

Draft legislation for the purposes of Council Decision 2008/615/JHA and Council Framework Decision 2009/905/JHA¹

PART 1 **GENERAL**

Interpretation

1. In these [Regulations]—

“convicted” includes—

(a) in England and Wales, the circumstances covered by section 65B of the Police and Criminal Evidence Act 1984 Act; and

(b) in Northern Ireland, the circumstances covered by article 53B of the Police and Criminal Evidence (Northern Ireland) Order 1989²;

“dactyloscopic data” means any image of a fingerprint or palm print, including an image of a latent fingerprint or palm print, and including templates of such images;

“DNA-profile” has the meaning given by section 65 of the Police and Criminal Evidence Act 1984;

“forensic service provider” means any person that carries out any laboratory activity at the request of a person responsible for the prevention, detection or investigation of criminal offences;

“laboratory activity” means any measure taken in a laboratory when locating and recovering traces of DNA or dactyloscopic data on items, as well as developing,

¹ As noted in the Business and Implementation Case, there may also need to be further legislation or amendments to this draft legislation to fully capture these safeguards and forensic service provider requirements in relation to Northern Ireland and Scotland.

² Not yet commenced.

analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence with another member State;

“latent” means any fingerprint or palm print that through processing has been made visible for the purpose of creating an image;

“loci” means any set of identification characteristics of the non-coding part of an analysed human DNA sample, being the particular molecular structure at the various DNA locations;

“non-coding part of an analysed human DNA sample” means chromosome regions not genetically expressed, being those regions not known to provide for any functional properties of an organism;

“personal data” has the meaning given by section 1 of the Data Protection Act 1998;

“recordable offence” has the meaning—

(a) in England and Wales, given by section 118 of the Police and Criminal Evidence Act 1984;

(b) in Northern Ireland, given by article 2 of the Police and Criminal Evidence (Northern Ireland) Order 1989;

“reference DNA-profile” means any DNA-profile of an identified person;

“result of a laboratory activity” means any analytical output and any directly associated interpretation of such output;

“UKAS” means the United Kingdom Accreditation Service within the meaning of regulation 2(1) of the Accreditation Regulations 2009;

“unidentified DNA-profile” means any DNA-profile collected during the investigation of a criminal offence and belonging to a person not yet identified; and

“Union accredited forensic service provider” means any forensic service provider in any other member State accredited in accordance with Article 4 of Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities.

PART 2

DATA PROTECTION UNDER COUNCIL DECISION 2008/615/JHA

Scope of searches under Council Decision 2008/615/JHA

2. When, in accordance with Articles 3, 4 or 9 of Council Decision 2008/615/JHA, a member State searches or compares any DNA-profile or dactyloscopic data it holds against DNA-profiles or dactyloscopic data held by the United Kingdom, the national unit must ensure that those searches or comparisons are only against —

- (a) unidentified DNA-profiles;
- (b) reference DNA-profiles relating to persons who have been convicted of a recordable offence; and
- (c) dactyloscopic data relating to persons who have been convicted of a recordable offence.

Provision of personal data following a DNA-profile match

3.—(1) Subject to paragraphs (2) to (4), where, pursuant to a search or comparison made by a member State under Articles 3 or 4 of Council Decision 2008/615/JHA, a match is shown between any DNA-profile held by that member State and any DNA-profile held by the United Kingdom, the national unit may provide the personal data it holds relating to the matched DNA-profile to the member State that made the search or comparison.

(2) The national unit must not provide the personal data where—

- (a) the member State that made the search or comparison has not requested the personal data relating to the matched DNA-profile;
- (b) the matched DNA-profile does not include ten or more matching loci;
- (c) the personal data relates to a person aged under 18, unless the request for the personal data is received by the national unit following a formal request for mutual legal assistance to the United Kingdom Central Authority for the Exchange of Criminal Records; or
- (d) subject to paragraphs (3) and (4), both the DNA-profile held by the member State and the DNA-profile held by the United Kingdom are reference DNA-profiles.

(3) In the circumstances set out in paragraph 2(d), the national unit may, unless one or more of paragraphs 2(a) to (c) applies, request that the member State requesting the personal data provides dactyloscopic data for the person to whom the reference DNA-profile relates.

(4) Where—

(a) the member State requesting the personal data provides dactyloscopic data in response to a request under paragraph (3); and

(b) there is a match with dactyloscopic data held by the United Kingdom;

the national unit may, subject to paragraph (2)(c), provide the personal data it holds relating to the matched dactyloscopic data.

Provision of personal data following a dactyloscopic data match

4.—(1) Subject to paragraph (2), where, pursuant to a search made by a member State under Article 9 of Council Decision 2008/615/JHA, a match is shown between any dactyloscopic data held by that member State and any dactyloscopic data held by the United Kingdom, the national unit may provide the personal data it holds relating to the matched dactyloscopic data to the member State that made the search.

(2) The national unit must not provide the personal data it holds relating to the matched dactyloscopic data to the member State that made the search or comparison where—

(a) the member State that made the search has not requested the personal data relating to the matched dactyloscopic data; or

(b) the personal data relates to a person aged under 18, unless the request for the personal data is received by the national unit following a formal request for mutual legal assistance to the United Kingdom Central Authority for the Exchange of Criminal Records.

PART 3

ACCREDITATION OF FORENSIC SERVICE PROVIDERS

Scope of provisions relating to forensic providers

5.—(1) This Part applies to any laboratory activity resulting in:

- (a) a DNA-profile; or
- (b) dactyloscopic data.

(2) Nothing in this Part affects rules of evidence.

Accreditation

6. Any forensic service provider carrying out a laboratory activity must be accredited by UKAS as complying with BS EN ISO/IEC 17025:2005.

Recognition of results

7. A person responsible for the prevention, detection, or investigation of criminal offences must recognise the result of a laboratory activity provided by a Union-accredited forensic service provider as being equally reliable as the result of a laboratory activity provided by a forensic service provider accredited in accordance with Regulation 6.

Enforcement

8.—(1) If the Secretary of State becomes aware that a person has not complied with its duties under this Part, the Secretary of State may, by notice to that person, specify—

- (a) measures that the person must take to ensure that that person complies with this Part; and .
- (b) the deadline by which those measures must be taken.

(2) The Secretary of State must consider any representations about the notice received from the person to whom the notice is addressed, and may amend or withdraw the notice.

(3) If the specified measures have not been taken by the specified deadline, the Secretary of State may apply to the High Court for an order requiring the person to comply with the notice or otherwise carry out its duties under this Part.

Guidance

9. The Secretary of State may give guidance to a person responsible for the prevention, detection or investigation of criminal offences with respect to the practical implementation of this Part, and a person to whom such guidance is given must have regard to it.