REVIEW MECHANISM

1. Introduction

This paper sets out the statutory arrangements for the review of DNA and fingerprints (material) retained by the Police Service of Northern Ireland (PSNI) under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI)[1], in line with data protection legislation and European Court of Human Rights (ECtHR) judgments. The statutory provisions will be set out in regulations to be made under Article 63V of PACE NI.

The underpinning principle is that the PSNI must ensure that the ongoing retention of an individual's material is lawful, necessary and proportionate. The paper outlines the process for an individual to make a request for a review of the continued need to retain their material, together with the introduction of a statutory obligation for the PSNI to review long-term retained material.

The Department of Justice (DoJ) is striving to create a system that is proportionate, provides clarity, and can be supported as much as possible by IT systems to avoid a resource intensive process for the PSNI to administer.

2. Distinction between review mechanism and the Data Protection Act 2018

The review arrangements apply specifically to the retention of fingerprints and DNA by the PSNI with the review arrangements being an independent and separate process to any rights contained within the Data Protection Act 2018 (DPA), such as:

- Section 45 – Right of access by the data subject
- Section 47 – Right to erasure
- Section 51(2)(b) – Application / complaint to the Information Commissioner to ascertain whether the refusal to delete material was lawful
- Section 167 – Application to court

[1] Material taken under the Terrorism Act 2000 or the National Security Act 2023 is outside the scope of this policy. Policy responsibility for National Security and Terrorism sits with the Home Office.

The protections of DPA do not apply after death.[2]

The review arrangements are separate to, and are not intended to interfere with, any right to:

- make a complaint to the ICO, whose role relates to monitoring and enforcing data protection legislation and assessing complaints in relation to a data controller's handling of personal information; or
- seek a Judicial Review of any decision.

3. Request for a review of the continued need for retention of material

An individual will be able to submit a request for a review of the continued need to retain their material at any time. An individual will have the right to request a review, but the right for a review to take place is not absolute. The requests for a review will be considered by a review team designated by the Chief Constable. Each request for a review will be considered on its individual merits, taking account of the provisions on deferrals and exclusions of reviews set in section 3 of this paper and factors such as those set out under 'Pre Deletion Checks'. The PSNI will set out on their website the criteria to be used for consideration of requests. If the request for a review is being made on specific grounds, this should be set out in the request[3].

Depending on the complexity of the request, the timeframes may vary, but a response should be provided within one month. Correspondence will issue in writing, via the applicant's preferred method of communication. The PSNI response may simply advise that a review is not due until [DATE], or it may advise that a review has been completed but the PSNI have determined that the material should be retained and a further review will be completed by [DATE].

Request for reconsideration of a decision of the PSNI review team (internal reconsideration)

[2] Any requests for a review relating to a deceased individual will fall solely within the scope of the review mechanism and not under data protection legislation.
[3] The specific grounds may include material taken unlawfully, no crime committed, proven alibi, incorrect disposal, unlawful arrest, mistaken identity, judicial recommendation, or another person convicted of the offence.

If an individual is not satisfied with a decision made by the PSNI review team to continue to retain their material, the individual will have the right to submit a request to the PSNI for a reconsideration of that decision[4]. A request for a reconsideration will be considered by an individual designated by the Chief Constable. Each reconsideration request will be considered on its individual merits. A response should be provided within one month, but if the case is complex and an extension is necessary, the individual will be advised of the expected length of the delay (a maximum period of three months will apply to extensions). Correspondence will issue in writing, via the applicant's preferred method of communication, to advise the applicant of the reconsideration decision.

4. Review mechanism proposals for long term retained material

Article 63V **(Annex A)** of the provisions contained within the Justice Bill includes a regulation making power for the DoJ to introduce a mechanism requiring the Chief Constable to review the need to retain long-term material. The DoJ anticipates that the regulations will be made and commenced at the same time as the new DNA and fingerprints retention legislative framework. The statutory timeframes will be included in regulations rather than the primary legislation to provide greater flexibility to revise as necessary. The regulations will also set out the role of the Biometrics Commissioner in the review process. The review regulations, including the statutory review dates, will be subject to public consultation and then will be considered by the Justice Committee as well as the Northern Ireland Assembly.[5]

The introduction of a statutory review mechanism does not undermine the principles of the retention regime, as public safety remains the priority; but it is also important to balance this with data protection principles and the rights of individuals. The statutory review mechanism will provide an additional safeguard where material is being retained for longer periods of time i.e. 75/50/25 years. It is considered that 75/50/25-year retention periods, coupled with the review mechanism, is a proportionate

[4] Responsibility for reconsideration of a decision should rest with the Chief Constable as the data controller.
[5] The review regulations will be the subject of a debate in the Assembly before they can take effect.

approach and is a significant improvement upon the current provision for indefinite retention.

The review model has been developed to take into consideration the age of the offender, the maximum retention period, and the disposal. If there is a court disposal, then there is also consideration of the judicial sentence for the offending (**Annex B**). The benefit of the model is that the disposal, determined by the PSNI / Public Prosecution Service (PPS) / Judge (as appropriate), will have taken into consideration the seriousness of the offence, previous offending behaviour, and any aggravating/mitigating factors for the individual and the particular offence(s). This is, in turn, reflected in the retention period (both the maximum retention period and the statutory review date/minimum retention period).

Exclusions

It is important to note that the review mechanism will only apply to long-term retained PACE NI material. Article 63V(1) defines long-term material as material that is retained by virtue of a 75/50/25 years retention period contained in the draft legislation. This means that the statutory review mechanism regulations will not apply to retention periods of 10 years or less (the longest retention period outside of the 75/50/25 is 10 years, i.e. an under 18 with a sentence falling just short of 5 years).

Material will not be considered for deletion if it is required to be retained by another piece of legislation, such as the Criminal Procedure and Investigations Act 1996 (CPIA), which makes provision for the retention of evidential material including, but not limited to, DNA and fingerprints until any investigation or related criminal proceedings is complete. **(See Annex D)**

DNA and fingerprints may also be retained under the Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024, which provide for the preservation of material, which would otherwise fall for destruction, for the purposes of legacy investigations by the Independent Commission for Reconciliation and Information Recovery.

Deferral if statutory review date has not been reached

A request for a review will be deferred for anyone that has not reached the statutory review date[6] (statutory review dates are set out in **Annex B**). The statutory review date will be the minimum period that an individual's DNA and fingerprints can be retained for (however, this does not apply to requests for reviews based on specific grounds). It is considered appropriate to set a statutory minimum period before a review can take place[7] due to the reasonable expectation that if material can be lawfully retained, it should be held for some period of time to be of value in its law enforcement purpose. As there are no statutory review dates associated with short-term retained material, no deferral of review dates is applicable. The PSNI will be required to consider each request for a review regarding short-term retained material based on its individual merits.

A review will also be deferred for anyone that is the subject of an ongoing police investigation (as covered in Article 63F 'Retention of Article 63B material pending investigation or proceedings'). Once the investigation or proceedings have concluded, appropriate retention, review and deletion dates will be calculated. To safeguard against material held under Article 63F being held for longer than is necessary, Article 63U **(see Annex D)** provides that the police must review Article 63F material every 5 years to mitigate any risk of material being held for longer than necessary.

In addition, the review mechanism will also be deferred for anyone who is subject to a notification order under the pieces of legislation listed under Article 63S **(see Annex E)**:

- Part 2 of the Sexual Offences Act 2003;
- Schedule 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015;
- Part 8 of the Justice Act (Northern Ireland) 2015; or
- Articles 6-16 of the Protection from Stalking Act (Northern Ireland) 2022.

[6] The statutory review dates were arrived at based on the mid-point of the maximum retention period but with additional review bands to ensure a graduated and proportionate approach.
[7] Other review mechanisms in Northern Ireland relating to personal information adopt a similar approach i.e. a) Sex offender notification requirements review mechanism and b) disclosure of information on criminal record certificates review mechanism.

A review date will be generated upon the expiry of the notification order.

The DoJ proposes the following step-by-step process:

Step 1

An individual has an offending history held on the PSNI system. Each offending disposal will receive an individual retention calculation (regardless of whether material was taken or not), which produces a maximum retention date.

The PSNI has developed a software solution for calculating lawful retention dates that considers the full offending history for an individual. The latest retention date for any disposal acts as the overall retention period for all PACE NI material belonging to that individual.

If it is long term retained PACE NI material, the system will calculate a statutory review date (minimum retention date), based upon a number of factors which take into account the particular disposal and the maximum retention period (**see Annex B**).

Step 2

Once the PSNI system identifies that an individual's PACE NI material has reached the statutory review date (minimum retention date), a decision will be taken on the need to continue to retain material for that individual. The decision will be subject to a number of pre-deletion checks, including those set out below. In general terms, the individual's material will be deleted unless there is a reason to retain on grounds such as:

- Investigation of crime;
- Prevention of crime; or
- Public safety.

Pre-Deletion Checks

When the statutory review date (minimum retention date) is approaching, the PSNI system will initiate a pre-deletion check to identify if there are any 'reasons to retain notifications' on the PSNI IT system which would prevent deletion. This means an

'upcoming deletions report'[8] will issue to targeted officers and police staff whose role will ultimately be to decide whether the material should be deleted or retained.

To assist police officers and police staff making the decision to retain DNA and fingerprints on public safety reasons they may be guided by the following:

- Material will not be permitted for deletion if the individual is risk managed under Public Protection Arrangements Northern Ireland (PPANI) **(See Annex F)**;
- If an individual is subject to any prevention or protection order, including interim orders, material will not be permitted for deletion until the orders have expired; Examples of prevention / protection orders include:
    - Sexual Offences Prevention Orders (SOPO)
    - Violent Offender Prevention Order (VOPO)
    - Slavery and Trafficking Prevention Order (STPO)
    - Domestic Abuse Prevention Notices (DAPN)
    - Domestic Abuse Prevention Order (DAPO)
    - Stalking Protection Order (SPO);
- Any assessment of a risk to the public which has been made by any of the agencies[9] mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008 (risk assessment and management);
- Any further suspected offending committed by the person to whom the material relates;
- Any evidence or information of established links or association with criminal elements including organised crime gangs; and
- Any other information that may have a bearing on whether the material should continue to be retained, such as;
    - Is there evidence that the individual has a capacity to inflict serious harm on either themselves or others?

[8] This term is used for illustrative purposes in this paper. The actual name of any such report will be a matter for PSNI in the development of their software.

[9] The PSNI, the Probation Board for NI, the Department of Education, the Department for Employment and Learning (functions transferred to the Department for the Economy and the Department for Communities in 2016), the Department of Health, Social Services and Public Safety (renamed Department of Health in 2016), the Department for Social Development (now Department for Communities), Education and Library Boards, the NI Housing Executive, and the National Society for the Prevention of Cruelty to Children.

- Are there concerns in relation to the safeguarding of children and vulnerable adults?
- Is there evidence that the individual has links or associations which may increase the risk of harm or reoffending?
- Are there concerns in relation to substance misuse that may exacerbate the risk of offending?
- Are there concerns in relation to the individual's mental health that may exacerbate the risk of offending?

- An assessment of the impact of continued retention on the individual.

The relevant officer or member of staff will undertake a final checking process by way of completing an offender management assessment, focusing primarily on public safety. Police officers and police staff will be responsible for the manual setting and removal (this may include the setting of an end date for the reason to retain notification after which the material will be deleted) of these reasons to retain notifications. Some notifications will have a pre-set expiry date added when the reason to retain notification is added.

Police officers and staff will have clear and carefully set out responsibilities, within PSNI guidance, to ensure the accurate management of these notifications[10]. The PSNI has several policies that they follow in relation to the management of police information, which include:

- The PSNI Management of Police Information 2005 (MoPI);
- The College of Policing's Authorised Professional Practice (APP) on Retention, Review and Disposal; and
- The PSNI Review, Retention and Disposal Schedule.

Police officers and police staff will be fully aware that any failure to maintain the reason to retain notifications appropriately may result in the deletion of DNA and fingerprints once the statutory review date (minimum retention date) has been reached. Reason

[10] PSNI Niche Records Management System provides functionality to assign a warning, or reason to retain notification against an individual's record (this is to inform others about any specific needs or associated risk factors). Any officer who completes the notification/warning training can add a notification/warning with authorisation by an Inspector who sends a form to a NICHE admin team. When adding a reason to retain notification, an end date can be added. Prior to expiration of the notification the person who created the notification will be prompted to review the continuing retention need. There is a training package for those officers identified who need the ability to place notifications or warnings on the NICHE system.

to retain notifications will be removed manually (unless an end date was entered when the notification was created) by PSNI officers or police staff once the individual is no longer deemed a person of interest for that particular reason to retain notification.

It is therefore imperative that due care and consideration is given to the recording of all information within the PSNI system and that the reason to retain notifications are subject to regular reviews by Investigating Officers and police staff.

The Chief Constable will be responsible for ensuring the security, integrity and quality of the system and that appropriate training and guidance is provided to staff maintaining the system. There should also be appropriate procedures in place for incident reporting.

Step 3

If:

- there are no reasons to retain notifications at the statutory review date (minimum retention date);and
- the material isn't required to be retained under other legislation such as CPIA or Legacy legislation;
- or if the maximum retention period has been reached,

the **material will be deleted.**

If the decision is to retain material at the statutory review date (minimum retention date), there will be no other generated statutory review dates. Rather the material will be retained according to a bespoke set of review dates for each individual. The bespoke review dates will be based on the expiry[11] of all reason to retain notifications , or when the maximum retention date has been reached.

When an individual's DNA profile is eligible for deletion, all profiles relating to that individual being retained on the Northern Ireland DNA Database and the UK National DNA Database will be deleted. When an individual's fingerprints are eligible for

[11] Expiry dates regarding reason to retain notifications will be entered manually by PSNI staff.

deletion, all electronic copies relating to that individual retained on IDENT1[12] will be deleted. Any original paper sets retained in PSNI's Identification Bureau will be destroyed manually. All deletion transactions are recorded in a biometric deletion audit.

There are separate retention rules for DNA samples, which should be destroyed[13] as soon as a DNA profile has been derived from the sample, or before the end of the six months beginning with the date on which the sample was taken (Article 63X of the draft legislation). The original DNA sample will be destroyed by Forensic Science Northern Ireland (FSNI).

Unsolicited Correspondence

The Department has identified a risk that creating an obligation for the PSNI to contact individuals (unsolicited correspondence) to update them on the status of their DNA and fingerprints could result in frequent data protection breaches, given that the PSNI may hold an address that may have been provided 20 or 30 years earlier.

The Department has engaged with the Information Commissioner's Office on this issue and, because of the level of human intervention in the operation of the regime it has been determined that the processing would not be considered automated processing as defined in Article 50 of DPA.

Therefore, the preferred approach will be for the PSNI to publish their DNA and fingerprints retention policy on the PSNI website. The website will provide details of how an individual can contact the PSNI to request a review of the continued need to retain their material.

The individual will be made aware of the outcome of the statutory review if they have requested a review.

Further consideration

[12] IDENT1 is the United Kingdom's central national database for holding, searching and comparing fingerprints and palm prints. The Northern Ireland collection is contained on IDENT1 along with the rest of the UK fingerprints.
[13] Unless protected under Criminal Procedure and Investigations Act 1996 (CPIA).

Following the conclusion of the PSNI review process, if an individual remains dissatisfied with the continued retention of their material, the individual will have the right to make a complaint to the Northern Ireland Biometrics Commissioner (the Commissioner), who will determine the lawfulness of retention and procedural fairness[14]. The Commissioner will specifically consider whether the retention of the individual's material by the PSNI is lawful and complies with both Part 6 of PACE NI and any Review Regulations introduced by the Department.

If the Commissioner considers that the PSNI's decision to continue to retain an individual's biometric material is unlawful, they will have the power to direct the PSNI to reconsider their decision or to delete the material.

5. Who can apply?

Where the long-term retained material relates to a person under the age of 18 a request for a review may be made by the individual in their own right if they are deemed competent to do so. The PSNI will put in place arrangements to assess competency where a request for a review has been received by a person under the age of 18. If the individual is not deemed to be competent, the request should be submitted on their behalf by their parent or legal guardian. Where an application is being made by a parent or legal guardian, evidence demonstrating parental responsibility or legal guardianship should be submitted using one of the items in the list of documents set out below.

- Marriage certificate (if a Father is not named on the birth certificate)
- The child's birth certificate showing that parent's name
- Parental responsibility Order from the court

[14] The proposed complaint function is in line with the models offered by the ICO and the Scottish Biometrics Commissioner. Advice from the Home Office indicated that the Commissioner would not be able to make decisions where matters of national security are involved. Also, a separate arrangement (i.e. the UK Biometrics Commissioner) for decisions where matters of national security are involved would result in the risk of an individual inadvertently becoming aware that the PSNI have a national security interest. Therefore, it is not considered appropriate or practicable for the Commissioner to have a case handling function. The Commissioner's role will be set out in regulations, which provides flexibility to adapt the role/function in future should this prove necessary.

- Parental responsibility agreement
- Residence order (if not a parent or guardian, in respect of the person with whom the child resides and who will maintain guardianship for the duration of the order)
- Parent's will (if guardianship is testamentary)
- Grant of probate (if guardianship is testamentary)
- Statutory declaration
- Power of attorney
- Any other relevant court order.

Where the long-term retained material relates to a person over the age of 18 and who either lacks capacity or is unable to make a decision, as defined under sections 3 and 4 of the Mental Capacity Act (Northern Ireland) 2016, a request for a review may be made on their behalf by a person with power of attorney, guardian or nearest relative as defined under Article 32 of The Mental Health (Northern Ireland) Order 1986. A birth certificate or other proof of identity, power of attorney, relevant court order, and medical evidence (if relevant) should be submitted.

For all other applications, there will be a requirement to provide a birth certificate or other proof of identity. Evidence to support the request for a review may also be submitted, which may take the form of a written submission from the individual providing a chronology and circumstances of their case and the reasons why the individual believes their material should be considered for review.

The arrangements as outlined above apply to both the initial application process and subsequent reconsideration process.

Individuals approaching 18

The Department considered the need for a bespoke provision to enable a young person approaching the age of 18 to request a review. Such requests can be made using the process outlined in this paper (see Section 2 - Request for a review of the continued need for retention of material) and each request will be considered on its individual merits.

After Death

In circumstances where the individual whose material is retained dies, a family member or relative may submit a request for a review of the continued need to retain the deceased person's material.[15]

It is anticipated that the regulations will set out who should be considered a family member or relative.

It is likely to be as follows:

A family member is someone who was married to the individual, who was in a civil partnership with the individual, or who was living with the individual as if a spouse.

A relative of the individual as per the following:

- Parent, child, grandparent, great-grandparent, grandchild, great-grandchild, brother, sister, uncle, great-uncle, aunt, great-aunt, nephew, great-nephew, niece or great-niece;
- A relationship of the half-blood or by affinity is to be treated as a relationship of the whole blood; or
- The stepchild of a person is to be treated as the person's child.

The application will require a copy of the death certificate together with any other information that the PSNI deem necessary to confirm the identity of the deceased person. Upon receipt of a request by a family member or relative for a review, the request will be processed in the same way as any other request for a review. The same provisions for challenges to a decision will also apply.

If the PSNI are notified of the death of an individual, the death is recorded on the PSNI NICHE system. The review mechanism will require the PSNI to review the need for continued retention within 2 years from the date they were notified of the date of death.

If a decision is made to retain material at the review date, the PSNI will apply a 'deceased' reason to retain notification on the individual's biometric record with an expiry date of 2 years from the date the review took place. This will result in a rolling

[15] Any requests for a review relating to a deceased individual will fall solely within the scope of the review mechanism and not under data protection legislation.

review every 2 years to ensure the continued necessity of the deceased individual's DNA and fingerprints is subject to regular review.

6. Awareness / Information Provision

There will be a responsibility on the PSNI to ensure that there is age-appropriate information provided to individuals when their material is being taken. The individual should be told why their material is being taken, what it will be used for and how long it may be retained. They should also be told how they can find out more information and how they can request a review and that the review arrangements are separate to the rights contained within the DPA.

It is also anticipated that the Biometrics Commissioner will provide guidance on their role.

ANNEX A

Review of retention where material retained for long term

63V

(1) The Department of Justice must by regulations require the Chief Constable, where any of P's material is retained by virtue of Articles 63J(2), 63K(2) and (3), 63L(3) and (4) and 63M(4), to conduct a review of the retention of P's material.

(2) The review is to be of all of P's material that is retained by virtue of Articles 63D, 63G to 63R and 63T.

(3) The regulations may, in particular, make provision—

(a) about when, and in what circumstances, the reviews must be conducted;

(b) enabling P to request that a review be conducted, subject to such conditions as may be specified;

(c) requiring that P be notified of the outcome of the review;

(d) conferring a right of appeal against a determination made on a review and about the procedure on such appeals (including the payment of fees).

(4) The regulations may set out factors that the Chief Constable must, may or must not consider in conducting a review.

(5) In particular, the regulations may provide that—

(a) material of a specified description;

(b) material relating to persons of a specified description;

must, or must not, be retained following a review.

(6) "Specified" means specified in the regulations.

(7) If the Chief Constable, following a review under this Article, determines that P's material should no longer be retained by virtue of Articles 63D, 63G to 63R and 63T, all of P's material that is retained by virtue of any of those Articles must be destroyed, unless it may be retained by virtue of Article 63F or 63S.

(8) Before making regulations under paragraph (1), the Department must consult such persons as the Department considers appropriate.

ANNEX B (the review dates below represent the point at which PSNI will be required to assess whether continued retention remains necessary. They do not guarantee deletion at that point).

Description	Retention Period	Statutory Review	Description	Retention Period	Statutory Review
			Adult Conviction Minor Offence(s) out of court disposal (excluding CBRJ or penalty notice)	25 years retention	Reviewed after 10 years
U18 Conviction Minor Offence(s) (when first offence rule does not apply) – non-custodial sentence	25 years retention	Reviewed after 10 years	Adult Conviction Minor Offence(s) non-custodial	25 years retention	Reviewed after 15 years
U18 Conviction Minor Offence(s) (when first offence rule does not apply) – custodial sentence of less than 5 years	25 years retention	Reviewed after 15 years	Adult Conviction Minor Offence(s) custodial sentence of less than 5 years	50 years retention	Reviewed after 20 years
U18 Conviction Minor Offence(s) custodial sentence of more than 5 years but less than 10 years	50 years retention	Reviewed after 20 years	Adult Conviction Minor Offence(s) custodial sentence of more than 5 years but less than 10 years	50 years retention	Reviewed after 25 years
U18 Conviction Minor Offence(s) custodial sentence of 10 years or more but less than 20 years	50 years retention	Reviewed after 25 years	Adult Conviction Minor Offence(s) custodial sentence of 10 years or more but less than 20 years	50 years retention	Reviewed after 30 years
U18 Conviction Minor Offence(s) custodial sentence of more than 20 years	50 years retention	Reviewed after 30 years	Adult Conviction Minor Offence(s) custodial sentence of more than 20 years	50 years retention	Reviewed after 35 years
			Adult Conviction Qualifying Offence(s) out of court disposal (excluding CBRJ or penalty notice)	75 years retention	Reviewed after 15 years
U18 Qualifying Offence(s) – non-custodial court sentence	75 years retention	Reviewed after 15 years	Adult Conviction Qualifying Offence(s) non-custodial court sentence	75 years retention	Reviewed after 20 years
U18 Qualifying Offence(s) – custodial sentence less than 5 years	75 years retention	Reviewed after 20 years	Adult Conviction Qualifying Offence(s) custodial sentence of less than 5 years	75 years retention	Reviewed after 25 years
U18 Qualifying Offence(s) – custodial sentence of 5 years or more but less than 10 years	75 years retention	Reviewed after 25 years	Adult Conviction Qualifying Offence(s) custodial sentence of 5 years or more but less than 10 years	75 years retention	Reviewed after 30 years
U18 Qualifying Offence(s) – custodial sentence of 10 years or more but less than 20 years	75 years retention	Reviewed after 30 years	Adult Conviction Qualifying Offence(s) custodial sentence of 10 years or more but less than 20 years	75 years retention	Reviewed after 35 years
U18 Qualifying Offence(s) – custodial sentence of 20 years or more	75 years retention	Reviewed after 35 years	Adult Conviction Qualifying Offence(s) custodial sentence of 20 years or more	75 years retention	Reviewed after 40 years

ANNEX C

Exclusion for certain regimes

63Z

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

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

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

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

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

(5) Articles 63B to 63Y do not apply to material to which paragraphs 43 to 51 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 (destruction, retention and use of material) apply.

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

(a) Part 4 of Schedule 6 to the National Security Act 2023 (dealing with fingerprints and samples etc: UK) applies, or
(b) paragraph 6 of Schedule 12 to that Act (requirement to destroy material) applies.

(7) Articles 63B to 63Y do not apply to material which is, or may become, disclosable under—

(a) the Criminal Procedure and Investigations Act 1996, or
(b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.

(8) A sample that—

(a) falls within paragraph (7), and
(b) but for that paragraph would be required to be destroyed under Article 63X, must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(9) A sample that once fell within paragraph (7) but no longer does, and so becomes a sample to which Article 63X applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.

(10) Articles 63B to 63Y do not apply to material which—

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

(11) Nothing in Articles 63B to 63Y affects any power conferred by—
(a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take reasonable steps to identify a person detained), or
(b) section 20 of the Immigration and Asylum Act 1999 (disclosure of police information to the Secretary of State for use for immigration purposes).

ANNEX D

Review of retention where material retained for investigations

63U

(1) This Article applies where there is an investigation into an offence (or offences) and any of P's material is retained by virtue of Article 63F in connection with that investigation.

(2) The Chief Constable must conduct a review of the retention of P's material—

(a) before the end of the period of 5 years beginning with the date on which P is arrested for, or charged with, the offence or offences (or, if there is more than one such date, the latest of them), and
(b) thereafter, before the end of each period of 5 years beginning with the previous review under this Article.

(3) On a review under this Article, the Chief Constable must consider—

(a) whether P remains, or should remain, a suspect in the investigation (or investigations), and
(b) whether P's material has, or may have, evidential value in that investigation (or those investigations) or in any proceedings to which that investigation (or those investigations) may give rise.

(4) If the Chief Constable, following a review under this Article, determines that P's material should no longer be retained by virtue of Article 63F, all of P's material that is retained by virtue of that Article must be destroyed, unless it may be retained by virtue of any other Article.

(5) The Department of Justice may in regulations set out additional factors that the Chief Constable must consider, or factors that the Chief Constable may or must not consider, in conducting a review.

(6) In particular, the regulations may provide that— (a) material of a specified description; (b) material relating to persons of a specified description; must, or must not, be retained following a review.

(7) "Specified" means specified in the regulations.

(8) Before making regulations under paragraph (5), the Department must consult such persons as the Department considers appropriate.

ANNEX E

Persons subject to notification requirements

63S

(1) This Article applies where P is subject to a notification requirement.

(2) P's material may be retained until P ceases to be subject to the notification requirement.

(3) For the purposes of this Article, P is subject to a notification requirement if—

(a) P is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (within the meaning of that Part);
(b) P is subject to the notification requirements of Part 2 of Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015;
(c) P is subject to the notification requirements of Part 8 of the Justice Act (Northern Ireland) 2015;
(d) the notification requirements imposed by section 14 of the Protection from Stalking Act (Northern Ireland) 2022 apply to P.

(4) The Department of Justice may by regulations amend the list of notification requirements set out in paragraph (3).

ANNEX F

Public Protection Monitoring

There are 3 PPANI categories of risk for individuals who are risk managed under Public Protection Arrangements Northern Ireland [16] (PPANI).

Category
Category 1 – Where previous offending and/or current behaviour and/or current circumstances present little evidence that the offender could cause serious harm.
Category 2 – Someone where previous offending and/or current behaviour and/or current circumstances, present clear and identifiable evidence, that the offender could cause serious harm through carrying out a contact sexual or violent offence.
Category 3 – Where previous offending, and/or current behaviour and/or current circumstances present clear and identifiable evidence that the offender is highly likely to cause serious harm through carrying out a contact sexual or violent offence.

[16] PPANI is a set of arrangements which places a duty on a range of agencies and Government Departments to work together to collaborate in assessing and managing the risks posed by certain sexual and violent offenders.

ANNEX G

REVIEW MECHANISM FLOW CHART

