This document is intended for use by all force personnel irrespective of their role. It aims to provide guidance, in the form of questions and answers, on chapter 1 of part 1 of the Protection of Freedoms Act (PoFA) 2012 and in particular on the new rules governing the destruction, retention and use of fingerprints, DNA samples and the profiles derived from those samples.

The Bill received Royal Assent on 1 May 2012 and will become law over the coming months with the issue of a series of Commencement Orders.

This initial edition of the guidance aims to answer some of the broader questions being asked as police officers and staff become more aware of the contents of the new legislation and its likely impact on policing and the wider criminal justice system.

Future editions will give further guidance either in the form of more up-to-date answers to previous questions or in the form of new questions and answers.

A glossary has been included at the end of this guidance.

If you have any questions that have not yet been answered in this or future editions, kindly submit them to the project team at freedoms.act@npia.pnn.police.uk for consideration for inclusion in a future edition of this guidance.
Dates & Timelines

1. How does Royal Assent fit in with commencement of the Protection of Freedoms Act 2012? Specifically, how much time do forces have to action deletions for legacy data?

   We know that no provisions in the Act will come into force less than two months after Royal Assent, but we are still awaiting ministerial approval for a draft timeline. We hope to be able to give a clearer indication in the coming weeks.

2. At what point should forces start to delete electronic data and destroy physical DNA samples / fingerprint forms?

   Although the destruction of DNA samples is anticipated to be one of the first tasks to be commenced, an exact date is not yet known. Hardcopy fingerprint forms will be destroyed once the retention period for their biometric data has expired, as set out in the Act. Further information will be provided once the PoFA project team have a list of forms earmarked for destruction. No provisions may come into force within the first two months following the date of Royal Assent. Whenever it is made, the relevant commencement order will include pertinent dates in relation to sample destruction.

3. What are the penalties if forces don’t meet the date for reconciling their profiles?

   There are no penalties, but there is a risk that you may have unreconciled DNA profiles deleted from the National DNA Database that could otherwise be legally retained. This could result in a potential decrease in matches, some of which could relate to serious offences. There is also a risk that members of the public will lose confidence in the police service.

4. Is there a process map for forces that sets out “Day Zero” onwards from the commencement of the Act?

   A draft timeline has been submitted to ministers for approval. This timeline would act as a visual aid to forces to indicate the likely dates for commencement for each section of the Act.

5. Much of the impact of this legislation seems dependent on extensive IT changes. How long are these likely to take? And who will foot the bill?

   Changes to the national IT systems (PNC, IDENT1 and NDNAD) could take up to a year to change, test and implement fully. How such changes will be paid for is currently under consideration. The costs of implementation are yet to be determined and fully understood. Once more detail is known, options will be duly considered by the project’s Senior Responsible Officer, Chief Constable Chris Sims (West Midlands Police) and the appropriate Home Office Minister.
Speculative Searches

Once amended, Section 63D (5) PACE will read "Nothing in this section prevents a speculative search, in relation to section 63D material, from being carried out within such time as may be reasonably required for the search if the responsible chief officer of police considers the search to be desirable."

6. Will LiveScan be changed to support the requirements of the new legislation or will the changes have to be managed manually in force?

There are likely to be significant changes to both LiveScan and IDENT1; the associated workflows within force will change to reflect this.

7. What are the timelines for resolving the single speculative search issue?

Chief Constable Chris Sims and Home Office ministers are currently discussing this.

8. Can forces continue to carry out searches whilst an investigation is ongoing?

Yes, whilst the investigation is ongoing, profiles can be loaded and searched against the national databases.

Reconciliation Work

9. Is there any merit in looking at the Phase 2 lists before completing the Phase 1 checks as there may be cases that forces wish to prioritise and send for upgrade to SGM Plus™?

If forces are anticipating that they would be reconciling their SGM profiles and would like to upgrade them to SGM Plus™, then it is prudent to complete these lists as soon as possible - there may be delays to upgrading which need to be identified before the destruction of samples takes place.

10. What are the Phase 2 and Phase 3 categories for unreconciled profiles? A refresher would be helpful.

**Phase 1:** Unique SGM Plus™ profile records which are PNC/NDNAD unreconciled

**Phase 2:** SGM records which are PNC/NDNAD unreconciled (including additional information for potential replicate record status)

**Phase 2.1:** SGM records which are PNC/NDNAD reconciled

**Phase 3.0:** SGM Retained Acquittal records

**Phase 3.1:** SGM Plus™ Retained Acquittal records

**Phase 3.2:** SGM Plus™ unreconciled records with a replicate SGM Plus™ PNC reconciled record retained on the PNC/NDNAD
11. For data previously held by the Forensic Science Service (FSS), who do forces notify of any upgrades that are required? Should it be the FSS or the force’s forensic service provider (FSP)?

The forensic service provider.

12. The FSS Archive already has backlogs; how will they manage their existing work in addition to the requests for upgrades?

The FSS has informed the project that they will be recruiting additional staff on the 1 June which will deal with the backlog and the requests coming through for SGM upgrades.

13. How soon will sample destruction occur once FSPs have been notified of which samples require upgrading?

This is very much dependant on the volumes sent to FSPs. The higher the volume the longer it will take, however, indicatives timelines are between one and three months.

Casework and Match Reports

14. Is casework in scope?

Any DNA profiles and fingerprints that have been taken to be compared against a specific case can be retained within that casework even if that person was found not guilty or the case was discontinued. This is to comply with disclosure rules under CIPA. Under no circumstances can that material be used for comparison against a different case.

15. What happens if a match report is generated but the subject profile is illegally held i.e. a legacy record that should be deleted according to the Act but the force has yet to delete it?

The PNC record should be updated so that it drives the deletion from the national databases. The legislation is very strict to say that any matches cannot be used as evidence or to aid an investigation; also that nobody should be notified of that match.

Retention of fingerprints and DNA profiles

16. From which point is the retention period calculated?

All retention periods are calculated from the date the appropriate sample was taken.
17. What is the process for applying to the Commissioner for the Retention and Use of Biometric Material (hereafter referred to as the Biometrics Commissioner) for his/her consent to retain section 63D material for a person who was arrested but not charged with a qualifying offence?

The Biometrics Commissioner is yet to be appointed but once they are in place further guidelines are expected. Decisions will need to be made on matters such as the application process, what forms may be required and the extent of the information required to be provided. As more detail becomes known, forces will be updated appropriately.

18. What will be the process for applying to a District Judge to retain section 63D material beyond its initial lawful retention period?

In a similar vein to Q17 above, the processes around an application to a District Judge are yet to be determined. All that is known with any degree of certainty at this time is that any application to extend a retention period must be made before the end of that period but no earlier than three months before the end.

19. Do cautions count as convictions?

Cautions, Reprimands and Warnings all count as convictions for the purposes of this legislation.

20. How are Penalty Notices for Disorder (PNDs) affected by the new legislation?

Any section 63D material taken in connection with the issue of a PND, whether to an adult or a person under 18 years old, may be retained for two years from the date of sampling. This retention period cannot be extended.

21. Is the retention of detainees’ photographs and footwear impressions covered by this new legislation?

No, the legislation deals with only fingerprints, DNA samples and the profiles derived from those samples. However, it is anticipated that the law will, in time, change in respect of detainees’ photographs.

22. How is Restorative Justice catered for within this legislation?

A Restorative Justice ‘Resolution’ (RJ) is not currently a formal criminal justice disposal and so cannot be considered as a disposal for the purposes of the Protection of Freedoms Act. It is not defined in legislation and has no primary legislative basis.

For the purposes of retaining/deleting biometrics, RJ resolutions should be treated according to the underlying formal criminal justice disposal:

- if the subject is arrested but no further action is taken other than an RJ resolution, treat as an NFA’d arrest
- if the subject is arrested and cautioned along with an RJ resolution, treat as you would someone who is cautioned
23. What support is there for forces in receipt of questions from members of the public about the retention/disposal of their own biometric profiles?

Home Office personnel are currently drafting standardised responses for forces to provide to members of the public in response to such questions. Once we are in receipt of these they will be shared with you.

24. The current ‘DNA confirmed’ marker on PNC is confusing – will any clarity be given as to what the “DNA confirmed” status actually means or will there be new markers that give more specific information?

PNC markers will be reviewed as part of this project; guidance and advice on any changes will be fully communicated to forces.

25. How do you deal with voluntary attendees where samples have been taken?

The Home Office has clarified that there is no issue with biometrics being taken from voluntary attendees, provided (i) it is truly voluntary i.e. it is not implied that they will be arrested if they refuse and (ii) they are identified in the system as voluntary so that, once the Protection of Freedoms Act is fully in force, they can be deleted readily. We are keen to see more cases dealt with voluntarily, for the workload/bureaucracy reasons identified, but this does need to be done properly and transparently.

The only volunteer DNA sample profile records which will be loaded to NDNAD will be those taken from Sex Offenders, Scottish Volunteers or Vulnerable Persons (on agreement by the NDNAD Strategy Board).
**Glossary**

**DNA**
Deoxyribonucleic acid, a substance found in most cells of all people, and in the cells of animals, plants, and other organic matter. Variations in the DNA code are responsible for physical differences between individuals including their sex, height and eye colour. Except for identical siblings, each person’s DNA is unique.

**DNA sample**
A physical sample of an individual’s DNA.

**DNA profile**
A numerical representation following analysis of a DNA sample.

**NDNAD**
National DNA Database

**PACE**
Police and Criminal Evidence Act 1984

**PNC**
The Police National Computer, which holds extensive data on arrested individuals, vehicles and property and is accessible from over 120,000 terminals across the country. In particular, it contains details of persons from whom DNA samples have been taken under PACE. A subset of these details is transferred electronically to create a stub record on the NDNAD to which the DNA profile is subsequently attached.

**Replicate Records**
DNA profile replicate records arise from samples being taken from the same subject on more than one occasion. Some causes of replication are unavoidable, for example, the existing profile on the Database may be under an alias. It is important to emphasise, however, that the presence of these replicate profiles on the NDNAD does not impact on the effectiveness and integrity of the Database.

**SGM**
The Second Generation Multiplex DNA profiling system, introduced in 1995, which allows the simultaneous analysis of six loci and a gender marker to produce a DNA profile with an average match probability of about one in fifty million. SGM was the original DNA system used for the NDNAD.
Glossary (cont’d)

**SGM Plus™**
The current system of DNA profiling used in the UK, known as SGM Plus™ examines 10 areas of DNA plus a gender test and produces a numeric DNA ‘profile’ that can be loaded electronically onto the NDNAD. This contains two numerical representations of the DNA at each area examined, one inherited from the mother and the other from the father. Although each person’s DNA is unique (apart from identical siblings) DNA profiling does not examine all variations between individuals and is therefore not unique to an individual. It does, however, examine those areas of the DNA that discriminate widely between individuals and the chance of two unrelated individuals having matching full SGM Plus™ profiles is less than one in a 1,000 million.

**Subject sample**
A DNA sample taken from a known individual, usually following an arrest.

**Subject profile**
The DNA profile derived from analysing a subject sample.

**Unreconciled record**
A DNA profile record or fingerprint record which has no linked PNC record and therefore no information relating to the subject’s arrest and conviction history.