



STATUTORY INSTRUMENTS.

**S.I. No. 528 of 2015**



CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE  
SYSTEM) ACT 2014 (SECTION 156) REGULATIONS 2015

CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE  
SYSTEM) ACT 2014 (SECTION 156) REGULATIONS 2015

CONTENTS

Part 1

*Preliminary and general*

Regulation

1. Citation and commencement
2. Interpretation

Part 2

*Taking of samples from persons in custody of Garda Síochána under Part 2 of Act*

3. Definitions
4. General provisions regarding taking of samples under Part 2 of Act
5. Location for taking of samples under Part 2 of Act
6. Persons who may be present for taking of samples under Part 2 of Act
7. Electronic recording equipment to be used under Part 2 of Act and matters to be recorded
8. Electronic recording of taking of sample under section 11 of Act, or non-intimate sample, using reasonable force
9. Electronic recording and other provisions relating to seeking of appropriate consent to taking of intimate sample
10. Application of provisions of Electronic Recording Regulations
11. Destruction of tapes
12. Working copy of electronic recording under Regulation 8 or 9 to be given to detained person
13. Records relating to samples under Part 2 of Act

Part 3

*Taking of samples from volunteers to generate DNA profiles*

14. General provisions regarding taking of samples under Part 3 of Act
15. Location for taking samples under Part 3 of Act

16. Persons who may be present for taking of samples under Part 3 of Act
17. Records relating to samples under Part 3 of Act

Part 4

*Taking of samples from other persons or bodies for reference index of DNA Database System*

18. Definitions (Part 4)
19. General provisions regarding taking of samples under Part 4 of Act
20. Location for taking of samples under Part 4 of Act
21. Persons who may be present for taking of samples under Part 4 of Act
22. Timing of taking of samples under Part 4 of Act from child offenders
23. Electronic recording equipment to be used under Part 4 of Act and matters to be recorded
24. Electronic recording of taking of sample or second sample under section 31 of Act using reasonable force
25. Electronic recording of taking of sample or second sample under section 32 of Act using reasonable force
26. Destruction of tapes
27. Working copy of electronic recording under Regulation 24 or 25
28. Records relating to samples under Part 4 of Act

Part 5

*Taking of samples for elimination purposes*

29. Definition (Part 5)
30. Records relating to certain samples under Part 5 of Act

Part 6

*Taking of samples from persons or bodies for purposes of Identification Division of DNA Database System*

31. General provisions regarding taking of certain samples under Part 6 of Act
32. Location for taking of certain samples under Part 6 of Act
33. Persons who may be present for taking of certain samples under Part 6 of Act
34. Records relating to samples under Part 6 of Act

Part 7

*Destruction of samples and destruction, or removal from DNA Database System of DNA profiles*

Chapter 1

*Application of Part 10 of Act to persons from whom samples were taken under Parts 2 and 4 of Act*

35. Records relating to Chapter 1 of Part 10 of Act

Chapter 2

*Application of Part 10 of Act to persons from whom samples were taken under Part 3 of Act*

36. Records relating to Chapter 2 of Part 10 of Act

Chapter 3

*Application of Part 10 of Act to persons from whom certain samples were taken under Part 5 of Act*

37. Records relating to Chapter 3 of Part 10 of Act

Chapter 4

*Application of Part 10 of Act to persons from whom samples were taken under Part 6 of Act*

38. Records relating to Chapter 4 of Part 10 of Act

Chapter 5

*Miscellaneous matters relating to destruction of samples and destruction, or removal from the DNA Database System, of DNA profiles*

39. Notices under section 98 of Act

Part 8

*Application of Regulations to Ombudsman Commission*

40. Application of Regulations to Ombudsman Commission

S.I. No. 528 of 2015

CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE SYSTEM) ACT 2014 (SECTION 156) REGULATIONS 2015

I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by sections 5 and 156 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (No. 11 of 2014), hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

*Citation and commencement*

1. (1) These Regulations may be cited as the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 156) Regulations 2015.

(2) These Regulations shall come into operation on the 20th day of November 2015.

*Interpretation*

2. (1) In these Regulations—

“Act” means Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (No. 11 of 2014);

“Act of 2001” means Children Act 2001 (No. 24 of 2001);

“Act of 2005” means Garda Síochána Act 2005 (No. 20 of 2005);

“appropriate consent” has the meaning assigned to it by section 15 of the Act;

“authorised member of the staff”, in relation to a children detention school, shall be construed in accordance with section 151 of the Act;

“authorised person” means a person who is appointed under section 150 of the Act to be an authorised person for the purposes of Parts 3, 5 and 6 of the Act;

“body”, in relation to a deceased human person (including a foetus or stillborn child), means the body or a part of the body of the person and includes the decomposed or cremated remains of the person;

“child” means a person who has not attained the age of 18 years and, for the purposes of sections 32 and 38 of the Act, includes a person who has attained the age of 18 years who is detained in a children detention school in accordance with section 155 of the Act of 2001;

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th November, 2015.*

“child offender” shall be construed in accordance with section 32(1) of the Act;

“children detention school” has the meaning it has in section 3(1) of the Act of 2001;

“Commissioner” means the Commissioner of the Garda Síochána;

“custody record”, in relation to a detained person, means a record kept in respect of that person under Regulation 6 of the Custody Regulations;

“Custody Regulations” means the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987);

“detained person” means a person who is detained under any of the provisions referred to in section 9(1) of the Act from whom a sample is sought to be taken, or is taken, under Part 2 of the Act;

“Director”, in relation to FSI, means the officer who is for the time being in charge of FSI;

“Director”, in relation to a children detention school, has the meaning it has in section 157 of the Act of 2001;

“DNA” means deoxyribonucleic acid;

“DNA Database System” shall be construed in accordance with section 59 of the Act;

“DNA profile”, in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a sample of biological material that is clearly identifiable as relating to the person and that is capable of comparison with similar information derived from an examination and analysis of another sample of biological material for the purpose of determining whether or not that other sample could relate to that person;

“elimination (crime scene investigators) index”, in relation to the DNA Database System, shall be construed in accordance with section 64 of the Act;

“elimination (Garda Síochána) index”, in relation to the DNA Database System, shall be construed in accordance with section 63 of the Act;

“former offender” shall be construed in accordance with section 33 of the Act;

“FSI” means Forensic Science Ireland (formerly known as Forensic Science Laboratory) of the Department of Justice and Equality;

“FSI staff elimination file” means a record kept by the Director of FSI of samples taken from, and DNA profiles generated in respect of, members of the staff of FSI for elimination purposes under Part 5 of the Act;

“Garda Síochána elimination file” means a record kept by the Commissioner of samples taken from, and DNA profiles generated in respect of—

- (a) members,
- (b) persons admitted in accordance with the Act of 2005 to training for membership (including as reserve members within the meaning of section 3 of that Act) of the Garda Síochána,

for elimination purposes under Part 5 of the Act;

“Garda Síochána (Part 10) file” means a record kept by the Commissioner to record matters in relation to Part 10 of the Act in accordance with Part 7 of these Regulations;

“governor”, in relation to a prison or a place of detention, means—

- (a) the governor of the prison or the place of detention, as the case may be, or
- (b) a person who is for the time being performing the functions of governor of the prison or the place of detention, as the case may be;

“guardian”, in relation to a child (including a protected person who is a child), means—

- (a) a person who is guardian of the child pursuant to the Guardianship of Infants Act 1964 (No. 7 of 1964) or who is appointed to be guardian of the child by deed or will or order of a court, or
- (b) a person who has custody or care of the child by order of a court,

but does not include the Health Service Executive;

“intimate sample” means any of the following taken, or to be taken, from a person under section 12 of the Act:

- (a) a sample of—
  - (i) blood,
  - (ii) pubic hair, or
  - (iii) urine;
- (b) a swab from a genital region or a body orifice other than the mouth; or
- (c) a dental impression;

“member” means a member of the Garda Síochána;

“member in charge” of a station has the meaning assigned to it by Regulation 4 of the Custody Regulations subject to the modification that the reference in paragraph (1) of that Regulation to the member who is in charge of a station at a time when the member in charge of the station is required to do anything or cause anything to be done pursuant to those Regulations shall be construed as a reference to the member who is in charge of the station at a time when the member in charge is required to do anything or cause anything to be done under the Act or these Regulations;

“missing person” means a person who, whether before or after the commencement of section 2 of the Act, is observed to be missing from his or her normal patterns of life, in relation to whom those persons who are likely to have heard from the person are unaware of the whereabouts of the person and that the circumstances of the person being missing raises concerns for his or her safety and well-being;

“non-coding part of DNA”, in relation to a person, means the chromosome regions of the person’s DNA that are not known to provide for any functional properties of the person;

“non-intimate sample” means any of the following taken, or to be taken, from a person under section 13 of the Act:

- (a) a sample of—
  - (i) saliva,
  - (ii) hair other than pubic hair,
  - (iii) a nail, or
  - (iv) any material found under a nail;
- (b) a swab from any part of the body including the mouth but not from any other body orifice or a genital region; or
- (c) a skin impression;

“offender” shall be construed in accordance with section 31(1) of the Act;

“Ombudsman Commission” means the Garda Síochána Ombudsman Commission;

“parent”, in relation to a protected person or child, means—

- (a) in a case in which one parent has the sole custody, charge or care of the person or child, that parent,
- (b) in a case in which the person or child has been adopted under the Adoption Act 2010 (or, if adopted outside the State, his or her adoption is recognised under the law of the State), the adopter or either of the adopters or the surviving adopter, and



(c) in any other case, either parent;

“place of detention”, in relation to a child offender (being a male aged 16 or 17 years), means—

(a) Saint Patrick’s Institution, or

(b) a place of detention provided under section 2 of the Prisons Act 1970 (No. 11 of 1970),

and “prison officer”, in relation to a place of detention, shall be construed accordingly;

“prison” means a place of custody administered by the Minister (other than a station) and includes—

(a) Saint Patrick’s Institution other than in respect of the detention of males aged 16 and 17 years therein,

(b) a place of detention provided under section 2 of the Prisons Act 1970 other than in respect of the detention of males aged 16 and 17 years therein, and

(c) a place specified under section 3 of the Prisons Act 1972 (No. 7 of 1972),

and “prison officer”, in relation to a prison, and “imprisonment” shall be construed accordingly;

“protected person” means, subject to paragraph (2), a person (including a child) who, by reason of a mental or physical disability—

(a) lacks the capacity to understand the general nature and effect of the taking of a sample from him or her, or

(b) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he or she consents to a sample being taken from him or her;

“reference index”, in relation to the DNA Database System, shall be construed in accordance with section 62 of the Act;

“registered medical practitioner” means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007 (No. 25 of 2007);

“registered nurse” means a person whose name is entered for the time being in the nurses division of the register of nurses and midwives established under section 46 of the Nurses and Midwives Act 2011 (No. 41 of 2011);

“relevant offence” means an offence in respect of which a person may be detained under any of the provisions referred to in section 9(1) of the Act (whether or not the person concerned was so detained);

“sample” means a sample taken, or to be taken, from a person under Part 2, 3, 4, 5 or 6 of the Act;

“station” means a Garda Síochána station;

“station occurrence book”, in relation to a station, means the book which is kept in the station to record matters, that are not recorded elsewhere, such as incidents occurring in the station, persons attending at the station and notices sent from the station by members or other persons;

“unknown deceased person” shall be construed in accordance with section 50 of the Act;

“unknown person” shall be construed in accordance with section 49 of the Act.

(2) The reference in the definition of “protected person” in paragraph (1) to a mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.

(3) References in these Regulations to a sample under section 11 of the Act and in Part 3, 4, 5 or 6 to a sample—

- (a) in relation to a person, means a sample of hair other than pubic hair of the person or a swab from the mouth of the person, and
- (b) in relation to the body of a deceased person, means a sample of biological material from the body of the deceased person from which a DNA profile in respect of the person may be generated.

(4) In these Regulations, a reference to a person signing a document shall include, in the case of a person unable to write, a reference to the person making his or her mark.

## Part 2

### TAKING OF SAMPLES FROM PERSONS IN CUSTODY OF GARDA SÍOCHÁNA UNDER PART 2 OF ACT

#### *Definitions (Part 2)*

3. In this Part—

“electronic recording” has the meaning it has in the Electronic Recording Regulations;

“Electronic Recording Regulations” means the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 (S.I. No. 74 of 1997);

“equipment” has the meaning it has in the Electronic Recording Regulations;

“master tape” means the tape on which is recorded—

- (a) under Regulation 8, the taking of a sample under section 11 of the Act, or of a non-intimate sample, from a detained person using reasonable force, or
- (b) under Regulation 9, the seeking from a person of the appropriate consent to the taking of an intimate sample from a detained person,

and which is sealed in accordance with Regulation 8 or 9, as the case may be, before it leaves the presence of the detained person or other person, as may be appropriate, and is one of the tapes used in the equipment;

“tape” and “working copy” have the respective meanings they have in the Electronic Recording Regulations.

*General provisions regarding taking of samples under Part 2 of Act*

4. (1) In performing their functions under this Part, members or other persons concerned shall act with due respect for the personal rights of detained persons and their dignity as human persons, and shall have regard for the special needs of protected persons and children.

(2) Before a member takes, or causes to be taken, a sample from a detained person under Part 2 of the Act, the member shall identify—

- (a) himself or herself and any other member present by name and rank, and
- (b) any other person present by name and status,

to the detained person.

(3) If, before a sample is taken or while a sample is being taken from a detained person under Part 2 of the Act, a complaint is made by that person to a member or other person who is present at the taking of the sample, the member or other person to whom the complaint is made shall bring the complaint to the attention of the member in charge of the station concerned if he or she is not present at the taking of that sample and the first-mentioned member shall enter, or cause to be entered, in the custody record of the detained person a note of the complaint.

(4) A complaint may be made under paragraph (3) on behalf of a protected person or a child by a person who is present at the taking of the sample concerned.

(5) Where a complaint is made by or on behalf of a detained person under paragraph (3), the member in charge of the station concerned shall investigate the complaint and take such steps as he or she considers appropriate in the circumstances and, for that purpose, he or she may consult with other members,

the solicitor for the detained person and, if appropriate, the other person who is to take, or has taken, the sample concerned.

*Location for taking of samples under Part 2 of Act*

5. A sample under Part 2 of the Act shall, insofar as it is practicable to do so, be taken from a detained person in a room in a station set aside for that purpose.

*Persons who may be present for taking of samples under Part 2 of Act*

6. (1) Subject to sections 21, 22 and 24 of the Act, where an authorisation to take a sample from a detained person is given under section 11(2), 12(2)(a), 13(2) or 25(3)(i) of the Act it shall not be necessary for any person other than the member or other person who is to take the sample to be present while the sample is being taken.

(2) Notwithstanding paragraph (1) but subject to the Act, it shall be permissible for persons other than the member or other person who is to take the sample concerned to be present while that sample is being taken.

*Electronic recording equipment to be used under Part 2 of Act and matters to be recorded*

7. (1) The electronic recording equipment to be used in a station for the purposes of Regulations 8 to 10 shall be the electronic recording equipment that has been provided to and installed in the station for the purpose of recording interviews in accordance with the Electronic Recording Regulations and no other equipment shall be used.

(2) Where provision is made in Regulations 8 to 10 for any matter to be recorded, then such matter shall be recorded on the tapes being used for the purposes of complying with the Regulation concerned in relation to the detained person concerned.

*Electronic recording of taking of sample under section 11 of Act, or of non-intimate sample, using reasonable force*

8. (1) The taking of a sample under section 11 of the Act, or of a non-intimate sample, pursuant to section 24 of the Act using reasonable force shall be recorded in accordance with this Regulation using the electronic recording equipment referred to in Regulation 7(1).

(2) The member who is to take, or cause to be taken, a sample from a detained person pursuant to section 24 of the Act, or the member or one of the members assisting the first-mentioned member, shall, before commencing the electronic recording of the taking of the sample, in addition to the information to be provided pursuant to subsection (4) of that section, inform or cause to be informed, orally and in ordinary language, the detained person that—

(a) the taking of the sample will be electronically recorded, and

(b) he or she is entitled to receive a notice as to what is to happen to the tape on which the taking of the sample is recorded.

- (3) The member concerned shall give, or cause to be given, to the detained person the notice referred to in paragraph (2)(b).
- (4) The member who is to take, or cause to be taken, the sample concerned pursuant to section 24 of the Act, or the member or one of the members assisting the first-mentioned member, shall, before commencing the electronic recording of the taking of that sample, and in the sight of the detained person—
- (a) unwrap the required number of unused blank tapes,
  - (b) load the equipment with the tapes, and
  - (c) set the equipment to record.
- (5) While the equipment is recording, the member who is to take, or cause to be taken, the sample concerned pursuant to section 24 of the Act, or the member or one of the members assisting the first-mentioned member, shall state all of the following:
- (a) the name and rank of that member and the names and ranks of any other member or members then present;
  - (b) the name and status of any other person present;
  - (c) the name of the detained person;
  - (d) the date, time of commencement of the recording and the location of the station concerned;
  - (e) that the detained person has been given a notice under paragraph (3).
- (6) At the conclusion of the taking of the sample concerned, the member who took, or caused to be taken, that sample, or the member or one of the members assisting the first-mentioned member, shall—
- (a) record the time,
  - (b) switch off the equipment,
  - (c) remove the tapes,
  - (d) seal one of the tapes with a master tape label and give it an identification number, and
  - (e) sign the master tape label and ask the detained person to sign it also.
- (7) If the detained person is a protected person or a child, a parent or guardian of the protected person or child, as the case may be, who is present at the taking of the sample by virtue of subsection (6) or (8) of section 24 of the Act or otherwise shall be asked to sign the master tape label also.

(8) If the detained person or, if appropriate, his or her parent or guardian referred to in paragraph (7) refuses or is unable to sign the master tape label, the member in charge shall be called to the room where the sample concerned was taken and be asked to sign it.

(9) The member who recorded the taking of the sample concerned, or the member or one of the members assisting the first-mentioned member, shall as soon as practicable after the taking of that sample give the sealed master tape to the member in charge who shall make, or cause to be made, an entry in the custody record of the detained person recording—

- (a) that the sample concerned has been taken,
- (b) the date and time of the taking of that sample,
- (c) the name and rank of the member who took, or caused to be taken, that sample,
- (d) the names and ranks of the other members, and the names and status of other persons, present during the taking of that sample,
- (e) that the taking of that sample has been recorded,
- (f) the name and rank of the member who made the recording,
- (g) that he or she has received the master tape,
- (h) the date and time of receipt of that master tape, and
- (i) the identification number of that master tape,

and the entry shall be signed by the person making it.

*Electronic recording and other provisions relating to seeking of appropriate consent to taking of intimate sample*

9. (1) Where the seeking by a member of the appropriate consent from a person to the taking of an intimate sample from a detained person is to be electronically recorded to comply with section 19(3) of the Act, the seeking of that consent from the person shall be recorded in accordance with this Regulation using the electronic recording equipment referred to in Regulation 7(1).

(2) A member seeking the appropriate consent from a person to the taking of an intimate sample from a detained person in compliance with subsection (3) of section 19 of the Act shall, before commencing the electronic recording of the seeking of that consent, in addition to the information to be provided pursuant to subsection (2) of that section to the detained person, inform or cause to be informed, orally and in ordinary language, the first-mentioned person that—

- (a) the seeking of that consent will be electronically recorded, and
- (b) he or she is entitled to receive a notice as to what is to happen to the tape on which the seeking of that consent is recorded.

- (3) The member concerned shall give, or cause to be given, to the person concerned the notice referred to in paragraph (2)(b).
- (4) The member who is to seek the appropriate consent from a person to the taking of an intimate sample from a detained person shall, before commencing the electronic recording of the seeking of that consent, and in the sight of the first-mentioned person—
- (a) unwrap the required number of unused blank tapes,
  - (b) load the equipment with the tapes, and
  - (c) set the equipment to record.
- (5) While the equipment is recording, the member who seeks the appropriate consent from a person to the taking of an intimate sample from a detained person shall state all of the following:
- (a) the name and rank of that member and the names and ranks of any other member or members then present;
  - (b) the name and status of any other person present;
  - (c) the name of the detained person;
  - (d) the date, time of commencement of the recording and the location of the station concerned;
  - (e) that the first-mentioned person has been given a notice under paragraph (3).
- (6) At the conclusion of the seeking of the appropriate consent from a person to the taking of an intimate sample from a detained person, the member who recorded the seeking of that consent shall—
- (a) record the time,
  - (b) switch off the equipment,
  - (c) remove the tapes,
  - (d) seal one of the tapes with a master tape label and give it an identification number, and
  - (e) sign the master tape label and ask the first-mentioned person to sign it also.
- (7) If the person concerned is a detained person who is a child, a parent or guardian of the child who is present at the seeking of the appropriate consent shall, other than where subsection (4) or (5) of section 22 of the Act applies to the parent or guardian, be asked to sign the master tape label also.

(8) If the person concerned or, if appropriate, his or her parent or guardian referred to in paragraph (7) refuses or is unable to sign the master tape label, the member in charge shall be called to the room where the appropriate consent to the taking of an intimate sample was sought and be asked to sign it.

(9) The member who recorded the seeking of the appropriate consent from a person to the taking of an intimate sample from a detained person shall as soon as practicable after the seeking of that consent give the sealed master tape to the member in charge who shall make, or cause to be made, an entry in the custody record of the detained person recording—

- (a) that the appropriate consent has been sought from the first-mentioned person,
- (b) the date and time of the seeking of that consent,
- (c) the name and rank of the member who sought that consent,
- (d) the number and names of the other persons (if any) present during the seeking of that consent,
- (e) that the seeking of that consent has been recorded,
- (f) the name and rank of the member who made the recording,
- (g) that he or she has received the master tape,
- (h) the date and time of receipt of that master tape, and
- (i) the identification number of that master tape,

and the entry shall be signed by the person making it.

(10) Where a person from whom the appropriate consent is being sought to the taking of an intimate sample from a detained person consents in writing to the seeking of the appropriate consent from him or her not being electronically recorded, the member concerned who sought that consent in writing shall as soon as practicable enter, or cause to be entered, in the custody record of the detained person a note of that fact, and the record shall be signed by the person making it.

*Application of provisions of Electronic Recording Regulations*

10. (1) The provisions of the Electronic Recording Regulations specified in paragraph (2) relating to the electronic recording of an interview in a station shall apply to—

- (a) the electronic recording of the taking of a sample under section 11 of the Act, or of a non-intimate sample, from a detained person using reasonable force under Regulation 8, or



- (b) the electronic recording of the seeking of the appropriate consent to the taking of an intimate sample from a detained person under Regulation 9,

subject to the following and any other necessary modifications:

- (i) the references in those provisions of the Electronic Recording Regulations to an interview or the conduct of an interview shall be construed as references to the taking of a sample under section 11 of the Act or of a non-intimate sample, as the case may be, or, as may be appropriate, the seeking of the appropriate consent to the taking of an intimate sample,
- (ii) the references in those provisions of the Electronic Recording Regulations to a person being interviewed or to be interviewed shall be construed as references to a detained person, and
- (iii) the references in those provisions of the Electronic Recording Regulations to the interview room shall be construed as references to the room in the station where the sample concerned is being, or is to be, taken or, as may be appropriate, the appropriate consent to the taking of an intimate sample is to be sought (if not in the interview room).

(2) The following provisions of the Electronic Recording Regulations are specified for the purposes of paragraph (1):

- (a) paragraphs (b) and (d) of Regulation 7;
- (b) paragraphs (1) and (2), and subparagraphs (a) and (c) of paragraph (3), of Regulation 9;
- (c) Regulation 11;
- (d) Regulation 15;
- (e) Regulation 17.

*Destruction of tapes*

11. (1) The master tape, and any working copy, of an electronic recording under Regulation 8, of the taking from a person of a sample under section 11 of the Act using reasonable force, that are in the possession of the Garda Síochána shall be destroyed whenever the DNA profile of the person that is generated from the sample and entered in the reference index of the DNA Database System is, in accordance with Part 10 of the Act, required to be removed from that System.

(2) The reference in paragraph (1) to the sample under section 11 of the Act, the taking of which is electronically recorded under Regulation 8, is a reference to a sample under that section (if any) that is taken from the detained person pursuant to section 24 of the Act.

(3) The master tape, and any working copy, of an electronic recording under Regulation 8 (other than an electronic recording to which paragraph (1) applies) or 9 that are in the possession of the Garda Síochána shall, subject to paragraphs (4) to (6), be destroyed whenever the non-intimate sample or intimate sample concerned that is the subject of that electronic recording is, in accordance with Part 10 of the Act, required to be destroyed.

(4) Where a DNA profile of the person concerned is—

(a) generated from the non-intimate sample or the intimate sample concerned that is the subject of an electronic recording referred to in paragraph (3), and

(b) entered in the reference index of the DNA Database System,

the master tape, and any working copy, of that electronic recording shall instead be destroyed whenever the DNA profile of that person is, in accordance with Part 10 of the Act, required to be removed from that System.

(5) The reference in paragraph (3) to—

(a) the non-intimate sample concerned, the taking of which is electronically recorded under Regulation 8, is a reference to the non-intimate sample (if any) that is taken from the detained person concerned pursuant to section 24 of the Act, and

(b) the intimate sample concerned is a reference to the intimate sample (if any) that is taken from the detained person concerned if the appropriate consent, the seeking of which is electronically recorded under Regulation 9, is given to the taking of that sample from him or her.

(6) The Commissioner shall arrange for the destruction of the tapes under this Regulation which shall be carried out by the effective removal of the electronic recording on those tapes.

(7) The Commissioner shall, if it is appropriate to do so, in the circumstances to which subsection (1) or (2) of section 98 of the Act applies in a notice sent to a person under either of those subsections also inform the person in the notice of the destruction under this Regulation of the tapes (if any) of the electronic recording of the taking of the sample concerned or of the seeking of the appropriate consent to the taking of the sample concerned, as may be appropriate.

*Working copy of electronic recording under Regulation 8 or 9 to be given to detained person*

12. (1) Where a person is before a court charged with an offence, a working copy of any electronic recording of the person under Regulation 8 or 9 while he or she was a detained person, in connection with the investigation of the offence shall be given to the person or his or her legal representative only if the court so directs and subject to such conditions (if any) as the court may specify.

(2) A working copy of an electronic recording referred to in paragraph (1) shall not be given to the person concerned by the Garda Síochána except in accordance with a direction or order of a court made under that paragraph or otherwise.

*Records relating to samples under Part 2 of Act*

13. (1) Where a certificate is provided by a registered medical practitioner under section 10(2) of the Act in respect of a detained person, the member in charge shall as soon as practicable make, or cause to be made, an entry in the custody record of the detained person recording—

- (a) the provision of the certificate,
- (b) the name of the registered medical practitioner who provided it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(2) Where an authorisation is given by a member under—

- (a) section 11(2), 12(2)(a) or 13(2) of the Act for the taking of a sample under section 11 of the Act, an intimate sample or a non-intimate sample, as may be appropriate, from a detained person,
- (b) section 20(1)(i) of the Act to regard a sample already taken from a detained person under section 11 of the Act as a non-intimate sample,
- (c) subsection (4) or (5) of section 21, or subsection (4) or (5) of section 22, of the Act for the exclusion or removal, as the case may be, of a person from the place where an intimate sample, a non-intimate sample or, if appropriate, a sample under section 11 of the Act is to be, or is being, taken,
- (d) subsection (3) of section 24 of the Act for the exercise of the power under subsection (1) of that section for the use of reasonable force to take a sample under section 11 of the Act or a non-intimate sample, or
- (e) section 25(3)(i) of the Act for the taking of a second non-intimate sample from a person who was a detained person,

the member in charge shall as soon as practicable make, or cause to be made, an entry in the custody record of the detained person recording—

- (i) the giving of the authorisation,
- (ii) the name and rank of the member who gave it, and
- (iii) the date and time when it was given,

and the entry shall be signed by the person making it.

(3) Where a member informs a person from whom a sample under Part 2 of the Act is to be taken, or any other person who is to be so informed, of the matters referred to in section 11(3), 12(5), 13(5), 15(4) or (5), 19(2), 20(1)(ii), 21(6), 22(6), 23 or 24(4), as may be appropriate, of the Act, the member in charge shall as soon as practicable make, or cause to be made, an entry in the custody record of the detained person recording—

- (a) the giving of that information,
- (b) the name and rank of the member who gave it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(4) Where a detained person whose consent to the taking of an intimate sample from him or her is required under section 12(2)(b) of the Act or, if the detained person is a protected person or a child, a person (including, if appropriate, the child) referred to in paragraph (b) or (c) of section 15(1) of the Act—

- (a) consents to the taking of that sample from the detained person,
- (b) refuses to consent to the taking of that sample from the detained person, or
- (c) withdraws consent which had previously been given to the taking of that sample from the detained person,

the member in charge shall as soon as practicable make, or cause to be made, an entry in the custody record of the detained person recording—

- (i) the giving, refusal or withdrawal, as may be appropriate, of the consent of the person to the taking of that sample, and
- (ii) the date and time of the giving, refusal or withdrawal, as the case may be, of the consent of the person to the taking of that sample,

and the entry shall be signed by the person making it.

(5) Where a member informs—

- (a) a detained person who is a protected person and, if appropriate, a parent or guardian of that person under subsection (2) of section 16 of the Act of his or her intention to make an application to a judge of the District Court under subsection (1) of that section, or
- (b) a detained person who is a child and, if appropriate, a parent or guardian of that child under subsection (2) of section 17 of the Act of his or her intention to make an application to a judge of the District Court under subsection (1) of that section,

the member in charge shall make, or cause to be made, an entry in the custody record of the protected person or child, as the case may be, recording—

- (i) the giving of that information,
- (ii) the name and rank of the member who gave it, and
- (iii) the date and time when it was given,

and the entry shall be signed by the person making it.

(6) Where a notice in writing under section 25(6) of the Act requiring a person to attend at a specified station, within the period specified in the notice, for the purpose of having a second non-intimate sample taken from him or her is sent by a member to that person, the member who sends the notice shall as soon as practicable enter, or cause to be entered, in the station occurrence book of the station a note recording—

- (a) the sending of that notice,
- (b) the name and rank of the member who sent it, and
- (c) the date on which it was sent,

and the entry shall be signed by the person making it.

(7) The member in charge shall as soon as practicable after the taking of a sample from a detained person under Part 2 of the Act make, or cause to be made, an entry in the custody record of the detained person recording—

- (a) the name of the person from whom the sample was taken,
- (b) the relevant offence in connection with which the sample was taken,
- (c) the nature of the sample,
- (d) the name and rank of the member, or the name and status of the person, who took the sample,
- (e) the number, names and status of other persons (if any) who were present while the sample was being taken, and
- (f) the date and time the sample was taken,

and the entry shall be signed by the person making it.

(8) The member in charge of a station shall ensure that the requirements of this Regulation are complied with.

## Part 3

## TAKING OF SAMPLES FROM VOLUNTEERS TO GENERATE DNA PROFILES

*General provisions regarding taking of samples under Part 3 of Act*

14. (1) In performing their functions under this Part, members or authorised persons shall act with due respect for the personal rights of persons from whom samples are taken, or to be taken, under Part 3 of the Act and their dignity as human persons, and shall have regard for the special needs of protected persons and children.

(2) Before a member or an authorised person takes, or causes to be taken, a sample from a person under Part 3 of the Act, the member or authorised person shall identify—

- (a) himself or herself by name and, if appropriate, by rank,
- (b) any member (other than the first-mentioned member) present by name and rank, and
- (c) any other person present by name and status,

to the person from whom the sample is to be taken.

(3) If, before a sample is taken or while a sample is being taken from a person under Part 3 of the Act, a complaint is made by the person to a member or an authorised person or other person who is present at the taking of the sample, the member, authorised person or other person to whom the complaint is made shall bring the complaint to the attention of the member in charge of the station concerned if he or she is not present at the taking of that sample.

(4) A complaint may be made under paragraph (3) on behalf of a protected person or a child by a person who is present at the taking of the sample concerned.

(5) Where a complaint is made by or on behalf of a person under paragraph (3), the member in charge of the station concerned shall investigate the complaint and take such steps as he or she considers appropriate in the circumstances and, for that purpose, he or she may consult with other members or the member or authorised person who is to take, or has taken, the sample concerned.

*Location for taking of samples under Part 3 of Act*

15. Where a sample is to be, or is being, taken from a person under Part 3 of the Act in a station, it shall, insofar as it is practicable to do so, be taken from the person in a room in the station set aside for that purpose.

*Persons who may be present for taking of samples under Part 3 of Act*

16. (1) Subject to paragraph (2), where a sample is being taken from a person under section 27 or 29, or a second sample is being taken from a person under section 30, of the Act, it shall not be necessary for any person other than the

member or authorised person who is to take the sample to be present while the sample is being taken.

(2) Paragraph (1) is subject to section 57 of the Act if the person from whom the sample concerned is to be taken is a protected person or a child.

(3) Notwithstanding paragraph (1) but subject to the Act, it shall be permissible for persons other than the member or authorised person who is to take the sample concerned to be present while that sample is being taken.

*Records relating to samples under Part 3 of Act*

17. (1) Where an authorisation for a mass screening of a class of persons in accordance with section 29 of the Act is given by a member under subsection (2) of that section, that member shall as soon as practicable after giving the authorisation enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the giving of that authorisation,
- (b) the name and rank of the member who gave it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(2) Where a member or authorised person informs a person from whom a sample is to be taken under section 27 or 29, or a second sample is to be taken under section 30, of the Act, or any other person who is by virtue of section 55 of the Act to be so informed, of the matters required by section 27(3) or 29(4), as may be appropriate, of the Act, the member shall as soon as practicable enter, or the member or authorised person, as the case may be, shall as soon as practicable cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the giving of that information,
- (b) the name and rank of the member or, as may be appropriate, the name of the authorised person, who gave it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(3) Where a person from whom a sample is to be taken under section 27 or 29, or a second sample is to be taken under section 30, of the Act or, if that person is a protected person or a child, a person (including, if appropriate, the child) whose consent to the taking of that sample may be given under section 54 of the Act—

- (a) consents to the taking of that sample from the person concerned,

- (b) refuses to consent to the taking of that sample from the person concerned, or
- (c) withdraws consent which had previously been given to the taking of that sample from the person concerned,

the member who seeks the consent or, as may be appropriate, notes the refusal to consent or the withdrawal of consent shall as soon as practicable enter, or that member or the authorised person who seeks the consent or, as may be appropriate, notes the refusal to consent or the withdrawal of consent, as the case may be, shall as soon as practicable cause to be entered, in the station occurrence book of the station concerned a note recording—

- (i) the giving, refusal or withdrawal, as may be appropriate, of the consent of the person to the taking of that sample, and
- (ii) the date and time of the giving, refusal or withdrawal, as the case may be, of the consent of the person to the taking of that sample,

and the entry shall be signed by the person making it.

(4) Where a member or an authorised person informs a person to whom subsection (1) of section 28 of the Act applies of the matters referred to in subsection (2) of that section, the member shall as soon as practicable enter, or the member or authorised person, as the case may be, shall as soon as practicable cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the giving of that information,
- (b) the name and rank of the member or, as may be appropriate, the name of the authorised person, who gave it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(5) Where a person from whom a sample was taken under section 27 of the Act consents, under section 28 of the Act, to his or her DNA profile generated from the sample being entered in the reference index of the DNA Database System, the member who sought the consent shall as soon as practicable enter, or that member or authorised person who sought that consent, as the case may be, shall as soon as practicable cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the giving of that consent, and
- (b) the date and time that consent was given,

and the entry shall be signed by the person making it.



(6) The member in charge of the station concerned shall as soon as practicable after the taking of a sample from a person under section 27 or 29, or the taking of a second sample from a person under section 30, of the Act enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the name of the person from whom the sample was taken,
- (b) the offence, or incident that may have involved the commission of an offence, in relation to the investigation of which the sample was taken under section 27, or a second sample was taken under section 30, of the Act or, as may be appropriate, the relevant offence being investigated for which a mass screening has been authorised, in case the sample was taken under section 29, or a second sample was taken under section 30, of the Act,
- (c) the nature of the sample,
- (d) the name and rank of the member or, as may be appropriate, the name of the authorised person, who took the sample, and
- (e) the date the sample was taken,

and the entry shall be signed by the person making it.

(7) The member in charge of the station shall ensure that the requirements of this Regulation are complied with.

#### Part 4

##### TAKING OF SAMPLES FROM OTHER PERSONS OR BODIES FOR REFERENCE INDEX OF DNA DATABASE SYSTEM

##### *Definitions (Part 4)*

18. In this Part—

“electronic recording” means a recording on tape of—

- (a) an oral communication, statement or utterance, or
- (b) a series of visual images which, when reproduced on tape, appear as a moving picture,

or both;

“equipment” means the electronic recording equipment installed in a prison, a children detention school or a place of detention, as the case may be, to be used for the purpose of recording the taking, pursuant to section 36 of the Act using reasonable force, of a sample under section 31 or 32 of the Act, as the case may be, or of a second sample under either of those sections under section 38 of the Act;

“master tape” means the tape on which is recorded—

- (a) under Regulation 24, the taking of a sample or a second sample under section 31 of the Act from an offender using reasonable force or the taking of a second sample under section 32 of the Act from a child offender in the circumstances to which section 38(5) of the Act apply using reasonable force, as the case may be, or
- (b) under Regulation 25, the taking of a sample or under a second sample under section 32 of the Act from a child offender using reasonable force,

and which is sealed in accordance with Regulation 24 or 25, as the case may be, before it leaves the presence of the offender or child offender, as may be appropriate, and is one of the tapes used in the equipment;

“place of detention record” means a record in respect of a child offender that is kept by a place of detention in which the child offender is or has been detained;

“prison record” means a record in respect of an offender that is kept by a prison in which the offender is or has been imprisoned and includes a record in respect of a person who is a child offender and who is in the prison at the time when a second sample under section 32 of the Act is to be taken from him or her pursuant to section 38(5) of the Act;

“residential care file” means a record in respect of a child offender that is kept by a children detention school in which the child offender is or has been detained;

“tape” includes—

- (a) a disc, magnetic tape, soundtrack or other device in which sounds or signals may be embodied for the purpose of being reproduced (with or without the aid of some other instrument) in audible form, and
- (b) a film, disc, magnetic tape or other device in which visual images may be embodied for the purpose of being reproduced (with or without the aid of some other instrument) in visual form;

“working copy” means any tape, that is not the master tape, used in the equipment.

*General provisions regarding taking of samples under Part 4 of Act*

19. (1) In performing their functions under this Part, prison officers, authorised members of the staff of a children detention school or members shall act with due respect for the personal rights of persons or children from whom samples are taken, or to be taken, under Part 4 of the Act and their dignity as human persons, and shall have regard for the special needs of protected persons and children.

(2) Before a prison officer, an authorised member of the staff of a children detention school or a member takes, or causes to be taken, a sample from a person or child under Part 4 of the Act, the prison officer, authorised member of the staff of the children detention school or member, as the case may be, shall identify—

- (a) himself or herself by name and grade or rank, as may be appropriate,
- (b) any prison officer, authorised member of the staff of the children detention school or member (other than the first-mentioned prison officer, authorised member of the staff of the children detention school or member, as the case may be) present by name and grade or rank, as may be appropriate, and
- (c) any other person present by name and status,

to the person or child, as the case may be, from whom the sample is to be taken.

(3) If, before a sample is taken or while a sample is being taken from a person or child under Part 4 of the Act, a complaint is made by the person or child to a prison officer, an authorised member of the staff of the children detention school, a member or other person who is present at the taking of the sample, the complaint shall—

- (a) in the case of a sample taken, or to be taken, in a prison or a place of detention, be brought to the attention of the governor of the prison or place of detention, as the case may be, by the prison officer or other person to whom the complaint is made,
- (b) in the case of a sample taken, or to be taken, in a children detention school, be brought to the attention of the Director of the children detention school by the authorised member of the staff of the children detention school or other person to whom the complaint is made, and
- (c) in the case of a sample taken, or to be taken, in a station, be brought to the attention of the member in charge of the station by the member or other person to whom the complaint is made,

if the governor of the prison or place of detention, as may be appropriate, the Director of the children detention school or the member in charge of the station, as the case may be, is not present at the taking of that sample.

(4) A complaint under paragraph (3) may be made on behalf of a protected person or a child by a person who is present at the taking of the sample concerned.

(5) Where a complaint is made by or on behalf of a person or child under paragraph (3), the governor of the prison or place of detention, as may be appropriate, concerned, the Director of the children detention school concerned or

the member in charge of the station concerned, as the case may be, shall investigate the complaint and take such steps as he or she considers appropriate in the circumstances.

*Location for taking of samples under Part 4 of Act*

20. Where a sample is to be, or is being, taken from a person or child under Part 4 of the Act, it shall, insofar as it is practicable to do so, be taken in a room set aside for that purpose in the prison, the children detention school, the place of detention or the station, as the case may be, concerned.

*Persons who may be present for taking of samples under Part 4 of Act*

21. (1) Subject to section 36 of the Act, where a sample is to be taken—

- (a) from an offender under section 31 or 38 of the Act, the taking of which has been authorised under section 31(5) of the Act by the governor of the prison where the offender is in prison,
- (b) from a child offender under section 32 or 38 of the Act, the taking of which has been authorised under section 32(5) of the Act by the Director of the children detention school or the governor of the place of detention, as the case may be, in which the child offender is detained or, if appropriate, authorised under section 31(5) of the Act by the governor of the prison where the child offender is in prison,

not less than two prison officers of the prison concerned, not less than two members of the staff of the children detention school concerned or not less than two prison officers of the place of detention concerned, as the case may be, shall be present for the taking of the sample.

(2) Where a sample is to be taken—

- (a) from an offender under section 31 or 38 of the Act, the taking of which has been authorised by a member under section 31(7) or 38(7), as may be appropriate, of the Act,
- (b) from a child offender under section 32 or 38 of the Act, the taking of which has been authorised by a member under section 32(7) or 38(8), as may be appropriate, of the Act, or
- (c) from a former offender under section 34 or 39 of the Act following a request under subsection (3), or a notice under subsection (7), of section 34 of the Act or a request under subsection (1), or a notice under subsection (7), of section 39 of the Act, as may be appropriate,

not less than two members shall be present for the taking of the sample.

(3) It shall not be necessary for any person other than the registered medical practitioner, or other person prescribed for that purpose, who is to take a sample from the body of a deceased person under section 35 of the Act to be present while the sample is being taken.

(4) Notwithstanding paragraph (3), it shall be permissible for persons other than the registered medical practitioner, or other person prescribed for that purpose, who is to take the sample concerned to be present while that sample is being taken.

*Timing of taking of samples under Part 4 of Act from child offenders*

22. (1) Subject to paragraph (2), a sample under section 32 of the Act shall be taken from a child—

- (a) who is a child offender on the commencement of that section, as soon as practicable after that commencement, or
- (b) who becomes a child offender at any time after that commencement, as soon as practicable after he or she becomes a child offender.

(2) In the case of a child offender who is detained in a children detention school or a place of detention whether on or after the commencement of section 32 of the Act, a sample under that section shall, if it is practicable to do so, be taken from him or her while he or she is so detained.

(3) Notwithstanding paragraph (1) but without prejudice to paragraph (2), a sample under section 32 of the Act may be taken from a child offender to whom paragraph (2) applies at as late a date as is practicable that is consistent with the requirements of the Act regarding the taking of such a sample so as to ensure, insofar as it is practicable to do so, that the child offender is of an age at which he or she has the capacity to understand the general nature and effect of the taking of such a sample.

(4) Whenever a child offender is to be transferred from a children detention school to a place of detention, a sample under section 32 of the Act shall, if not already taken, be taken from him or her before such transfer if it is practicable to do so.

*Electronic recording equipment to be used under Part 4 of Act and matters to be recorded*

23. (1) The electronic recording equipment to be used in a prison for the purposes of Regulation 24 shall be the electronic recording equipment installed in the prison to be used for the purpose of recording the taking of a sample under that Regulation and no other equipment shall be used.

(2) The electronic recording equipment to be used in—

- (a) a children detention school, or
- (b) a place of detention,

for the purposes of Regulation 25 shall be the electronic recording equipment installed in the children detention school or the place of detention, as the case may be, to be used for the purpose of recording the taking of a sample under that Regulation and no other equipment shall be used.

(3) Where provision is made in Regulation 24 or 25 for any matter to be recorded, then such matter shall be recorded on the tapes being used for the purposes of complying with that Regulation in relation to the offender or child offender, as the case may be, concerned.

*Electronic recording of taking of sample or second sample under section 31 of Act using reasonable force*

24. (1) The taking of a sample or a second sample from an offender under section 31 of the Act, pursuant to section 36 of the Act using reasonable force, shall be recorded in accordance with this Regulation using the electronic recording equipment referred to in Regulation 23(1).

(2) The prison officer of a prison who is to take, or cause to be taken, a sample or second sample, as the case may be, from an offender under section 31 of the Act pursuant to section 36 of the Act, or the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall, before commencing the electronic recording of the taking of the sample or second sample, as the case may be, in addition to the information to be provided pursuant to subsection (4) of that section, inform or cause to be informed, orally and in ordinary language, the offender that—

(a) the taking of the sample concerned will be electronically recorded, and

(b) he or she is entitled to receive a notice as to what is to happen to the tape on which the taking of the sample concerned is recorded.

(3) The prison officer concerned shall give, or cause to be given, to the offender the notice referred to in paragraph (2)(b).

(4) The prison officer who is to take, or cause to be taken, the sample concerned pursuant to section 36 of the Act, or the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall, before commencing the electronic recording of the taking of that sample, and in the sight of the offender—

(a) unwrap the required number of unused blank tapes,

(b) load the equipment with the tapes, and

(c) set the equipment to record.

(5) While the equipment is recording, the prison officer who is to take, or cause to be taken, the sample concerned pursuant to section 36 of the Act, or the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall state all of the following:

(a) the name and grade of that prison officer and the names and grades of any other prison officer or officers then present;

(b) the name and status of any other person present;

- (c) the name of the offender;
- (d) the date, time of commencement of the recording and the location of the prison concerned;
- (e) that the offender has been given a notice under paragraph (3).

(6) At the conclusion of the taking of the sample concerned, the prison officer who took, or caused to be taken, that sample, or the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall—

- (a) record the time,
- (b) switch off the equipment,
- (c) remove the tapes,
- (d) seal one of the tapes with a master tape label and give it an identification number, and
- (e) sign the master tape label and ask the offender to sign it also.

(7) If the offender refuses or is unable to sign the master tape label, the governor of the prison concerned shall be asked to sign it.

(8) The prison officer who recorded the taking of the sample concerned, or the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall as soon as practicable after the taking of that sample give the sealed master tape to the governor of the prison concerned who shall make, or cause to be made, an entry in the prison record in respect of the offender recording—

- (a) that the sample concerned has been taken,
- (b) the date and time of the taking of that sample,
- (c) the name and grade of the prison officer who took, or caused to be taken, that sample,
- (d) the number and names of the other prison officers or persons present during the taking of that sample,
- (e) that the taking of that sample has been recorded,
- (f) the name and grade of the prison officer who made the recording,
- (g) that he or she has received the master tape,
- (h) the date and time of receipt of that master tape, and
- (i) the identification number of that master tape,

and the entry shall be signed by the person making it.

(9) This Regulation shall, with any necessary modifications, apply to the taking of a second sample under section 32 of the Act from a child offender in the circumstances to which section 38(5) of the Act apply if that sample is taken using reasonable force pursuant to section 36 of the Act.

*Electronic recording of taking of sample or second sample under section 32 of Act using reasonable force*

25. (1) The taking of a sample or a second sample from a child offender under section 32 of the Act, pursuant to section 36 of the Act using reasonable force, shall be recorded in accordance with this Regulation using the electronic recording equipment referred to in Regulation 23(2).

(2) The authorised member of the staff of a children detention school or the prison officer of a place of detention who is to take, or cause to be taken, a sample or second sample, as the case may be, from a child offender under section 32 of the Act pursuant to section 36 of the Act, or the authorised member or one of the authorised members of the staff of the school assisting the first-mentioned authorised member of the staff or, as may be appropriate, the prison officer or one of the prison officers of the place of detention assisting the first-mentioned prison officer, shall, before commencing the electronic recording of the taking of the sample or second sample, as the case may be, in addition to the information to be provided pursuant to subsection (4) of that section, inform or cause to be informed, orally and in ordinary language, the child offender that—

- (a) the taking of the sample concerned will be electronically recorded, and
- (b) he or she is entitled to receive a notice as to what is to happen to the tape on which the taking of the sample concerned is recorded.

(3) The authorised member of the staff of the children detention school or the prison officer, as the case may be, concerned shall give, or cause to be given, to the child offender the notice referred to in paragraph (2)(b).

(4) The authorised member of the staff of the children detention school or the prison officer who is to take, or cause to be taken, the sample concerned pursuant to section 36 of the Act, or the authorised member or one of the authorised members of the staff of the school assisting the first-mentioned authorised member of the staff or, as may be appropriate, the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall, before commencing the electronic recording of the taking of that sample, and in the sight of the child offender—

- (a) unwrap the required number of unused blank tapes,
- (b) load the equipment with the tapes, and
- (c) set the equipment to record.



(5) While the equipment is recording, the authorised member of the staff of the children detention school or the prison officer who is to take, or cause to be taken, the sample concerned pursuant to section 36 of the Act, or the authorised member or one of the authorised members of the staff of the school assisting the first-mentioned authorised member of the staff or, as may be appropriate, the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall state all of the following:

- (a) the name and grade of that authorised member of the staff of the school or prison officer, as the case may be, and the names and grades of any other authorised member or members of the staff of the school or prison officer or officers, as the case may be, then present;
- (b) the name and status of any other person present;
- (c) the name of the child offender;
- (d) the date, time of commencement of the recording and the location of the children detention school or place of detention, as the case may be, concerned;
- (e) that the child offender has been given a notice under paragraph (3).

(6) At the conclusion of the taking of the sample concerned, the authorised member of the staff of the children detention school or the prison officer who took, or caused to be taken, that sample, or the authorised member or one of the authorised members of the staff of the school assisting the first-mentioned authorised member of the staff or, as may be appropriate, the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall—

- (a) record the time,
- (b) switch off the equipment,
- (c) remove the tapes,
- (d) seal one of the tapes with a master tape label and give it an identification number, and
- (e) sign the master tape label and ask the child offender to sign it also.

(7) If the child offender refuses or is unable to sign the master tape label, the Director of the children detention school or the governor of the place of detention, as the case may be, concerned shall be asked to sign it.

(8) The authorised member of the staff of the children detention school or the prison officer who recorded the taking of the sample concerned, or the authorised member or one of the authorised members of the staff of the school assisting the first-mentioned authorised member of the staff or, as may be appropriate, the prison officer or one of the prison officers assisting the first-mentioned prison officer, shall as soon as practicable after the taking of that sample

give the sealed master tape to the Director of the school or the governor of the place of detention, as the case may be, concerned who shall make, or cause to be made, an entry in the residential care file or the place of detention record, as may be appropriate, in respect of the child offender recording—

- (a) that the sample concerned has been taken,
- (b) the date and time of the taking of that sample,
- (c) the name and grade of the authorised member of the staff of the school or the prison officer who took, or caused to be taken, that sample,
- (d) the number and names of the other authorised members of the staff of the school or prison officers, as the case may be, or other persons present during the taking of that sample,
- (e) that the taking of that sample has been recorded,
- (f) the name and grade of the authorised member of the staff of the school or prison officer, as the case may be, who made the recording,
- (g) that he or she has received the master tape,
- (h) the date and time of receipt of that master tape, and
- (i) the identification number of that master tape,

and the entry shall be signed by the person making it.

*Destruction of tapes*

26. (1) The master tape, and any working copy, of an electronic recording under Regulation 24 of—

- (a) the taking of a sample or second sample from an offender under section 31 of the Act using reasonable force, or
- (b) the taking of a second sample from a child offender under section 32 of the Act in the circumstances to which section 38(5) of the Act apply using reasonable force,

that is in the possession of the governor of the prison in which the sample concerned was taken shall be destroyed only if and when the DNA profile of the offender or the child offender, as the case may be, that is generated from that sample and entered in the reference index of the DNA Database System is, in accordance with Part 10 of the Act, required to be removed from that System.

(2) The master tape, and any working copy, of an electronic recording under Regulation 25, of the taking of a sample or second sample from a child offender under section 32 of the Act using reasonable force, that is in the possession of the Director of the children detention school in which the sample concerned was taken or the governor of the place of detention in which the sample concerned was taken, as the case may be, shall be destroyed only if and when the

DNA profile of the child offender that is generated from that sample and entered in the reference index of the DNA Database System is, in accordance with Part 10 of the Act, required to be removed from that System.

(3) Arrangements for the destruction of the tapes under this Regulation, which shall be carried out by the effective removal of the electronic recording on those tapes, shall be made by—

- (a) the governor of the prison where the sample concerned was taken in a prison,
- (b) the Director of the children detention school where the sample concerned was taken in a children detention school, or
- (c) the governor of the place of detention where the sample concerned was taken in a place of detention.

*Working copy of electronic recording under Regulation 24 or 25*

27. (1) The District Court may, on application to it in that behalf, order that a working copy of an electronic recording—

- (a) under Regulation 24 in relation to an offender or a child offender, or
- (b) under Regulation 25 in relation to a child offender,

shall be given to the offender or child offender, as the case may be, or his or her legal representative subject to such conditions (if any) as the court may specify.

(2) A working copy of an electronic recording referred to in paragraph (1) shall not be given to an offender by the governor of a prison, or to a child offender by the governor of a prison or of a place of detention or the Director of a children detention school, as the case may be, except in accordance with an order of a court made under that paragraph.

*Records relating to samples under Part 4 of Act*

28. (1) Where an authorisation is given by the governor of a prison—

- (a) under subsection (5) of section 31 of the Act for the taking of a sample under that section, or the taking of a second sample under section 38 of the Act, from an offender,
- (b) under subsection (3)(a) of section 36 of the Act for the exercise of the power under subsection (1) of that section for the use of reasonable force to take a sample under section 31, or to take a second sample under section 38 of the Act, from an offender, or
- (c) under subsection (5) of section 31 of the Act for the taking of a second sample under that section, pursuant to section 38 of the Act, from a child offender who is in prison at the time that the sample previously taken from him or her under section 32 of the Act proves to be insufficient,

the governor of the prison shall as soon as practicable make, or cause to be made, an entry in the prison record in respect of the offender or the child offender, as the case may be, recording—

- (i) the giving of the authorisation,
- (ii) the name and grade of the person giving it, and
- (iii) the date on which it was given,

and the entry shall be signed by the person making it.

(2) Where an authorisation is given by the Director of a children detention school—

- (a) under subsection (5) of section 32 of the Act for the taking of a sample under that section, or the taking of a second sample under section 38 of the Act, from a child offender, or
- (b) under subsection (3)(b) of section 36 of the Act for the exercise of the power under subsection (2) of that section for the use of reasonable force to take a sample under section 32, or to take a second sample under section 38 of the Act, from a child offender,

the Director of the children detention school shall as soon as practicable make, or cause to be made, an entry in the residential care file in respect of the child offender recording—

- (i) the giving of the authorisation,
- (ii) the name of the person giving it, and
- (iii) the date on which it was given,

and the entry shall be signed by the person making it.

(3) Where an authorisation is given by the governor of a place of detention—

- (a) under subsection (5) of section 32 of the Act for the taking of a sample under that section, or the taking of a second sample under section 38 of the Act, from a child offender, or
- (b) under subsection (3)(c) of section 36 of the Act for the exercise of the power under subsection (2) of that section for the use of reasonable force to take a sample under section 32, or to take a second sample under section 38 of the Act, from a child offender,

the governor of the place of detention shall as soon as practicable make, or cause to be made, an entry in the place of detention record in respect of the child offender recording—

- (i) the giving of the authorisation,

(ii) the name and grade of the person giving it, and

(iii) the date on which it was given,

and the entry shall be signed by the person making it.

(4) Where an authorisation is given by a member—

(a) under subsection (7)(a) of section 31 of the Act for the taking of a sample under that section, or under subsection (7)(a) of section 38 of the Act for the taking of a second sample under section 31 of the Act, from an offender,

(b) under subsection (7)(a) of section 32 of the Act for the taking of a sample under that section, or under subsection (8)(a) of section 38 for the taking of a second sample under section 32 of the Act, from a child offender, or

(c) under subsection (2) of section 34 of the Act for the making of a request under subsection (3) of that section of a former offender to have a sample under that section taken from him or her,

the member shall as soon as practicable make, or cause to be made, an entry in the station occurrence book for the station concerned in respect of the offender, child offender or former offender, as the case may be, recording—

(i) the giving of the authorisation,

(ii) the name and rank of the member giving it, and

(iii) the date on which it was given,

and the entry shall be signed by the person making it.

(5) Where a prison officer of a prison informs—

(a) an offender from whom a sample is to be taken under section 31, or a second sample under that section is to be taken under section 38, of the Act, or

(b) a child offender who is in prison at the time a second sample under section 32 of the Act is to be taken from him or her pursuant to section 38 of the Act,

of the matters referred to in section 31(8) of the Act, the prison officer shall as soon as practicable make, or cause to be made, an entry in the prison record in respect of the offender or the child offender, as the case may be, recording—

(i) the giving of that information,

(ii) the name and grade of the prison officer who gave it, and

(iii) the date on which it was given,

and the entry shall be signed by the person making it.

(6) Where an authorised member of the staff of a children detention school or a prison officer of a place of detention informs a child offender from whom a sample is to be taken under section 32, or a second sample under that section is to be taken under section 38, of the Act of the matters referred to in section 32(8) of the Act, the authorised member of the staff of the children detention school or the prison officer of the place of detention, as the case may be, shall as soon as practicable make, or cause to be made, an entry in the residential care file or the place of detention record, as may be appropriate, in respect of the child offender recording—

(a) the giving of that information,

(b) the name and grade of the authorised member of the staff of the children detention school or prison officer of the place of detention, as the case may be, who gave it, and

(c) the date on which it was given,

and the entry shall be signed by the person making it.

(7) Where a member informs—

(a) an offender from whom a sample is to be taken under section 31, or a second sample under that section is to be taken under section 38, of the Act of the matters referred to in section 31(8) of the Act,

(b) a child offender from whom a sample is to be taken under section 32, or a second sample under that section is to be taken under section 38, of the Act of the matters referred to in section 32(8) of the Act, or

(c) a former offender from whom a sample is to be taken under section 34, or a second sample under that section is to be taken under section 39, of the Act of the matters referred to in section 34(10) of the Act,

the member shall as soon as practicable make, or cause to be made, an entry in the station occurrence book of the station concerned in respect of the offender, child offender or former offender, as the case may be, recording—

(i) the giving of that information,

(ii) the name and rank of the member who gave it, and

(iii) the date on which it was given,

and the entry shall be signed by the person making it.

(8) Where a notice is sent by a member to an offender—

- (a) under subsection (9) of section 31 of the Act, and, if appropriate, also to a parent or guardian of the offender under subsection (10) of that section, requiring the offender to attend at a specified station for the purpose of having a sample under that section taken from him or her, or
- (b) under subsection (10) of section 38 of the Act, and, if appropriate, also to a parent or guardian of the offender under subsection (11) of that section, requiring the offender to attend at a specified station for the purpose of having a second sample under section 31 of the Act taken from him or her,

the member who sends the notice shall as soon as practicable enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (i) the sending of that notice,
- (ii) the name and rank of the member who sent it, and
- (iii) the date on which it was sent,

and the entry shall be signed by the person making it.

(9) Where a notice is sent by a member to a child offender—

- (a) under subsection (9) of section 32 of the Act, and also to a parent or guardian of the child offender under subsection (10) of that section, requiring the child offender to attend at a specified station for the purpose of having a sample under that section taken from him or her, or
- (b) under subsection (10) of section 38 of the Act, and also to a parent or guardian of the offender under subsection (11) of that section, requiring the child offender to attend at a specified station for the purpose of having a second sample under section 32 of the Act taken from him or her,

the member who sends the notice shall as soon as practicable enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (i) the sending of that notice,
- (ii) the name and rank of the member who sent it, and
- (iii) the date on which it was sent,

and the entry shall be signed by the person making it.

(10) Where a notice is sent by a member to a former offender—

- (a) under subsection (7) of section 34 of the Act, and also to a parent or guardian of the former offender under subsection (8) of that section, requiring the former offender to attend at a specified station for the purpose of having a sample under that section taken from him or her, or
- (b) under subsection (7) of section 39 of the Act, and also to a parent or guardian of the offender under subsection (8) of that section, requiring the former offender to attend at a specified station for the purpose of having a second sample under section 34 of the Act taken from him or her,

the member who sends the notice shall as soon as practicable enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (i) the sending of that notice,
- (ii) the name and rank of the member who sent it, and
- (iii) the date on which it was sent,

and the entry shall be signed by the person making it.

(11) Where a sample under Part 4 of the Act is taken in a prison from an offender or a person who is a child offender, the prison officer of the prison who took, or caused to be taken, the sample shall as soon as practicable after the sample is taken make, or cause to be made, an entry in the prison record in respect of the offender or that person, as the case may be, recording—

- (a) the name of the offender or person from whom the sample was taken,
- (b) the relevant offence in respect of which the offender or person was convicted in connection with which the sample was taken,
- (c) the nature of the sample,
- (d) the name and grade of the prison officer who took, or caused to be taken, the sample, and
- (e) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(12) Where a sample under Part 4 of the Act is taken in a children detention school from a child offender, the authorised member of staff of the children detention school who took, or caused to be taken, the sample shall as soon as practicable after the sample is taken make, or cause to be made, an entry in the residential care file in respect of the child offender recording—

- (a) the name of the child offender from whom the sample was taken,



- (b) the relevant offence in respect of which the child offender was convicted in connection with which the sample was taken,
- (c) the nature of the sample,
- (d) the name and grade of the authorised member of the staff of the children detention school who took, or caused to be taken, the sample, and
- (e) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(13) Where a sample under Part 4 of the Act is taken in a place of detention from a child offender, the prison officer of the place of detention who took, or caused to be taken, the sample shall as soon as practicable after the sample is taken make, or cause to be made, an entry in the place of detention record in respect of the child offender recording—

- (a) the name of the child offender from whom the sample was taken,
- (b) the relevant offence in respect of which the child offender was convicted in connection with which the sample was taken,
- (c) the nature of the sample,
- (d) the name and grade of the prison officer who took, or caused to be taken, the sample, and
- (e) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(14) Where a sample under Part 4 of the Act is taken in a station from an offender, a child offender or a former offender, the member who took, or caused to be taken, the sample shall as soon as practicable after the sample is taken make, or cause to be made, an entry in the station occurrence book of the station concerned in respect of the offender, child offender or former offender, as the case may be, recording—

- (a) the name of the offender, child offender or former offender, as the case may be, from whom the sample was taken,
- (b) the relevant offence or offences in respect of which the offender, child offender or former offender, as the case may be, was convicted in connection with which the sample was taken,
- (c) the nature of the sample,
- (d) the name and rank of the member who took, or caused to be taken, the sample, and

(e) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(15) Where a member who intends to make an application under subsection (2) of section 35 of the Act informs—

(a) a member of the family of the deceased person from whose body a sample is sought to be taken under that section, or

(b) a coroner to whom the death of that deceased person is reportable under the Coroners Act 1962 (No. 9 of 1962),

of that intention, the member shall as soon as practicable make, or cause to be made, an entry in the station occurrence book of the station concerned recording—

(i) the giving of that information,

(ii) the name and rank of the member who gave it, and

(iii) the date on which it was given,

and the entry shall be signed by the person making it.

(16) Where a sample is taken from the body of a deceased person under section 35 of the Act, the member of the Garda Síochána in charge of the investigation of the relevant offence of which the deceased person is suspected shall as soon as practicable after the sample is taken, make, or cause to be made, an entry in the station occurrence book of the station concerned recording—

(a) the name of the deceased person from whose body the sample was taken,

(b) the relevant offence of which that deceased person is suspected,

(c) the nature of the sample,

(d) the name and status of the person who took the sample,

(e) the name and rank of the member who caused the sample to be taken, and

(f) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(17) In relation to samples taken under Part 4 of the Act—

(a) the governor of a prison, in the case of samples taken in the prison,

- (b) the Director of a children detention school, in the case of samples taken in the children detention school,
- (c) the governor of a place of detention, in the case of samples taken in the place of detention, and
- (d) the member in charge of a station, in the case of samples taken, or caused to be taken, by members in the station or elsewhere,

shall ensure that the requirements of this Regulation are complied with.

## Part 5

### TAKING OF SAMPLES FOR ELIMINATION PURPOSES

#### *Definition (Part 5)*

29. In this Part “member” has the meaning it has in section 3 of the Act of 2005.

#### *Records relating to certain samples under Part 5 of Act*

30. (1) Where a member or authorised person informs a person from whom a sample is to be taken under section 41, 42 or 45, or a second or further sample is to be taken under section 47(1), of the Act of the matters referred to by subsection (4) or (6) of section 41, subsection (4) or (6) of section 42 or section 45(4), as may be appropriate, of the Act, the member or authorised person, as the case may be, shall as soon as practicable enter, or cause to be entered, in the Garda Síochána elimination file a note recording—

- (a) the giving of that information,
- (b) the name and rank of the member or, as may be appropriate, the name of the authorised person who gave it, and
- (c) the date when it was given,

and the entry shall be signed by the person making it.

(2) Where a person from whom a sample is to be taken under section 41(3) or 42(3), or a second or further sample is to be taken under section 47(1), of the Act consents in writing to the taking of the sample, the member or the authorised person who is to take, or cause to be taken, the sample shall as soon as practicable enter, or cause to be entered, in the Garda Síochána elimination file a note recording—

- (a) the giving of that consent, and
- (b) the date on which it was given,

and the entry shall be signed by the person making it.

(3) Where a person to whom section 41(6) or 42(6) of the Act applies consents in writing to a sample that was taken from him or her before the commencement of whichever of those sections applies to him or her, and any DNA profile that was generated from the sample in respect of the person, being regarded as a sample taken under the section concerned and a DNA profile generated from the sample to be entered in the elimination (Garda Síochána) index or the elimination (crime scene investigators) index, as may be appropriate, of the DNA Database System in respect of him or her, the member or authorised person who sought that consent shall as soon as practicable enter, or cause to be entered, in the Garda Síochána elimination file a note recording—

- (a) the giving of that consent, and
- (b) the date on which it was given,

and the entry shall be signed by the person making it.

(4) The member or authorised person, as the case may be, concerned shall as soon as practicable after the taking of a sample from a person under section 41, 42 or 45, or the taking of a second or further sample from a person under section 47(1), of the Act enter, or cause to be entered, in the Garda Síochána elimination file a note recording—

- (a) the name of the person from whom the sample was taken,
- (b) the name and rank of the member or, as may be appropriate, the name of the authorised person, who took the sample,
- (c) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(5) The Commissioner shall as soon as practicable after giving a direction under section 45(1) of the Act place the direction, or cause it to be placed, in the Garda Síochána elimination file.

(6) Where a person who is authorised to take samples under section 43 or 46 of the Act informs a person from whom a sample is to be taken under either of those sections, or a second or further sample is to be taken under section 47(2) of the Act, of the matters referred to in subsection (4) or (6) of section 43 or section 46(4), as may be appropriate, of the Act, the first-mentioned person shall as soon as practicable enter, or cause to be entered, in the FSI staff elimination file a note recording—

- (a) the giving of that information,
- (b) the name of the person who gave it,
- (c) the date on which it was given,

and the entry shall be signed by the person making it.

(7) Where a person from whom a sample is to be taken under section 43(3), or a second or further sample is to be taken under section 47(2), of the Act consents in writing to the taking of the sample, the person who is to take, or cause to be taken, the sample shall as soon as practicable enter, or cause to be entered, in the FSI staff elimination file a note recording—

(a) the giving of that consent, and

(b) the date on which it was given,

and the entry shall be signed by the person making it.

(8) Where a person to whom subsection (6) of section 43 of the Act applies consents in writing to a sample that was taken from him or her before the commencement of that section, and any DNA profile that was generated from the sample in respect of the person, being regarded as a sample taken under that section and a DNA profile generated from the sample to be entered in the elimination (crime scene investigators) index of the DNA Database System in respect of him or her, the person who is authorised by the Director of FSI to take samples under that section and who sought that consent shall as soon as practicable enter, or cause to be entered, in the FSI staff elimination file a note recording—

(a) the giving of that consent, and

(b) the date on which it was given,

and the entry shall be signed by the person making it.

(9) The person concerned who is authorised by the Director of FSI to take samples under section 43 or 46 of the Act shall as soon as practicable after the taking of a sample from a person under either of those sections, or the taking of a second or further sample from a person under section 47(2) of the Act, enter, or cause to be entered, in the FSI staff elimination file a note recording—

(a) the name of the person from whom the sample was taken,

(b) the name of the person who took the sample,

(c) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(10) The Director of FSI shall as soon as practicable after giving a direction under section 46(1) of the Act place the direction, or cause it to be placed, in the FSI staff elimination file.

## Part 6

*General provisions regarding taking of certain samples under Part 6 of Act*

31. (1) In performing their functions under sections 48 and 49 of the Act, members, authorised persons, registered medical practitioners, registered nurses or other persons prescribed to take samples under section 49 of the Act, shall act with due respect for the personal rights of persons from whom samples are taken, or to be taken, under those sections and their dignity as human persons, and shall have regard for the special needs of protected persons and children.

(2) Before—

- (a) a member or an authorised person takes, or causes to be taken, a sample from a person who is a relative by blood of a missing person under section 48 of the Act, or
- (b) a registered medical practitioner, a registered nurse or other person prescribed to take samples under section 49 of the Act takes, or causes to be taken, a sample from an unknown person under that section,

the member, authorised person, registered medical practitioner, registered nurse or other person so prescribed, as may be appropriate, shall identify—

- (i) himself or herself by name and, if appropriate, by rank,
- (ii) any member (other than the first-mentioned member) present by name and rank, and
- (iii) any other person present by name and status,

to the person from whom the sample is to be taken.

(3) If, before a sample is taken or while a sample is being taken from a person who is a relative by blood of a missing person under section 48 of the Act, a complaint is made by the person to a member or an authorised person or other person who is present at the taking of the sample, the member, authorised person or other person to whom the complaint is made shall bring the complaint to the attention of the member in charge of the station concerned if he or she is not present at the taking of that sample.

(4) Where a complaint is made by or on behalf of a person under paragraph (3), the member in charge of the station concerned shall investigate the complaint and take such steps as he or she considers appropriate in the circumstances and, for that purpose, he or she may consult with other members or the member or authorised person who is to take, or has taken, the sample concerned.

(5) If, before a sample is taken or while a sample is being taken from an unknown person under section 49 of the Act, a complaint is made by the person to a registered medical practitioner, a registered nurse or other person prescribed to take samples under that section or other person who is present at the taking of the sample, the registered medical practitioner, registered nurse or

person so prescribed or other person to whom the complaint is made shall bring the complaint to the attention of the person who made the application concerned to the High Court under subsection (2) of that section in relation to the unknown person.

(6) Where a complaint is made by or on behalf of an unknown person under paragraph (5), the person who made the application concerned to the High Court under section 49(2) of the Act in relation to the unknown person shall investigate the complaint, or cause the complaint to be investigated, and take such steps as he or she considers appropriate in the circumstances and, for that purpose, that person may consult with the registered medical practitioner, registered nurse or other person prescribed to take samples under section 49 of the Act who is to take, or has taken, the sample concerned.

(7) A complaint may be made under paragraph (3) or (5) on behalf of a protected person or a child by a person who is present at the taking of the sample concerned.

*Location for taking of certain samples under Part 6 of Act*

32. (1) Where a sample is to be, or is being, taken from a person under section 48 of the Act in a station, it shall, insofar as it is practicable to do so, be taken from the person in a room in the station set aside for that purpose.

(2) Where a sample is to be, or is being, taken from an unknown person under section 49 of the Act in a hospital, nursing home or other premises in which the person is receiving care, it shall, insofar as it is practicable to do so, be taken from the person in a room in the hospital, nursing home or other premises, as the case may be, set aside for that purpose.

*Persons who may be present for taking of certain samples under Part 6 of Act*

33. (1) Subject to paragraph (2), where a sample is being taken from a person who is a relative by blood of a missing person under section 48, or a second or further sample is being taken from such a person under section 51(1), of the Act, it shall not be necessary for any person other than the member or authorised person who is to take the sample to be present while the sample is being taken.

(2) Paragraph (1) is subject to section 57 of the Act if the person from whom the sample concerned is to be taken is a protected person or a child.

(3) Where a sample is being taken from an unknown person under section 49, or a second or further sample is being taken from such a person under section 51(1), of the Act, it shall not be necessary for any person other than the registered medical practitioner, the registered nurse or other person prescribed to take samples under section 49 of the Act who is to take the sample to be present while the sample is being taken.

(4) Notwithstanding paragraphs (1) and (3) but subject to the Act, it shall be permissible for persons other than the member, authorised person, registered medical practitioner, registered nurse or other person prescribed to take samples

under section 49 of the Act who is to take the sample concerned to be present while the sample is being taken.

*Records relating to samples under Part 6 of Act*

34. (1) Where an authorisation for the taking of a sample under section 48 of the Act is given by a member under subsection (3) of that section, that member shall as soon as practicable after giving the authorisation enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the giving of that authorisation,
- (b) the name and rank of the member who gave it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(2) Where a member or authorised person informs a person from whom a sample is to be taken under section 48, or a second or further sample is to be taken under section 51(1), of the Act, or any other person who is by virtue of section 55 of the Act to be so informed, of the matters referred to in section 48(6) of the Act, the member shall as soon as practicable enter, or the member or authorised person, as the case may be, shall as soon as practicable cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the giving of that information,
- (b) the name and rank of the member or, as may be appropriate, the name of the authorised person, who gave it, and
- (c) the date and time when it was given,

and the entry shall be signed by the person making it.

(3) Where a person from whom a sample is to be taken under section 48, or a second or further sample is to be taken under section 51(1), of the Act or, if that person is a protected person or a child, a person (including, if appropriate, the child) whose consent to the taking of that sample may be given under section 54 of the Act—

- (a) consents to the taking of that sample from the person concerned,
- (b) refuses to consent to the taking of that sample from the person concerned, or
- (c) withdraws consent which had previously been given to the taking of that sample from the person concerned,

the member who seeks the consent or, as may be appropriate, notes the refusal to consent or the withdrawal of consent shall as soon as practicable enter, or



that member or the authorised person who seeks the consent or, as may be appropriate, notes the refusal to consent or the withdrawal of consent, as the case may be, shall as soon as practicable cause to be entered, in the station occurrence book of the station concerned a note recording—

- (i) the giving, refusal or withdrawal, as may be appropriate, of the consent of the person to the taking of that sample, and
- (ii) the date of the giving, refusal or withdrawal, as the case may be, of the consent of the person to the taking of that sample,

and the entry shall be signed by the person making it.

(4) The member in charge of the station concerned shall as soon as practicable after the taking of a sample from a person who is a relative by blood of a missing person under section 48, or the taking of a second or further sample from such a person under section 51(1), of the Act enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the name of the person from whom the sample was taken,
- (b) the name of the missing person concerned in connection with whose disappearance the sample was taken,
- (c) the nature of the sample,
- (d) the name and rank of the member or, as may be appropriate, the name of the authorised person, who took the sample, and
- (e) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(5) As soon as practicable after the taking of a sample from an unknown person under section 49, or the taking of a second or further sample from such a person under section 51(1), of the Act, the member who is consulted in relation to the application concerned to the High Court under section 49(2) of the Act or, if that application is made by the Commissioner, the Commissioner shall enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the name and status of the applicant for an order of the High Court under section 49(2) of the Act,
- (b) the date of that order,
- (c) the nature of the sample taken from the unknown person,
- (d) the name and status of the person who took the sample, and
- (d) the date on which the sample was taken,

and the entry shall be signed by the person making it.

(6) Whenever a member is informed by a coroner under subsection (4) of section 50 of the Act that he or she has given an authorisation under subsection (2) of that section for a sample to be taken from the body of an unknown deceased person under that section, the member shall as soon as practicable after being so informed enter, or cause to be entered, in the station occurrence book of the station concerned a note recording—

- (a) the receipt of that information,
- (b) the name of the coroner who gave the authorisation, and
- (c) the date on which it was given,

and the entry shall be signed by the person making it.

(7) The member in charge of a station concerned shall ensure that the requirements of this Regulation are complied with.

## Part 7

### DESTRUCTION OF SAMPLES AND DESTRUCTION, OR REMOVAL FROM DNA DATABASE SYSTEM, OF DNA PROFILES

#### Chapter 1

#### *Application of Part 10 of Act to persons from whom samples were taken under Parts 2 and 4 of Act*

#### *Records relating to Chapter 1 of Part 10 of Act*

35. (1) Where an authorisation is given by the Commissioner under—

- (a) subsection (3) or (4) of section 77 of the Act to extend the retention period for an intimate sample or a non-intimate sample taken from a person, or
- (b) subsection (4), (5), (6) or (8) of section 81 of the Act to extend the retention period for a DNA profile of a person in the reference index of the DNA Database System,

the Commissioner shall as soon as practicable after giving the authorisation make, or cause to be made, an entry in the Garda Síochána (Part 10) file recording—

- (i) the giving of the authorisation, and
- (ii) the date on which it was given,

and the entry shall be signed by the person making it.

(2) Whenever an application is received by the Commissioner under section 83(1) of the Act from a person from whom a sample was taken under section 34 of the Act to have his or her DNA profile that was generated from the sample and entered in the DNA Database System removed from that System, the Commissioner shall as soon as practicable after the receipt of the application make, or cause to be made, an entry relating to the application in the Garda Síochána (Part 10) file recording—

- (a) the name of the person who made the application, and
- (b) the date on which it was received,

and the entry shall be signed by the person making it.

(3) Whenever the Commissioner informs a person, or causes a person to be informed, by notice in writing of—

- (a) the matters referred to in section 77(5) of the Act in relation to the retention of an intimate sample or a non-intimate sample taken from a person,
- (b) the matters referred to in section 81(10) of the Act in relation to the retention of the DNA profile of a person in the reference index of the DNA Database System,
- (c) the receipt of an application under section 83(1) of the Act for the removal of the DNA profile of a person from the reference index of the DNA Database System that was generated from a sample taken from the person under section 34 of the Act, or
- (d) the matters referred to in subsection (8) of section 83 of the Act in relation to the determination by the Commissioner of an application under subsection (1) of that section,

the Commissioner shall as soon as practicable after the sending or giving of the notice to the person make, or cause to be made, an entry in the Garda Síochána (Part 10) file recording—

- (i) the sending or giving of the notice, and
- (ii) the date on which it was sent or given.

## Chapter 2

### *Application of Part 10 of Act to persons from whom samples were taken under Part 3 of Act*

#### *Records relating to Chapter 2 of Part 10 of Act*

36. (1) Whenever a request is received by the Commissioner under section 87(1) of the Act from, or on behalf of, a person from whom a sample was taken under section 27 or 29 of the Act for the destruction of the sample, or of the

DNA profile generated from the sample in respect of the person, or both, the Commissioner shall as soon as practicable after the receipt of the request make, or cause to be made, an entry relating to the request in the Garda Síochána (Part 10) file recording—

- (a) the name of the person from whom the sample was taken, and
- (b) the date on which the request was received,

and the entry shall be signed by the person making it.

(2) The Commissioner shall as soon as practicable after a person consents in writing under section 87(5) of the Act to the retention of his or her DNA profile in relation to the investigation of the particular offence in connection with which the sample was taken from him or her under section 27 of the Act make, or cause to be made, an entry in the Garda Síochána (Part 10) file recording—

- (a) the giving of that consent, and
- (b) the date on which it was given,

and the entry shall be signed by the person making it.

(3) Whenever a request is received by the Commissioner under section 87(10) of the Act from a person from whom a sample was taken under section 27 of the Act and his or her DNA profile generated from the sample was entered in the reference index of the DNA Database System under section 28 of the Act for the removal of the DNA profile from that System, the Commissioner shall as soon as practicable after the receipt of the request make, or cause to be made, an entry relating to the request in the Garda Síochána (Part 10) file recording—

- (a) the name of the person who made the request, and
- (b) the date on which the request was received,

and the entry shall be signed by the person making it.

### Chapter 3

#### *Application of Part 10 of Act to persons from whom certain samples were taken under Part 5 of Act*

#### *Records relating to Chapter 3 of Part 10 of Act*

37. (1) Whenever a request is received by the Commissioner under section 88(3) of the Act from a person—

- (a) to whom subsection (3) of section 41 of the Act applies and from whom a sample was taken under that section, or
- (b) to whom subsection (3) of section 42 of the Act applies and from whom a sample was taken under that section,

for the destruction of the sample if not already destroyed, and the removal of his or her DNA profile generated from the sample from the DNA Database System, the Commissioner shall as soon as practicable after the receipt of the request make, or cause to be made, an entry relating to the request in the Garda Síochána elimination file recording—

- (a) the name of the person who made the request, and
- (b) the date on which it was received,

and the entry shall be signed by the person making it.

(2) Whenever a request is received by the Director of FSI under section 89(3) of the Act from a person to whom subsection (3) of section 43 of the Act applies and from whom a sample was taken under that section for the destruction of the sample if not already destroyed, and the removal of his or her DNA profile generated from the sample from the DNA Database System, the Director of FSI shall as soon as practicable after the receipt of the request make, or cause to be made, an entry relating to the request in the FSI staff elimination file recording—

- (a) the name of the person who made the request, and
- (b) the date on which it was received,

and the entry shall be signed by the person making it.

(3) Whenever the Commissioner informs by notice in writing a person from whom a sample was taken under section 45 of the Act if a direction was given by him or her under section 91(2) of the Act in relation to the DNA profile in respect of the person generated from the sample, the Commissioner shall as soon as practicable after the sending or giving of the notice to the person make, or cause to be made, an entry in the Garda Síochána elimination file recording—

- (a) the sending or giving of the notice, and
- (b) the date on which it was sent or given.

(4) Whenever the Director of FSI informs by notice in writing—

- (a) a person from whom a sample was taken under section 41 or 42 of the Act—
  - (i) if a direction was given by the Director under section 88(5) of the Act in relation to the DNA profile in respect of the person generated from the sample, and
  - (ii) if appropriate, of a determination under section 88(6) of the Act in relation to the DNA profile in respect of the person generated from the sample,
- (b) a person from whom a sample was taken under section 43 of the Act—

- (i) if a direction was given by the Director under section 89(5) of the Act in relation to the DNA profile in respect of the person generated from the sample, and
- (ii) if appropriate, of a determination under section 89(6) of the Act in relation to the DNA profile in respect of the person generated from the sample,
- (c) a person from whom a sample was taken under section 46 of the Act if a direction was given by the Director under section 91(2) of the Act in relation to the DNA profile in respect of the person generated from the sample,

the Director of FSI shall as soon as practicable after the sending or giving of the notice to the person make, or cause to be made, an entry in the FSI staff elimination file recording—

- (i) the sending or giving of the notice, and
- (ii) the date on which it was sent or given.

#### Chapter 4

##### *Application of Part 10 of Act to persons from whom samples were taken under Part 6 of Act*

##### *Records relating to Chapter 4 of Part 10 of Act*

38. Whenever a request is received by the Commissioner under section 92(1) of the Act from, or on behalf of, a person from whom a sample was taken under section 48 of the Act for the destruction of the sample, or the removal from the DNA Database System of the DNA profile generated from the sample in respect of the person, or both, the Commissioner shall as soon as practicable after the receipt of the request make, or cause to be made, an entry relating to the request in the Garda Síochána (Part 10) file recording—

- (a) the name of the person from whom the sample was taken, and
- (b) the date on which the request was received,

and the entry shall be signed by the person making it.

#### Chapter 5

##### *Miscellaneous matters relating to destruction of samples and destruction, or removal from the DNA Database System, of DNA profiles*

##### *Notices under section 98 of Act*

39. (1) Whenever the Commissioner under section 98 of the Act informs a person, or causes a person to be informed, by notice in writing—

- (a) under subsection (1) of that section of the destruction of an intimate sample or a non-intimate sample,

- (b) under subsection (2) of that section of the removal of the DNA profile of a person from the DNA Database System,
- (c) under subsection (3) of that section of the destruction of a sample, or the destruction of a DNA profile of a person or its removal from the DNA Database System, or both,
- (d) under subsection (4) of that section of the destruction of a sample, or the removal of a DNA profile of a person from the DNA Database System, or both,

the Commissioner shall as soon as practicable after the sending or giving of the notice to the person make, or cause to be made, an entry in the Garda Síochána (Part 10) file recording—

- (a) the sending or giving of the notice, and
- (b) the date on which it was sent or given.

(2) Whenever the Director of FSI under section 98 of the Act informs a person, or causes a person to be informed, by notice in writing under subsection (5) of that section of the destruction of a sample, or the removal of a DNA profile of a person from the DNA Database System, or both, the Director shall as soon as practicable after the sending or giving of the notice to the person make, or cause to be made, an entry in the FSI staff elimination file recording—

- (a) the sending or giving of the notice, and
- (b) the date on which it was sent or given.

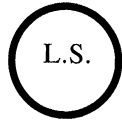
## Part 8

### APPLICATION OF REGULATIONS TO OMBUDSMAN COMMISSION

#### *Application of Regulations to Ombudsman Commission*

40. For the purposes of the application of these Regulations to the Ombudsman Commission—

- (a) references in these Regulations to a station occurrence book of a station shall be construed as references to the case management system maintained by the Ombudsman Commission in relation to the performance of its functions, and
- (b) references in these Regulations to the Commissioner shall be construed as references to the Ombudsman Commission.



GIVEN under my Official Seal,  
20 November 2015.

FRANCES FITZGERALD,  
Minister for Justice and Equality.



EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These regulations contain detailed provisions in relation to the taking of biological samples under the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

---

€11.94



Wt. (B31658). 285. 11/15. Essentra. Gr 30-15.