

Criminal Justice (Forensic Sampling and Evidence) Bill 2007

General Scheme

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Part A: Preliminary

Head 1: Short Title, Interpretation and Commencement

- (a) Short Title: This [Act] may be cited as the Criminal Justice (Forensic Sampling and Evidence) Act 2007
- (b) Commencement: The Minister for Justice, Equality & Law Reform (hereafter 'the Minister') shall by order appoint a day as a commencement day for this Act.
- (c) DNA Database
The DNA database is as set out in Parts B of this Scheme. It shall be established on or after the commencement day and shall be arranged to facilitate the carrying out of two functions, investigation and identification.
- (d) Evidential samples: 'Evidential samples' are those taken in accordance with Part C of this Act on or after the commencement day.
- (e) Definitions:
Analysis: for the purposes of this Act, the term 'analysis' means the differentiation between individuals, based on forensic methods, including DNA profiles.
Minister: Minister for Justice, Equality & Law Reform.
Commissioner means the Garda Commissioner.
DNA: means deoxyribonucleic acid.
'Evidential sample' means a sample under Head 14.
"Forensic" means the scientific tests and techniques used in connection with the detection of crime.
Laboratory: means the Forensic Science Laboratory and *'Director'* means the officer who is, or is for the time being, in charge of the laboratory (Head 3)
Proceedings: includes extradition and EAW proceedings and Mutual Legal Assistance requests, as well as proceedings under section 2 of Criminal Procedure Act 1993 (i.e. miscarriages of justice).
Profile: means the differentiation between individuals based on their DNA.
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Head 2: Permitted Analysis of Samples taken under this Act

Subject to more specific provisions that may apply, profiles derived from samples taken or provided in accordance with this Act may be analysed or used in connection with:

- (a) criminal investigations generally (i.e. the ‘investigation database’ as referred to in Head 6(2)) or, as appropriate,
 - (b) for the purpose of identifying missing or unidentified persons, or
 - (c) under Part D / Head 14, in connection with the investigation of particular offence(s).
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Head 3: Designated Laboratory

- (a) The Forensic Science Laboratory of the Department of Justice, Equality & Law Reform, hereafter referred to as the laboratory, shall, in accordance with this Act, perform the analysis and any related functions under Head 2.
- (b) The laboratory shall develop profiles from samples submitted to it (by the Gardaí) and those profiles shall be stored electronically for purposes of comparison.
- (c)
 - (i) Subject to Head 17(d), the Gardaí shall retain ownership of the samples and of the intelligence information derived from the forensic analysis of the samples..
 - (ii) The laboratory, acting on behalf of the Minister, shall retain ownership and custody of the profiles.
- (d) The laboratory shall undertake searches of the database as required, in particular when new or additional profiles are added, and it shall inform the Gardaí when a match is recorded.
- (e) A 'search' or 'searches' means:
 - (i) in the case of a criminal investigation, that the profiles on the Investigation division of the DNA database (arising from Heads 8,9,10,11,12) and the crime scene samples (Head 7) are examined against each other or,
 - (ii) in the case of the identification division of the DNA database, that the 'investigation' division (Heads 8,9,10,11, 12) and the 'crime scene' index (head 7) are examined against a sample / profile available in the 'identification' division under Head 13.
- (f) A 'match' means a situation where a degree of correspondence that may be reasonably regarded as indicating the identity of a person is recorded between
 - (i) in the case of a criminal investigation, a 'crime scene' profile under Head 7 and another profile from the Investigation database of profiles under Heads 8,9,10,11 or
 - (ii) in the case of missing or injured persons, a profile from the 'identification' database under Head 13 and another profile from the Investigation database or under Head 7.
- (g) The laboratory shall adhere to best international practice in all matters relating to the performance of its functions and shall maintain accreditation to recognised international standards in relation to its procedures.
- (h) The laboratory may seek the assistance of another laboratory (whether in or outside the State) in the analysis of samples. The laboratory shall satisfy itself that the other laboratory meets the required standards in respect of the analysis to be carried out.

- (i) The laboratory shall provide to the Minister (within six months from the end of the calendar year in question) an annual report on the operation by it of this Act. The Minister shall lay it before the Houses of the Oireachtas.
 - (j) (i) Nothing in this Head shall prevent the assignment to another laboratory, inside or outside the State, on a temporary basis, of the work carried out by the FSL, where the services of the FSL are temporarily unavailable.
 - (ii) The reassignment shall be authorised by the Minister upon request from the Director of the FSL or the Commissioner.
 - (iii) The laboratory to which work is assigned shall have appropriate accreditation and other requirements as may be specified by the Minister.
 - (iv) The FSL shall facilitate the other laboratory and the Gardai during any period of reassignment. It shall, in particular, provide access to profiles it holds and to any previous analysis of those profiles.
 - (v) The laboratory to which work had been assigned shall, without delay, return all relevant files, samples and profiles to the FSL when the period of reassignment ceases.
 - (vi) The provisions of this [Act], in particular Head 20 (offences), shall apply in the case of the laboratory to which work has been assigned.
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Head 4: Expenses

The expenses incurred by the Minister in the operation of this Act shall be met from moneys voted by the Oireachtas.

Part B: DNA Database

Head 5 Composition of the DNA Database:

- (1) The DNA database shall be an electronic storing of profiles derived from samples taken or recovered in accordance with Heads 7(crime scenes), 8 (suspects), 9 (convicts), 10 (volunteers), 11 (mass screening), 13 (samples from or relating to missing persons), 12 (elimination index) and 14(h) (certain evidential samples) of this [Act] and shall be organised along the lines set out in paragraphs (2) and (3) of this Head.
 - (2) The section of the DNA database to be used in connection with criminal investigations (to be known as the investigation division) shall consist of:
 - (a) profiles derived from samples taken under Heads 8 (suspects) and 9 (convicts) [and 14(h) - certain evidential samples] and,
 - (b) subject to the provisions of Heads 10,11,12 , profiles derived from samples provided under Heads 10 (volunteers), 11 (mass screening) or 12 (elimination index) and
 - (3) The second part of the database (the Identification Division) shall contain profiles provided or taken for the purposes of identifying missing and unidentified persons - Head 13 refers.
 - (4) The database shall be constructed, maintained and updated by the laboratory.
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Head 6: Operation of the DNA Database

- (a) Profiles derived from samples taken in accordance with Head 13 (missing persons) for purposes of paragraph (3) of Head 5 (i.e. identification) may not be analysed for purposes of paragraph (2) of Head 5 (criminal investigation).
 - (b) An analysis in connection with a criminal investigation shall entail a comparison, for the purposes of establishing whether and the extent to which there is correspondence between,
 - (i) on the one hand, a profile or profiles on the 'investigation' database that has been derived from a sample or samples taken from a person in accordance with Heads 8 (suspects) and 9 (convicts) or, where appropriate, Head 10 (volunteers) or, Head 11 (mass screening) and,
 - (ii) on the other, a profile or profiles derived from a sample or samples found at a scene of crime [Head 7].
 - (c) An analysis for purposes of identification of missing or injured persons shall entail a comparison between samples taken under Head 13 and other samples that are likely to assist in identifying the missing or injured person. Those 'other samples' may include crime scene samples recovered under Head 7 but only in so far as they aid identification.
 - (d) In the case of criminal investigations, a profile derived from a sample taken in accordance with this Act, other than a profile derived from samples taken under Heads 10(f) and 11, [i.e. where the sample is taken in connection with a particular offence] or under Head 13 (missing or injured persons), may be analysed against all crime scene profiles held on the database.
 - (e) A sample taken under Head 10(e) or Head 11 shall be analysed or used only in relation to the criminal investigation in connection with which the sample was taken.
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Head 7: Crime Scene Samples

- (a) There shall be a database of crime scene samples. It shall consist of profiles from samples taken or recovered on, before or after the commencement day, from crime scenes. The profiles shall be analysed as provided for in Head 6 or Part C (Evidential Samples).
 - (b) For the purposes of this Act, a crime scene may include a place as in Section 5 of the Criminal Justice Act 2006 and may, as appropriate, include :
 - (i) a person, their clothing and belongings that are or may be linked to the crime, and may include also their dwelling or other place where it is reasonably believed samples may be recovered that are relevant to the investigation, or
 - (ii) a vehicle (whether or not the vehicle is or was at the place referred to at section 5 of 2006 Act or whether or not it belongs to the person referred to at (i)) or
 - (iii) the remains of a deceased person.
 - (c) Samples may be taken at a location other than that referred to at section 5 of 2006 Act from a person who comes within the terms of paragraph (b)(i) or from a vehicle referred to at paragraph (b)(ii). .
 - (d) A warrant issued under Section 6 of the CJ Act 2006 is required where a search of a dwelling (as mentioned at paragraph (b) of this Head) arises.
 - (e) Samples taken as part of a criminal investigation, from a person or a place, which, when taken, is not a crime scene, may be analysed or made available for analysis under this Act, in furtherance of the said investigation.
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Head 8: Samples from suspects

- (a) (i) Profiles from samples taken under this Head shall be entered on to the DNA database
- (ii) A sample may be taken from a person who is in custody under the provisions of:
- a. section 30 of the OAS Act 1939,
 - b. section 4 of the CJ Act 1984
 - c. section 2 of the CJ (Drug Trafficking) Act 1996.
 - d. section 42 of CJ Act 1999
- (iii) Where a sample is taken under this Head as part of the investigation into the particular offence(s) in relation to which the person has been detained, the sample, in addition to being stored on the database, shall, in so far as that investigation is concerned, be treated as if taken under Head 14 (i.e. an 'evidential' sample).
- (b) (i) A sample may be taken under (a) of this Head even where a sample was previously taken where the person had previously been detained under any of the powers referred to in (a) or had already been provided in accordance with Heads 9 (convicted persons), 10 (volunteers) or 11 (mass screening).
- (ii) A Supt may authorise the taking of a second or further sample under this Head where he / she is satisfied that the previous sample was lost, damaged, contaminated or was otherwise unsuitable for analysis or for the development of profiles.
- (c) (i) The member in charge (as defined in the Treatment of Persons in Custody Regs 1987) may take, or cause to be taken, from a person in custody under paragraph (a) of this Head, for the purpose of forensic testing and analysis in accordance with this Act any or all of the following samples: mouth swabs or plucked hairs.
- (ii) The member in charge shall record details of the sampling in the custody record (as defined in the 1987 Regs).
- (iii) The samples shall be taken in a Garda Station or, with the consent of an Inspector, at another place where the person is lawfully detained.
- (d) (i) Where a person who is required by this Head to provide a sample under paragraph (c)(i) fails or refuses to do so, that person shall be informed that the Gardaí may use reasonable force to ensure a sample is taken.
- (ii) The use of force to take a sample under para (c)(i) of this Head must be authorised by the Superintendent. The level of force shall be proportionate and shall be carried out in the presence of a Garda not below the rank of Inspector and shall be video recorded.
- (iii) In the case of a person over 12 (or 10, as appropriate) but under 18, the parent or guardian shall, where it is reasonably possible to do so, be given the opportunity to attend while the sample is being taken.

- (e) Profiles may be developed by the laboratory from samples taken under this Head and may be entered on the DNA database referred to at Head 5.
 - (f) Subject to paragraph (g) of this Head, details of any results of analysis carried out by the laboratory on a sample taken under this Head [or under Heads 9,10,11] or on a related profile shall not be used or relied upon as evidence in any criminal proceedings.
 - (g) The results of analysis carried out on samples provided under this Head or Heads 9, 10 or 11 may, with leave of the Court hearing the proceedings, be entered in evidence where a person from whom the sample was taken refuses or fails to provide a second sample for purposes of Head 14 or where the said person is unavailable to provide the second sample (under Head 14) or where the court otherwise permits.
 - (h) A person who obstructs a Garda entitled to take a sample under this Head shall be guilty of an offence and shall be liable to a fine of up to €5000 or 3 years imprisonment, or both.
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Head 9: Samples from Convicted Persons

- (a) Samples shall be taken:
- (i) from those persons who, on the commencement day, have been convicted and are in prison or are on temporary release or who are otherwise still subject to a sentence for an offence to which the detention powers at Head 8(a) apply or could be applied, and
 - (ii) from persons sentenced to imprisonment following the commencement day in respect of an offence to which the detention powers of Head 8 apply but who had not given a sample previously under this Act and
 - (iii) from persons who, following conviction, are placed on the sex offenders 'register' in accordance with the Sex Offenders Act 2001.
 - (iv) In the case of persons under paragraph (iii) who had not been required to give a sample under Head 8 at the time of his / her arrest, or who are convicted after the commencement of this Act and who are not sentenced to or are not required to serve a term of imprisonment, a Garda Inspector may seek an order from the Court at the time of conviction or, as appropriate, sentencing requiring the convicted person to present himself / herself at a specified Garda Station at a specified time, there to have a sample taken for the purposes of this Act.
 - (v) In the case of persons on the sex offenders register at the time of commencement of this Act, a Garda Inspector may (where the person does not volunteer to attend at a Garda Station) seek an order from the District Court requiring the person to present himself / herself at a specified Garda Station at a specified time, there to have a sample taken for the purposes of this Act.
 - (vi) The Gardai may arrest any person who fails to comply with an order under paragraphs (iv) or (v) and bring that person to the Station specified in the order, there to have a sample taken in accordance with the order.
- (b) The provisions in Head 8 (b), (c), (d), (e), and (f) shall apply under this Head.
- (c) In cases where the person is in prison, samples shall be taken in the prison (define 'prison'). They shall otherwise be taken in accordance with Head 8(c)(iii), i.e. at a Garda Stn where the person is not in prison but is still subject to paragraph (a)(i) of this Head. They shall be taken by a Prison Officer where the person is in prison.
- (d) A person who obstructs a Garda or other person entitled to take a sample under this Head shall be guilty of an offence and shall, on conviction, be liable to a fine of up to €5000 or 3 years imprisonment, or both.
- (e) Head 8(d) – use of reasonable force – applies to this Head also, but with necessary modifications where the donor is in prison (e.g. substitute 'governor' for 'superintendent').
- (f) Subject to Head 8(g), details of any results of analysis carried out by the laboratory on a sample taken under this Head or on a related profile shall not be used or relied upon as evidence in any criminal proceedings other than by leave of the court.

(g) (i) Where the person is still in prison on the commencement day, the sample shall be taken as soon as possible after the commencement day but in any event, within six months of the commencement day.

(ii) Where the person is due for release within six months of the commencement day, the sample shall be taken no later than the date of release.

(iii) Where the person is being considered for temporary release within six months of the commencement day and the sample has not been taken, the taking of a sample shall occur before temporary release is granted. It may be a condition for the granting of the request.

(iv) In the case of a person to whom paragraph (a)(ii) applies, the sample shall be taken as soon as practicable after the commencement of the sentence but, in any event, within six months of commencement of the sentence or prior to release, whichever first occurs.

(h) (i) Where the person is not in prison on the commencement day but is still subject to the sentence (e.g. while on temporary release, licence, etc), the Garda Inspector in the district where the person normally resides shall, within six months of the commencement day, direct the person in writing to attend at a specified Garda Station at a specified time for the purpose of having a sample taken.

(ii) Where a person fails to comply with a direction under (i), the Inspector may authorise the arrest of that person for the purpose of having a sample taken at the designated Garda Station.

Head 10: Samples from Volunteers

- (a) Persons other than those persons to whom Head 8 (a) or Head 9 apply may give any of the samples provided for in Head 8(c)(i), i.e. mouth swabs or plucked hairs.
 - (b) Samples taken under this Head may be analysed in accordance with Head 2.
 - (c) The provisions of this Act shall apply to samples taken under this section, including the transmission of such samples, the development and analysis of profiles.
 - (d) A sample shall be taken under this Head only where the person has given written consent. The person taking the sample shall be made aware that the person giving the sample has consented.
 - (e) The consent may relate to the sample and profile being available for analysis in relation to a particular investigation(s) or generally.
 - (f) Where the consent is in relation to a particular investigation(s), the sample and profiles shall be removed from the DNA database and destroyed as soon as possible after the investigation or, as appropriate, the proceedings relating to that particular offence have been completed. The person giving the sample shall be informed when destruction has taken place.
 - (g) Where the person has consented to having the sample and profile available generally on the database, the person may withdraw consent, by notification in writing to the Superintendent in the area where the sample was taken. Where the Supt considers that the request should not be acceded to, he shall apply to the District Court for an order that the sample and profiles may be available generally. The application shall be on notice to the other party.
 - (h) An application to withdraw consent under paragraph (g) may also be made in accordance with Head 16.
 - (i) Samples shall be taken in a Garda Station or other place authorised by a Garda Sgt or, where the Garda agrees, at a place nominated by the volunteer. There shall be a written record of where and when the sample was taken. The sample shall be taken by a Garda or other person authorised by the Commissioner.
 - (j) Subject to Head 8(g), details of any results of analysis carried out by the laboratory on a sample taken under this Head or on a related profile shall not be used or relied upon as evidence in any criminal proceedings other than by leave of the court.
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Head 11: Mass Screening

- (a) 'Mass Screening' means the taking of samples for forensic testing from a defined group of people
 - (b) A Garda of at least Chief Supt rank may authorise a mass screening.
 - (c) The group may be defined by reference to one or more of the following criteria: gender, age, geographic location, timeframe, kinship, or any other factor that the Chief Supt considers relevant.
 - (d) A 'mass screening' may be undertaken only as a part of an investigation into a particular offence. The offence shall be an arrestable offence and where the Ch Supt reasonably believes that (i) a 'mass screening' is a reasonable and proportionate course of action, (ii) it is likely to advance the investigation of the offence and (iii) it represents an efficient use of resources.
 - (e) Only those samples permitted by Head 8(c)(i) may be taken, i.e. mouth swabs or plucked hairs.
 - (f) All those invited to give samples under this Head shall be informed of the purpose and shall be required to consent in writing.
 - (g) Failure or refusal to participate shall not give rise to any inference in any subsequent proceedings for the offence or any other offence.
 - (h) All persons who are asked to participate shall be informed that the samples and profiles derived therefrom shall be analysed in relation to a particular and specified offence and no other.
 - (i) All participants shall be informed that samples and profiles shall be destroyed within twelve months of the sample being taken.
 - (j) A person may be requested to give a second or further sample where the first sample has been or is thought to have been contaminated or is otherwise unsuitable for testing and analysis.
 - (k) Samples may be taken in a Garda Station or other place authorised by a Garda Sgt, or with the consent of the Gardai, at a place nominated by the donor. There shall be a record of where and when the samples were taken. Samples shall be taken by a Garda or another person authorised by the commissioner.
 - (l) Subject to Head 8(g), details of any results of analysis carried out by the laboratory on a sample taken under this Head or on a related profile shall not be used or relied upon as evidence in any criminal proceedings other than by leave of the court.
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Head 12: Elimination Index

- (a) Subject to paragraph (c) of this Head, a sub – division of the DNA database, to be known as the elimination index, may be established in relation to a particular investigation or generally.
 - (b) It shall, as appropriate, contain profiles derived from samples provided by persons who it is reasonably believed may have or are in a position (by virtue of their tasks in relation to the taking of samples or the analysis of such samples taken in accordance with this Act or as a result of being present at crime scenes) to inadvertently contaminate the sample or there is reasonable risk of such contamination.
 - (c) (i) Following consultations with the agency concerned, the Minister may, by regulation under Head 18, specify categories of persons (where necessary, by reference to the agency in which or by which they are employed) whose samples shall be taken for the purposes of this Head.
(ii) Notwithstanding (i) of this paragraph, the Minister may, by regulation under this Act, specify categories of persons who, by virtue of their employment and the tasks they will reasonably be expected to carry out in the course of that employment, shall be required to provide samples for the database. The regulations under this sub-head may, if appropriate, apply to new entrants to specified posts or categories of such posts.
 - (d) The elimination index shall be analysed for the purpose of eliminating results relating to persons referred to at (b) from the results of the analysis.
 - (e) Persons at (b) who provide samples shall be requested to indicate in writing that they are aware that the sample is for use in relation to the elimination index only.
 - (f) The use of the sample and related profiles shall be restricted to those investigations to which it relates. Where appropriate, it shall be destroyed as soon as it is no longer required for any ongoing investigation or proceedings after the person has ceased to be a person coming within the terms of this Head, including a person coming within the terms of a regulation made under paragraph (c). The person shall be notified of such restriction or destruction.
 - (g) Subject to Head 8(g), details of any results of analysis carried out by the laboratory on a sample taken under this Head or on a related profile shall not be used or relied upon as evidence in any criminal proceedings other than by leave of the court.
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Head 13: Samples from or relating to Missing or Injured Persons

- (a) Samples may be taken under this Head from :
 - (i) relatives of missing or injured persons,
 - (ii) a person who, by virtue of physical or mental injury or illness, is unable to identify him/herself,
 - (iii) any other person whose sample is likely to assist in the identification of injured or missing persons.
- (b) A sample under paragraph (a) shall be a mouth swab or plucked hairs. It shall be given with the person's consent.
- (c) Consent:
 - (i) Where possible, the consent of the person giving the sample shall be provided in writing or shall be confirmed in writing as soon as possible after the sample was taken.
 - (ii) Where the person is unable to consent (due to injury or illness), a guardian or legal representative or other appropriate person shall be informed that samples have been taken under this Head.
- (d) In the case of a missing person, samples may be taken whether or not the missing or injured person has been located (whether alive or dead). The samples may include samples recovered from clothing or other locations and, in the case of unidentified bodies, may include such bodily samples as will assist in identification. .
- (e) Where samples taken from or relating to a person who had been missing or from an injured person provide or are reasonably expected to provide information relating to the investigation of a criminal offence, the samples may be regarded as relating to crime scenes under Head 7 and may be analysed accordingly under Head 6.
- (e) All profiles derived from samples taken under paragraph (a)(i),(iii), (i.e. other than profiles derived from samples from missing or injured persons), shall be stored separately from all other profiles taken under this Act and may be analysed only in conjunction with profiles relating to persons coming within paragraphs (a)(ii) or (d).
- (f) A sample /profile taken under paragraph (a)(i) or (iii) of this Head may be analysed against crime scene samples but in such instances it shall not be analysed for purposes of a criminal investigation. Samples taken under this Head from relatives, etc may be used only for the purpose of aiding identification and shall not relate to a criminal investigation.
- (h) Persons (or in the case of paragraph (c) (ii), the representative of the person) whose samples were taken under this Head, whether with consent or not, may at any time request the Supt to destroy the sample and related profiles and the sample and profile shall be destroyed as soon as possible after such a request is made. The person (or his / her representative) shall be informed as soon as possible after the destruction has taken place. However, while samples from or referring to injured / missing persons (and related profiles) shall also be destroyed once identification has been established, they may be retained (subject only to Head 16) if the sample is a crime scene sample.
- (i) Samples may be taken in a Garda Station or other place authorised by a Garda Sgt, or, where the Garda agrees, at a place nominated by the donor. They may be taken by a Garda or a person authorised by the Commissioner or, in the case of paragraph (c)(ii), by a medical practitioner.

Part D: Evidential Samples

Head 14: Evidential Samples

- (a) (i) 'Evidential Samples' are samples taken in the context of the investigation of a specific offence or offences, with a view to proving or disproving the involvement of a person in the commission of that specific offence(s), where the offence is one with a penalty of more than one year imprisonment.
- (ii) The 'evidential' sample shall be analysed against the relevant crime scene(s) sample(s). The results of the analysis of those samples may be admitted in evidence (by defence or prosecution) in any proceedings taken as a result of the said investigation.
- (b) (i) Where a Garda not below the rank of Inspector has reasonable grounds to believe that having a sample taken from a person and having it analysed in relation to particular offence(s) would assist the investigation of that offence or those offence(s), he / she may require the person to give a sample.
- (ii) The Inspector may base his reasonable belief on the fact that a sample from the person was analysed on the 'investigation' database and that the results of that analysis gave sufficient grounds on which the Inspector could reasonably require a sample under this Head.
- (iii) The evidential sample for DNA analysis shall be a mouth swab or plucked hairs. The consent of the person shall not be required. However, in the case of persons between 12, or, as appropriate, 10 and 18 years, the parents / guardians shall, where reasonably possible to do so, be informed before a sample is taken.
- (iv) Where a sample is required for forensic testing and analysis, other than DNA analysis, any of the samples listed in paragraph (d) may be taken.
- (v) The sample taken under this Head may be analysed in relation to one or more specified criminal investigations. The person giving the sample shall be informed of this fact.
- (vi) A sample may be required under this Head even where the person has already provided a sample under Heads 8, 9, 10, 11. (i.e. for the 'investigation' part of the DNA database).
- (c) Where consent is not required (under (b)(iii) or under (d) (i), (ii),(vi), (vii), (viii), (x), (xi)) but the person is not in custody and refuses to attend at a Garda Station for the purpose of taking a sample for DNA or other analysis (when requested to do so in writing by the inspector), the inspector may authorise the arrest of that person for the purpose of taking a sample.
- (d) A sample under this Head may include any of the following:
 - (i) a swab from any part of the body including the mouth but not from any other body orifice or a genital region,
 - (ii) plucked hair (including, as may be, the follicle) other than pubic hair,
 - (iii) blood,
 - (iv) pubic hair,

- (v) urine,
 - (vi) saliva,
 - (vii) a nail,
 - (viii) any material found under the nail,
 - (ix) a swab from a body orifice, other than the mouth, or a genital region,
 - (x) a dental impression,
 - (xi) a footprint or shoeprint or similar impression of any part of the body.
- (e) A sample may be taken under this Head only if, in the case of samples under paragraph (d) (iii), (iv), (v), the appropriate consent has been given in writing by the person concerned.
- (f) Paragraph (e) of this Head shall also apply for swabs under paragraph (d) (ix), other than mouth swabs.
- (g) The samples shall be taken in a Garda Station or, with the consent of an Inspector, at another place where the person is lawfully detained.
- (h)
 - (i) In addition to the analysis referred to at paragraph (a) of this Head, profiles derived from samples providing DNA profiles taken under (b)(iii) of this Head may be entered on the DNA database (Part B) and analysed in accordance with Head 7 but only where the offence of which the donor is suspected of involvement is one to which the detention powers referred to at Head 8(a) relate.
 - (ii) All other samples taken under paragraph (b)(iii) of this Head may, subject to Head 16, be retained but shall be analysed against the crime scene index only where the Superintendent has made an *ex parte* application to the Circuit Court. Any analysis shall be in accordance with the court's order – the court may attach such conditions and restrictions as it thinks appropriate.
- (i) A report from the laboratory on the results of analysis referred to at paragraphs (b) and (c) of this Head on a sample taken under this Head, or a related profile, shall, unless the contrary is shown, be accepted as evidence of the matters contained therein and may be entered in evidence in any criminal proceedings.
- (j) Before a member of the Garda Síochána takes or causes to be taken a sample under paragraph (b) or (c), or seeks the consent (under paragraphs (e) or (f)) of the person from whom the sample is required, the member shall inform the person in writing that the results of any tests on the sample may be given in evidence in any proceedings. The details shall be recorded in the custody record (as defined in 1987 Custody Regs).
- (k)
 - (i) Only a medical practitioner or a nurse may take a sample under paragraph (d) (iii), (iv).
 - (ii) Only a medical practitioner or a nurse may take a swab under (d) (ix), other than a mouth swab.

- (iii) Only a dentist or a medical practitioner or a dental nurse may take a dental impression under (d) (x).
 - (iv) Samples under (d) (iii), (iv), (v) (ix) (other than a mouth swab) shall, in so far as is practicable, be taken by a person who is of the same sex as the person giving the sample.
- (l) A person who obstructs a Garda or other person entitled to take a sample under this Head shall be guilty of an offence and shall, on conviction, be liable to a fine of up to €5000 or 3 years imprisonment, or both.
 - (m) Head 8 (d) – use of reasonable force- shall apply in relation to the taking of those samples under this Head for which the donor’s consent is not required.
 - (n) (i) Subject to (ii) below, where consent is required and a person refuses to give that consent, the court, in any subsequent proceedings in the case, may draw such inferences as appear proper and the refusal may be treated as corroboration of any evidence in relation to which the refusal is material but the person shall not be convicted of an offence (other than an offence under paragraph (l) of this Head) solely on the basis of the inference drawn from the refusal. The arrested person shall be informed in writing that inferences may arise from a refusal to consent. The Custody Record shall include the details of the notification.
 - (ii) Where in the case of a person aged 12 (or 10 as the case may be – see Head 15) or over and under 18 has indicated consent, but the parent or guardian refuses to give consent, the Inspector may apply to a judge of the District Court for an Order authorising the taking of the sample. The court shall take all reasonable steps (having regard to any other urgent factors relevant to the situation) to hear the parents / guardian or their representative before making the Order. No inference may be drawn where no Order is sought or where the Court refuses to make an Order.
 - (iii) In considering an application under paragraph (ii), the Court shall have regard to the age and maturity of the child, the seriousness of the offence, whether the child was willing to give consent, the advice availed of by the child before he/ she indicated his / her willingness to consent, and whether it would, in all the circumstances, be in the interests of justice to make an order for the taking of a sample.
 - (iv) The Court may specify the type of sample to be taken. It shall, where possible, prescribe a sample for which, in the case of an adult, consent would not be required.
 - (o) For the avoidance of doubt, a person may be re-arrested under section 10(1) of the Criminal Justice Act 1984 where the results of analysis of samples taken under this Head become available after the initial period of detention has expired and those results merit further investigation of the person’s role in relation to the particular offence.
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Head 15: Consent to taking of “Intimate Samples”

The 'appropriate consent' referred to in Head 14(e) means

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- (a) in the case of a person who has attained the age of 18 years, the consent of that person,
- (b) In the case of a person who is aged 12 or over (or in the case of Section 52(2) of the Children Act as amended by section 129 of the CJ Act 2006, aged over 10) but under 18, the consent of that person and of a parent or guardian

A person whose consent is required under Head 14 shall be informed that the sample to be taken shall be subject to forensic testing and that the results may be given in evidence in any proceedings.

Part E: Removal, etc of Samples and Profiles

Head 16: Application to Remove / Restrict Use of a Sample or Profile

- (a) Any person whose sample was taken under Head 8, 9, 10, 11, 12, 14 may, without prejudice to any more specific provision in the particular Heads, apply to the Commissioner of An Garda Síochána to have the sample destroyed and all related profiles removed or to have the analysis of the profile restricted to certain purposes. [See Head 13(h) in relation to the treatment of samples from injured / missing persons.]
- (b) The applicant under this Head shall provide a reasoned statement as to the reasons for the application.
- (c) The Garda Commissioner shall reply within one month of the application being made, indicating his position on the request.
- (d) Where the Commissioner agrees to the removal of the sample / profile or to a restriction on its use, he shall inform the laboratory and the laboratory shall arrange for the removal of the profile or for the placing of the restriction on its use, as notified to it by the Commissioner. The Gardai shall take the same steps in relation to samples, etc it holds.
- (e) The applicant, if not satisfied with the Commissioner's position, may, within two months of the Commissioner's reply, appeal the Commissioner's decision to the District Court in the area where he / she resides. The application shall be heard otherwise than in public.
- (f) The applicant shall give notice of the appeal to the Commissioner.
- (g) In considering the appeal, the District Court shall have regard to results of any analysis carried out to date on the sample, in particular, if the results were positive. It shall also take account of the circumstances in which the sample was provided, in particular if it was voluntary or while detained under statutory powers. The court shall consider whether, in all the circumstances, it would be unjust to refuse the application.
- (h) Pending the outcome of the appeal, the sample and profiles may be analysed in accordance with the Heads under which the sample was taken.
- (i) Where the District Court orders, as appropriate, the destruction or restriction on the use of the sample or profile, the Commissioner and the laboratory shall be informed and, subject to a decision on any appeal under paragraph (k), such destruction or restriction as is required by the District Court's order shall take place with immediate effect.
- (j) The District or, where applicable, the Circuit court shall hear the Commissioner or his representative before making an order under (h) or, as appropriate, (k).
- (k) (i) Both the Commissioner and the applicant may appeal the District Court's decision to the Circuit Court.
(ii) The grounds for the appeal under (i) shall be stated by the party making the application.
(iii) The application shall be on notice to the other party.
(iv) At a preliminary hearing, the circuit Court shall decide on the admissibility of the appeal, having regard to the issues considered by the District Court and the decision of that court.

- (v) The Circuit Court, where it decides to hear the appeal, shall have regard to the factors at (g) and any other relevant facts in arriving at its decision.
- (vi) The Circuit Court may order the destruction of the sample and related records or place restrictions on its use. The Commissioner and the laboratory shall take immediate steps to comply with the Circuit Court's order.
- (l) A person wishing to know if his / her samples and related profiles are being retained under Parts B or C of this Act may request such information from the Commissioner and the Commissioner shall, following consultations with the laboratory, provide the information as requested, including details of any limitations that may apply to the use of the sample or profile.
- (m) Nothing in this section shall prevent the taking or giving of samples (other than the ones that are subject to the application) from the person concerned and the development of profiles from those samples and the analysis of those profiles in accordance with this Act.
- (n) (i) This Head shall not have retrospective effect, i.e. any decision on the removal, etc of a sample / profile shall not affect anything done in relation to that sample / profile prior to the application under this Head.
- (ii) A sample / profile may continue to be analysed pending the outcome of any appeal by the Commissioner to the Circuit Court against a decision of the District Court and the results of such analysis may be used as provided for by this [Act].
- (iii) Any proceedings in which results to which (ii) of this paragraph refers are used shall not be terminated or otherwise ceased by virtue of a later decision of the District or Circuit Court to order the destruction of the sample / profile or an order to restrict its use.
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Part F: Regulations, Codes, etc

Head 17: Transmission, etc of Samples / Results to / from Designated Laboratory

- (a) Codes of Good Practice shall be developed by the Gardaí, in consultation, where appropriate, with the laboratory to set out the procedures and processes relating to
 - (i) the taking of samples under Parts B and C of this Act,
 - (ii) in the case of persons referred to in Heads 8, 9, 10, 11, 12, 13 or Head 14, the transmission of samples from the place where the sample was taken to the laboratory,
 - (iii) transmission from the crime scene to the laboratory.

The Codes shall include such provision as is necessary to facilitate the identification by both the laboratory and the Gardaí of the person or scene from whom / which the sample was taken.

- (b) Where appropriate, Codes shall also be developed in relation to the taking, etc of samples in prisons under Head 9.
 - (c) Procedures shall be agreed between the laboratory and the Gardaí in relation to procedures for the communication of results from the laboratory to the Gardaí. The procedures shall include such provision as is necessary to facilitate the identification by both the laboratory and the Gardaí of the person or scene from whom / which the sample was taken.
 - (d) Arrangements shall be agreed between the Gardaí and the laboratory in relation to the safe storage of samples.
 - (e) Codes, procedures and arrangements developed under this Head shall be published as regulations under Head 18 and shall be laid before the Oireachtas by the Minister.
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Head 18: Ministerial Regulations

- (a) Notwithstanding Head 17, the Minister may, from time to time, make such other Regulations as are considered necessary for the operation of this Act, including Regulations on the taking of samples, the transmission of samples to the designated laboratory, the recording of consent.
 - (b) Regulations made under this section may amend or replace other Regulations made under this section.
 - (c) Regulations made by the Minister shall be laid before the Oireachtas.
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Part G: International Cooperation

Head 19: International Co-operation

- (a) Information relating to samples/ profiles taken in accordance with this Act may be provided to specified persons or agencies in another state in accordance with the terms of any agreements entered into by the State which provide for the exchange of (i) forensic evidence, where such material is requested in connection with criminal investigations or proceedings or (ii) information to assist with identification.
 - (b) In cases where an agreement under paragraph (a) is not in place, the Commissioner may, upon request from law enforcement authorities (police, prosecutor, customs authorities) in another state, and following consultation with the laboratory, provide such information as he / she considers appropriate for the purposes of a criminal investigation or prosecution in that other state.
 - (c) The information which may be provided under (b) relates to samples, and related profiles, taken or available under Heads 7, 8, 9, 10 or 14 but not under Heads 11, 12. Information in relation to a sample / profile obtained under Head 13 may be provided only after the persons who provided it or their representative has consented and is for the purpose of identification only.
 - (d) The Commissioner may, following consultations with the laboratory where appropriate, attach such conditions as are felt to be reasonable and appropriate to any information provided under (b).
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Part H: Offences, etc

Head 20: Offences and Penalties

- (a) In relation to any sample or profile derived therefrom that has been provided or taken from a person in accordance with this Act, it shall be an offence for any person to analyse or otherwise use that sample or profile or have it analysed or otherwise used, except for the purposes set out in Head 2.
- (b) It shall be an offence for any person to supply or provide to any person any information in relation to any sample provided or taken under this Act or any profile derived therefrom, except to a person who is authorised to receive it.
- (c) It shall be an offence for any person other than an authorised person to seek, request or receive any information in relation to any sample provided or taken under this Act or any profile derived therefrom.
- (d) For the purposes of this Act, an authorised person includes:
 - (i) a Garda in the performance of his / her duty,
 - (ii) a staff member of the laboratory acting in the performance of his / her duty,
 - (iii) an accused person or his/her legal representatives, in connection with legal proceedings for which the analysis of the sample and profile are relevant,
 - (iv) the DPP or a person authorised by the DPP or retained by him/her in connection with the prosecution of an offence in relation to which the sample / profile is relevant,
 - (v) in the case of a sample or profile under Head 14 (or head 8(g), where it applies), a person retained as an 'expert witness' by the defence or prosecution in relation to legal proceedings to which a sample / profile under that Head relates,
 - (vi) for the purposes of an inquest, a coroner or a person acting on the authority of a coroner,
 - (vii) a member of the Oversight Committee, in the discharge of his / her functions, or a person retained by the Oversight Committee, while that person is in the discharge of the Committee's functions,
 - (viii) staff of the Court's Service, in so far as the information is required by them in the performance of their duties in or on behalf of the court,
 - (ix) the Minister or other Minister of the Government, in so far as the information is required by him or them, or on their behalf, for purposes related to the security of the State and the maintenance of public order,
 - (x) any other person to whom a court grants access to the sample or its related profile, including the analysis thereof.
- (e) For the purposes of paragraph (d)(iii) of this Head, an 'accused person' includes a person who is appealing a conviction and 'legal proceedings' includes an appeal.
- (f) For the purposes of paragraph (d)(x) of this Head, access shall be for the purpose or and in connection with legal proceedings, it shall be within the

terms of Head 2 and the court may attach such further conditions as it considers appropriate.

(g) Proceedings may be brought only by or with the consent of the DPP.

(h) **PENALTIES:**

- a. An offence under paragraph (a), (b), or (c) of this Head may be prosecuted as a summary offence or on indictment.
 - b. On summary conviction, a fine of up to €5,000 and up to six months imprisonment, or both, may be imposed.
 - c. On conviction on indictment, a fine and imprisonment of up to 3 years, or both, may apply.
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Part I: Oversight Arrangements

Head 21: Oversight Committee

- (a) The Minister shall establish and appoint on the commencement day a committee, to be known as the Oversight Committee.
 - (b) Its function shall be to review and report annually to the Minister on the operation of the Act, having particular regard to the importance of ensuring the overall integrity of the arrangements and systems operated under this Act.
 - (c) In particular, it shall keep under review the arrangements for the taking of samples (including crime scene samples), their transmission to the designated laboratory (or an 'assigned' laboratory under Head 3(j)), their secure handling and storage, the development of profiles, the techniques and practices for the analysis of profiles and the communication of the results of analysis.
 - (d) The committee shall, in particular, review the arrangements for the handling and analysis of samples taken under Heads 10(f) and 11 (i.e. those taken in relation to particular investigations).
 - (e) The Committee may make recommendations in relation to the arrangements and systems operated under this Act.
 - (f) The Committee shall have access to such documentation and other records as are required for the discharge of its functions.
 - (g) The Minister may, from time to time, request the committee to (i) provide a work programme or (ii) undertake such inquiry as the Minister considers appropriate in relation to matters coming within the ambit of this Act.
 - (h) The committee shall consist of no more than five persons, consisting of a Chairperson and up to four ordinary members.
 - (i) The Chairperson shall be a judge of the Circuit Court or above.
 - (j) In the case of the ordinary members, there shall be at least one representative of the legal profession, one member with appropriate scientific / medical qualifications, and one nominee of the Data Protection Commissioner.
 - (k) It shall be a part-time committee but it may, with the approval of the Minister, retain such administrative, technical and scientific support as is considered necessary.
 - (l) The members of the committee shall be paid such expenses and allowances as may be approved by the Minister and the Minister for Finance.
 - (m) The committee may, with the approval of the Minister, retain expertise for the purpose of undertaking more detailed consideration of issues coming within its functions.
 - (n) Reports of the Committee to the Minister shall be published by the Minister and laid before the Oireachtas.
 - (o) It shall be an offence to obstruct the Committee or its officers while in the pursuit of their functions under this Head. Penalty of up to 3,000 euro or 6 months imprisonment on summary conviction.
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Part J: Repeals, etc

Head 22: Amendment to Sections 6 and 8 of Criminal Justice Act 1984

(1) In section 6(2) of the Criminal Justice Act 1984, the word ‘superintendent’ is deleted and replaced by ‘inspector’.

(2) The following is substituted for Section 8 of the Criminal Justice Act 1984:

"Section 8:

- (a) Any person whose photograph (including a negative), fingerprint and palm print was taken under section 6 may apply to the Commissioner of An Garda Síochána to have the photograph (including the negative), fingerprint, or palm print destroyed and all related records destroyed or to have their use restricted.
- (b) The application under this section shall provide a reasoned statement as to the reasons for the application.
- (c) The Garda Commissioner shall reply within one month of the application being made, indicating his position on the request.
- (d) The applicant, if not satisfied with the Commissioner's position, may, within two months of the Commissioner's reply, appeal the Commissioner's decision to the District Court in the area where he / she resides. The District Court shall hear the appeal otherwise than in public.
- (e) The applicant shall give notice of the appeal to the Commissioner.
- (f) In considering the appeal, the District Court shall have regard to the results of any analysis carried out on the photograph, etc (as listed at (a)), in particular if any of the results were positive. It shall have regard to the person's previous criminal record. The Court shall also have regard to whether in all the circumstances of the case, it would be unjust to refuse the application.
- (g) Pending the outcome of the appeal, the photograph (including the negative), fingerprint or the palm print, as the case may be, may be analysed in connection with a criminal investigation.
- (h) Where the District Court orders, as appropriate, the destruction or restriction on the use of a photograph (including a negative), a fingerprint or a palm print, the Commissioner shall be informed and, subject to any decision by him to appeal the District Court's decision, such destruction or restriction as is required by the District Court's order shall take place with immediate effect.
- (i) (i) Both the Commissioner and the donor may appeal the District Court's decision to the Circuit Court.
 - (ii) The grounds for the appeal under (i) shall be stated by the party making the application.
 - (iv) The application shall be on notice to the other party.
 - (iv) At a preliminary hearing, the Circuit Court shall decide on the admissibility of the appeal, having regard to the issues considered by the District Court and the decision of that court.
 - (v) The Circuit Court, where it decides to hear the appeal, shall have regard to the factors at (f) and any other relevant facts in arriving at its decision.

- (vi) The Circuit Court may order the destruction of the sample/ photos and related records or place restrictions on its use. The Commissioner and the laboratory shall take immediate steps to comply with the Circuit Court's order.
- (j) The District court, or where appropriate, the Circuit Court shall hear the Commissioner or his representative before making an order under (g).
- (k) A person wishing to know if his / her photograph (including a negative), a fingerprint or a palm print have been destroyed as required by an order under paragraph (h) or (i) may request such information from the Commissioner and the Commissioner shall provide the information as requested.
- (l) Nothing in this section shall prevent the taking under section 6 of photographs, fingerprints or palm prints (other than the ones that are subject to the application) from the person concerned.
- (m) (i) This Head shall not have retrospective effect, i.e. any decision on the removal, etc of a sample shall not affect anything done in relation to that sample prior to the application under this Head.
(ii) A sample may continue to be analysed pending the outcome of any appeal by the Commissioner to the Circuit Court against a decision of the District Court and the results of such analysis may be used as provided for by this Act.
(iii) Any proceedings in which results to which (ii) of this paragraph refers are used shall not be terminated or otherwise ceased by virtue of a later decision of the District or Circuit Court to order the destruction of the sample or an order to restrict its use.
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Head 23: Repeal of the 1990 Act

- (a) The Criminal Justice (Forensic Evidence) Act 1990 is hereby repealed.
 - (b) The repeal is without prejudice to anything done in accordance with that Act prior to its repeal.
 - (c) Evidence secured under that Act prior to its repeal may continue to be submitted in proceedings to which the evidence relates, even where the proceedings are taking place on the date of the repeal or will take place following the repeal.
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