



Counter-Terrorism and Border Security Act 2019

Biometric Data Fact Sheet

What are we going to do?

- The Act will improve current legislation relating to the retention of fingerprints and DNA profiles (biometrics), to strengthen the ability of the police to use biometrics to support counter-terrorism investigations.

Key quote

“[National Security Determinations (NSDs)] are being reviewed at two yearly intervals as Parliament intended. For some NSD cases, my judgment is that the evidence/intelligence against the relevant individuals is such that they could be granted for longer than two years.”

Paul Wiles, Biometric Commissioner, Annual Report for 2017

How are we going to do it?

- Amend the legislation governing the retention of biometric data in order to simplify and streamline the regime, including by increasing the maximum duration of a National Security Determination (NSD) from two to five years.
- Harmonise the retention periods for biometric data when individuals are arrested on suspicion of terrorism offences under the Police and Criminal Evidence Act 1984 (PACE) and under the Terrorism Act 2000 (TACT).
- Allow the police to treat multiple sets of biometric data taken on different occasions (but in relation to the same individual) as a single combined record, enabling a single NSD to be made in respect of multiple sets of fingerprints.
- Allow chief officers to make NSDs authorising the retention of biometric data taken in force areas other than their own.

Background

- The Protection of Freedoms Act 2012 (POFA 2012) introduced a new framework governing the retention and deletion of biometric data by the police. A chief officer can currently make a NSD to authorise the retention, for up to two years, of biometric data which the police would otherwise be required to delete, if it is necessary for national security purposes and proportionate to do so. The NSD may be renewed for successive periods of up to two years. This process can be resource intensive and complex to manage.
- In his 2017 Annual Report, Professor Paul Wiles, the Biometrics Commissioner expressed the view that the evidence/intelligence would support the making of NSDs for longer than two years in appropriate cases, and highlighted that in cases where individuals have been detained or arrested on multiple occasions, multiple NSDs have to be made for the same individual. The Commissioner suggested that the Government consider amending the legislation to address these issues.



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Biometric Data Fact Sheet

- Many planned arrests on suspicion of terrorism offences are made under the standard power of arrest in PACE, because the longer period of pre-charge detention and other exceptional powers available following arrest under TACT (on suspicion of being a terrorist) are not necessary. However, biometric data taken following a terrorism arrest under PACE cannot be retained if the person is not charged, whereas if the same individual is arrested under TACT their data can automatically be retained for three years. This change will bring the rules applying to the retention of biometric data of persons arrested for terrorism offences under PACE into line with those applying to persons arrested for the same offences under TACT.
- Currently, if an individual is arrested and their fingerprints are taken on different occasions, these would have to be managed as multiple sets of fingerprints - each with its own deletion date, and each requiring its own duplicate NSD to be made if they are to be retained on national security grounds, despite referring to the same individual. This increases the workload associated with managing the data, creates unnecessary complication and brings an increased risk of error. The Act will allow a single NSD to be made authorising the retention of multiple sets of fingerprints relating to the same individual thus ensuring consistency of treatment and reducing the workload for police, without any increased intrusion into the individual's privacy.
- At present an NSD can only be made by the chief officer of the force where the biometric data in question was taken. Where multiple sets of biometrics are taken by different forces, this can mean that multiple chief officers have to consider the same case in order to make multiple NSDs. The Act will allow a chief officer to make an NSD in relation to data taken outside their force area, ensuring that a single decision is taken by the chief officer best placed to do so, for example, because their force is investigating the individual.

What is Biometric Data?

- Biometric Data is the term used for fingerprints and DNA profiles (unique identifiers derived from a physical sample of DNA, which is destroyed once the profile is made). Biometrics can be used to identify a particular individual, and are routinely used by the police in all kinds of criminal cases.

Who is subject to a National Security Determination?

- An individual may be subject to a National Security Determination if, on the basis of risk assessments and intelligence, a chief officer determines that it is necessary and proportionate

in the circumstances of the particular case to retain their biometrics for the purpose of national security.

Why is the length of a NSD increasing from two to five years?

- Suspected terrorists will generally pose an enduring threat to national security. This extended period will strike a better balance between ensuring there is regular review of the retention of biometrics, subject to safeguards, and more effectively enabling the police to use the data to support investigations. It will reduce the burden of having to review the retention of data more frequently than is necessary.



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Why is the retention period of biometric data taken under PACE being increased to three years?

- This will close a gap and ensure that the police are able to retain biometric data from all suspected terrorists they arrest for the same period, regardless of the power of arrest they use.

Will these measures apply across the United Kingdom?

- Yes; the measures will apply across England and Wales, Scotland and Northern Ireland.

Key facts

- The Biometric Commissioner reviews every NSD made or renewed to ensure that there is sufficient evidence to justify the NSD.
- At the end of 2017, there were 9,072 DNA and 9,966 fingerprint holdings on the counter-terrorism biometric databases.
- 322 applications were made for NSDs in 2017, of which 310 were supported by the Biometrics Commissioner.