iceland and Norway, an evaluation visit and a pilot run shall be carried out in respect of and under conditions and arrangements acceptable to those States, similar to those concluded in respect of Member States pursuant to Chapter 4 of the Annex to Decision 2008/616/JHA.

On the basis of an overall evaluation report the Council, acting unanimously, shall determine the date or dates as from which personal data may be supplied by Member States to Iceland and Norway pursuant to this Agreement.

#### *Article 9*

##### **Accession**

Accession by new Member States to the European Union shall create rights and obligations under this Agreement between those new Member States and Iceland and Norway.

#### *Article 10*

##### **Termination**

1. This Agreement may be terminated at any time by one of the Contracting Parties. In the event of termination by either Iceland or Norway, this Agreement shall remain in force between the European Union and the State for which it has not been terminated. In the event of termination by the European Union, the Agreement shall lapse.



2. Termination of this Agreement pursuant to paragraph 1 shall take effect six months after the deposit of the notification of termination.

*Article 11*

**Depository**

1. The Secretary-General of the Council of the European Union shall act as the depository of this Agreement.
2. The depository shall make public information on any notification made concerning this Agreement.

Done at Stockholm on 26 November 2009 and at Brussels on 30 November 2009 in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish, Icelandic and Norwegian languages, each text being equally authentic.

For the European Union

For the Republic of Iceland

For the Kingdom of Norway

**Declaration to be adopted at the occasion of the Signature of the Agreement**

The European Union and Iceland and Norway, signatories to the Agreement on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, ('the Agreement'),

declare:

The implementation of the DNA, dactyloscopic and vehicle registration data exchange pursuant to the Agreement will require that Iceland and Norway set up bilateral connections for each of these data categories with each of the Member States.

To enable and facilitate this work, Iceland and Norway will be provided with all the available documentation, software products and contact lists.

Iceland and Norway will have the opportunity to set up an informal partnership with Member States that have already implemented such data exchange, with a view to sharing experiences and getting practical and technical support. The details of such partnerships are to be arranged in direct contacts with the Member States concerned.

The Icelandic and Norwegian experts can contact at any time the Presidency of the Council, the Commission and/or leading experts in these matters to obtain information, clarification or any other support. Similarly the Commission will, whenever in preparation of proposals or communications it contacts representatives of the Member States, avail itself of the opportunity to contact also representatives of Iceland and Norway.

Icelandic and Norwegian experts may be invited to attend on an ad hoc basis meetings where Member States' experts discuss within the Council technical aspects of the DNA, dactyloscopic or vehicle registration data exchange which are directly relevant to the proper application of the content of the aforementioned Council Decisions by Iceland and/or Norway.

#### SCHEDULE 4

##### **Text of Council Framework Decision 2009/905/JHA of 30 November 2009**

##### *Section 109*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1) (a) and (c) and Article 34(2) (b) thereof,

Having regard to the initiative of the Kingdom of Sweden and the Kingdom of Spain<sup>1</sup>,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice; a high level of safety is to be provided by common action among the Member States in the field of police and judicial cooperation in criminal matters.
- (2) That objective is to be achieved by preventing and combating crime through closer cooperation between law enforcement authorities in the Member States, while respecting the principles and rules relating to human rights, fundamental freedoms and the rule of law on which the Union is founded and which are common to the Member States.
- (3) Exchange of information and intelligence on crime and criminal activities is crucial for the possibility for law enforcement authorities to successfully prevent, detect and investigate crime or criminal activities. Common action in the field of police cooperation under Article 30(1) (a) of the Treaty entails the need to process relevant information which should be subject to appropriate provisions on the protection of personal data.
- (4) The intensified exchange of information regarding forensic evidence and the increased use of evidence from one Member State in the judicial processes of another highlights the need to establish common standards for forensic service providers.
- (5) Information originating from forensic processes in one Member State may currently be associated with a level of uncertainty in another Member State regarding the way in which an item has been handled, what methods have been used and how the results have been interpreted.
- (6) In point 3.4(h) of the Council and Commission Action Plan implementing The Hague Programme on strengthening freedom, security and justice in

<sup>1</sup> O.J. No. C174, 28.7.2009, p.7.

the European Union<sup>2</sup> Member States stressed the need for a definition of the quality standards of forensic laboratories by 2008.

- (7) It is particularly important to introduce common standards for forensic service providers relating to such sensitive personal data as DNA profiles and dactyloscopic data.
- (8) Pursuant to Article 7(4) of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime<sup>3</sup>, Member States shall take the necessary measures to guarantee the integrity of DNA profiles made available or sent for comparison to other Member States and to ensure that these measures comply with international standards, such as EN ISO/IEC 17025 'General requirements for the competence of testing and calibration laboratories' (hereinafter 'EN ISO/IEC 17025').
- (9) DNA profiles and dactyloscopic data are not only used in criminal proceedings but are also crucial for the identification of victims, particularly after disasters.
- (10) The accreditation of forensic service providers carrying out laboratory activities is an important step towards a safer and more effective exchange of forensic information within the Union.
- (11) Accreditation is granted by the national accreditation body which has exclusive competence to assess if a laboratory meets the requirements set by harmonised standards. An accreditation body derives its authority from the State. Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products<sup>4</sup> contains detailed provisions on the competence of such national accreditation bodies. Inter alia, Article 7 of that Regulation regulates cross-border accreditation in cases where accreditation may be requested from another national accreditation body.
- (12) The absence of an agreement to apply a common accreditation standard for the analysis of scientific evidence is a deficiency that should be remedied; it is, therefore, necessary to adopt a legally binding instrument on the accreditation of all forensic service providers carrying out laboratory activities. Accreditation offers the necessary guarantees that laboratory activities are performed in accordance with relevant international standards, in particular EN ISO/IEC 17025, as well as relevant applicable guidelines.
- (13) An accreditation standard allows any Member State to require, if it wishes, complementary standards in laboratory activities within its national jurisdiction.
- (14) Accreditation will help establish mutual trust in the validity of the basic analytic methods used. However, accreditation does not state which method to use, only that the method used has to be suitable for its purpose.
- (15) Any measure taken outside a laboratory is beyond the scope of this Framework Decision. For example, the taking of dactyloscopic data or measures taken at the scene of incident, the scene of crime or forensic analyses carried out outside laboratories are not included in its scope.
- (16) This Framework Decision does not aim to harmonise national rules regarding the judicial assessment of forensic evidence.

<sup>2</sup> O.J. No. C198, 12.8.2005, p.1.

<sup>3</sup> O.J. No. L210, 6.8.2008, p.12.

<sup>4</sup> O.J. No. L218, 13.8.2008, p.30.

(17) This Decision does not affect the validity, established in accordance with national applicable rules, of the results of laboratory activities carried out prior to its implementation, even if the forensic service provider was not accredited to comply with EN ISO/IEC 17025,

HAS ADOPTED THIS FRAMEWORK DECISION:

*Article 1*

Objective

1. The purpose of this Framework Decision is to ensure that the results of laboratory activities carried out by accredited forensic service providers in one Member State are recognised by the authorities responsible for the prevention, detection and investigation of criminal offences as being equally reliable as the results of laboratory activities carried out by forensic service providers accredited to EN ISO/IEC 17025 within any other Member State.
2. This purpose is achieved by ensuring that forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.

*Article 2*

Scope

This Framework Decision shall apply to laboratory activities resulting in:

- (a) DNA-profile; and
- (b) dactyloscopic data.

*Article 3*

Definitions

For the purposes of this Framework Decision:

- (a) "laboratory activity" means any measure taken in a laboratory when locating and recovering traces on items, as well as developing, analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence;
- (b) "results of laboratory activities" means any analytical outputs and directly associated interpretation;
- (c) "forensic service provider" means any organisation, public or private, that carries out forensic laboratory activities at the request of competent law enforcement or judicial authorities;
- (d) "national accreditation body" means the sole body in a Member State that performs accreditation with authority derived from the State as referred to in Regulation (EC) No 765/2008;
- (e) "DNA-profile" means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular molecular structure at the various DNA locations (loci) ;
- (f) "dactyloscopic data" means fingerprint images, images of fingerprint latents, palm prints, palm print latents and templates of such images (coded minutiae).

*Article 4*

## Accreditation

Member States shall ensure that their forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.

*Article 5*

## Recognition of results

1. Each Member State shall ensure that the results of accredited forensic service providers carrying out laboratory activities in other Member States are recognised by its authorities responsible for the prevention, detection, and investigation of criminal offences as being equally reliable as the results of domestic forensic service providers carrying out laboratory activities accredited to EN ISO/IEC 17025.
2. This Framework Decision does not affect national rules on the judicial assessment of evidence.

*Article 6*

## Costs

1. Each Member State shall bear any public costs resulting from this Framework Decision in accordance with national arrangements.
2. The Commission shall examine the means to provide financial support from the general budget of the European Union for national and transnational projects intended to contribute to the implementation of this Framework Decision, inter alia for the exchange of experience, dissemination of know-how and proficiency testing.

*Article 7*

## Implementation

1. Member States shall take the necessary steps to comply with the provisions of this Framework Decision in relation to DNA-profiles by 30 November 2013.
2. Member States shall take the necessary steps to comply with the provisions of this Framework Decision in relation to dactyloscopic data by 30 November 2015.
3. Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national laws the obligations imposed on them under this Framework Decision by 30 May 2016 at the latest.
4. On the basis of the information referred to in paragraph 3 and other information provided by the Member States on request, the Commission shall, before 1 July 2018, submit a report to the Council on the implementation and application of this Framework Decision.
5. The Council shall, by the end of 2018, assess the extent to which Member States have complied with this Framework Decision.

*Article 8*

## Entry into force

This Framework Decision shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK



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Number 11 of 2014

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**CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE SYSTEM) ACT  
2014**

**REVISED**

**Updated to 1 November 2023**

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**About this Revised Act**

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

**Related legislation**

This Act is not collectively cited with any other Act.

**Annotations**

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at [www.lawreform.ie/annotations](http://www.lawreform.ie/annotations).

**Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

**Acts which affect or previously affected this revision**

- *Criminal Justice (Miscellaneous Provisions) Act 2023 (24/2023)*
- *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (3/2023)*
- *Defence Forces (Evidence) Act 2022 (16/2022)*
- *Garda Síochána (Functions and Operational Areas) Act 2022 (7/2022)*
- *Parole Act 2019 (28/2019)*

- *Data Protection Act 2018* (7/2018)
- *Fines Act 2010* (8/2010)

All Acts up to and including *Screening of Third Country Transactions Act 2023* (28/2023), enacted 31 October 2023, were considered in the preparation of this revision.

**Statutory instruments which affect or previously affected this revision**

- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022* (S.I. No. 738 of 2022)
- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 110) (Designation of United Kingdom) Order 2020* (S.I. No. 722 of 2020)
- *European Union (International Cooperation) Regulations 2020* (S.I. No. 721 of 2020)
- *Criminal Justice (Forensic Evidence and DNA System) Act 2014 (Commencement) Order 2018* (S.I. No. 503 of 2018)
- *Criminal Justice (Forensic Evidence and DNA System) Act 2014 (Section 156) Regulations 2015* (S.I. No. 528 of 2015)
- *Criminal Justice (Forensic Evidence and DNA System) Act 2014 (Section 11) Order 2015* (S.I. No. 527 of 2015)
- *Criminal Justice (Forensic Evidence and DNA System) Act 2014 (Certificates) Regulations 2015* (S.I. No. 526 of 2015)
- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Commencement) Order 2015* (S.I. No. 508 of 2015)
- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Commencement) Order 2014* (S.I. No. 317 of 2014)

All statutory instruments up to and including *Criminal Justice (Miscellaneous Provisions) Act 2023 (Commencement) (No. 2) Order 2023* (S.I. No. 525 of 2023), made 31 October 2023, were considered in the preparation of this revision.