



DÁIL ÉIREANN

**AN BILLE UM CHEARTAS COIRIÚIL (FIANAISE DLÍ-
EOLAÍOCHTA AGUS CÓRAS BUNACHAIR SONRAÍ DNA),
2013**

**CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA
DATABASE SYSTEM) BILL 2013**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (FIANAISE DLÍ-EOLAÍOCHTA AGUS CÓRAS BUNACHAIR SONRAÍ DNA), 2013 —ROGHFHOCHOISTE

CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE SYSTEM) BILL 2013 —SELECT SUB-COMMITTEE

Leasuithe Amendments

SECTION 33

1. In page 52, between lines 21 and 22, to insert the following:

“(2) Any conviction covered by the terms of the Good Friday Agreement 1998 is excluded for consideration under this section.”.

—Pádraig Mac Lochlainn.

SECTION 96

2. In page 111, line 14, to delete “The Minister may, by order” and substitute “The Minister may by order”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 98

3. In page 112, between lines 2 and 3, to insert the following:

“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,

[SECTION 98]

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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 98 of the Bill.]

[SECTION 100]

SECTION 100

4. In page 112, after line 33, to insert the following:

“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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 100]

5. In page 112, after line 33, to insert the following:

“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;”.

—An tAire Dlí agus Cirt agus Comhionannais.

6. In page 112, after line 33, to insert the following:

“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”.

—An tAire Dlí agus Cirt agus Comhionannais.

7. In page 112, after line 33, to insert the following:

“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,

[SECTION 100]

- (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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

8. In page 112, after line 33, to insert the following:

“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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

9. In page 112, after line 33, to insert the following:

“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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

10. In page 112, after line 33, to insert the following:

“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,

[SECTION 100]

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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

11. In page 112, after line 33, to insert the following:

“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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

12. In page 112, after line 33, to insert the following:

“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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

13. In page 113, line 17, to delete “*section 118(2)*” and substitute “*section 117(2)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

14. In page 113, line 20, to delete “*section 118(1)*” and substitute “*section 117(1)*”.

—An tAire Dlí agus Cirt agus Comhionannais.

15. In page 113, between lines 29 and 30, to insert the following:

“ “Council Framework Decision” means Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities;”.

—An tAire Dlí agus Cirt agus Comhionannais.

16. In page 113, line 30, after “data” ” to insert “, other than in *Chapter 8*,”.

—An tAire Dlí agus Cirt agus Comhionannais.

17. In page 115, line 29, after “instrument” to insert “or the Council Framework Decision”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 100]

18. In page 115, line 31, after “instrument” to insert “or the Council Framework Decision, as the case may be”.

—An tAire Dlí agus Cirt agus Comhionannais.

19. In page 115, between lines 36 and 37, to insert the following:

“(7) The text of the Council Framework Decision in the English language is for convenience of reference set out in *Schedule 4**.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**This refers to the new Schedule proposed to be inserted by amendment No. 39*]

SECTION 101

20. In page 115, between lines 36 and 37, to insert the following:

“Transfer of DNA samples or profiles to other jurisdictions

101. (1) A DNA sample or profile may not be transferred to another jurisdiction for the purposes of it being used against an individual who has already stood trial and been acquitted in this jurisdiction.
- (2) The transfer of DNA samples or profiles to other jurisdictions must be limited to jurisdictions with which the Irish State has extradition treaties in place.
- (3) Once a DNA sample or profile has been transferred to another jurisdiction there must be a guarantee in place that the sample must be destroyed no later than 6 months after it has first been received.”.

—Pádraig Mac Lochlainn.

SECTION 113

21. In page 122, between lines 11 and 12, to insert the following:

“Definitions (*Chapter 4*)

113. 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;

[SECTION 113]

“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 104(2), 105(3), 106(2), 107(3), 110(2) or 111(2)*.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 113 of the Bill.]

SECTION 114

22. In page 122, between lines 21 and 22, to insert the following:

“Application of Act of 1988

114. (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 100* 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 100* 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 104(2), 105(3), 106(2), 107(3), 110(2) or 111(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 116** 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 11* 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 11* 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 11 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 11 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 11 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 11 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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 114 of the Bill.]

*[*This is a reference to the new section proposed to be inserted by amendment 24.]*

SECTION 115

23. In page 122, between lines 28 and 29, to insert the following:

“Purposes for which data may be processed

115. (1) Subject to *subsection (3)*, data supplied by the national contact point of a designated state under *section 104, 105 or 110* 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 104(3) or 105(4)*;
 - (d) recording the supply and receipt of the data under *section 118**.
- (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

[SECTION 115]

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 118**.
- (3) Data received by a national contact point pursuant to *section 106(2)*, *107(3)* or *111(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 106(3)* or *107(4)*;
 - (c) recording the supply and receipt of the data under *section 118**.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 115 of the Bill.*]

[**This is a reference to the new section proposed to be inserted by amendment 26.*]

SECTION 116

24. In page 123, between lines 1 and 2, to insert the following:

“Correction of inaccurate data, destruction of incorrectly supplied data and storage of data

- 116.** (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

[SECTION 116]

- (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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 116 of the Bill.]

SECTION 117

25. In page 123, between lines 15 and 16, to insert the following:

“Authorised officers

- 117.** (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 106 and 107* 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 111* 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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 117]

[*Acceptance of this amendment involves the deletion of section 117 of the Bill.*]

SECTION 118

26. In page 123, between lines 28 and 29, to insert the following:

“Recording of automated supply of data

- 118.** (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 104, 105, 106 and 107*.
- (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 110 and 111*.
- (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 106, 107 or 111*—
 - (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

[SECTION 118]

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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 118 of the Bill.]

SECTION 120

27. In page 125, between lines 17 and 18, to insert the following:

“ ‘data controller’ has the meaning it has in section 1(1) of the Data Protection Act 1988;”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 121

28. In page 126, between lines 25 and 26, to insert the following:

“Amendment of section 77(5) of Act of 2008

121. 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

[SECTION 121]

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”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 122

29. In page 128, lines 3 and 4, to delete “section 8 of the Criminal Justice Act 1984” and substitute the following:

“any statutory provision providing for the destruction of fingerprints, palm prints or photographs of persons”.

—An tAire Dlí agus Cirt agus Comhionannais.

30. In page 129, line 9, to delete “section 8(11)” and substitute “section 8H”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 125

31. In page 140, between lines 5 and 6, to insert the following:

“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

125. The Act of 2008 is amended by the insertion of the following section after section 79B (inserted by *section 124*):

“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.”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 125]

32. In page 140, between lines 5 and 6, to insert the following:

“Amendment of section 107 of Act of 2008

126. 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 11 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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 127

33. In page 144, lines 22 and 23, to delete “section 8 of the Criminal Justice Act 1984” and substitute the following:

“any statutory provision providing for the destruction of fingerprints, palm prints or photographs of persons”.

—An tAire Dlí agus Cirt agus Comhionannais.

34. In page 145, line 12, to delete “section 8(11)” and substitute “section 8H”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 134

35. In page 151, between lines 24 and 25, to insert the following:

“CHAPTER 8

Recognition of accredited forensic service providers carrying out laboratory activities

Definitions (Chapter 8)

135. 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

[SECTION 134]

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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 135

36. In page 151, between lines 24 and 25, to insert the following:

“Recognition of accredited forensic service providers carrying out laboratory activities in Member States

136. (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.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 144

37. In page 157, line 38, to delete “Director General of the Irish Youth Justice Service” and substitute “National Director of the Irish Youth Justice Service”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 154

38. In page 162, between lines 4 and 5, to insert the following:

“Amendment of section 6(4) of Act of 1984

154. 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”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 154 of the Bill.]

[SECTION 154]

SECTION 155

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 156

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

NEW SCHEDULE

39. In page 192, after line 26, to insert the following:

“SCHEDULE 4

Section 100

TEXT OF COUNCIL FRAMEWORK DECISION 2009/905/JHA OF 30 NOVEMBER 2009

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,

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.

[NEW SCHEDULE]

- (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 the European Union 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, 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 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.

[NEW SCHEDULE]

- (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.
- (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

[NEW SCHEDULE]

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

[NEW SCHEDULE]

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”.

—An tAire Dlí agus Cirt agus Comhionannais.

TITLE

- 40.** In page 12, line 3, after “2006;” to insert the following:

“to give effect to Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities;”.

—An tAire Dlí agus Cirt agus Comhionannais.