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*Number 16 of 2022*

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**Defence Forces (Evidence) Act 2022**

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**DEFENCE FORCES (EVIDENCE) ACT 2022**

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Data Protection Acts 1988 to 2018  
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Firearms Acts 1925 to 2009  
Medical Practitioners Act 2007 (No. 25)  
Misuse of Drugs Act 1977 (No. 12)  
Nurses and Midwives Act 2011 (No. 41)  
Official Secrets Act 1963 (No. 1)





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*Number 16 of 2022*

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## **DEFENCE FORCES (EVIDENCE) ACT 2022**

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An Act to amend the law to authorise the taking of bodily samples from military persons suspected of certain offences under military law for forensic testing; to provide for the taking of certain bodily samples from military persons or other persons who volunteer to have such samples taken from them for the purpose of the investigation of offences or incidents that may have involved the commission of offences under military law; to provide for the establishment and operation by Forensic Science Ireland of the Department of Justice and Equality of a DNA (Military Police) Database System; to provide for the purposes of that System; to provide for the taking of certain bodily samples from persons suspected of certain offences under military law for the purpose of generating DNA profiles in respect of those persons to be entered in the DNA (Military Police) Database System; to provide for the taking of certain bodily samples from certain persons for elimination purposes and, where appropriate, the entry of their DNA profiles in the DNA (Military Police) Database System; to provide for the taking of bodily samples from military persons, or samples from things, for the purpose of generating DNA profiles to be entered in the DNA (Military Police) Database System; to provide for the collection and analysis of other evidence; to provide, in certain circumstances, for the destruction of evidence and samples taken under this Act and the destruction, or removal from the DNA (Military Police) Database System, of any DNA profiles generated from those samples; to amend the Defence Act 1954, the Courts-Martial Appeals Act 1983 and the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014; and to provide for related matters. [6th July, 2022]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title and commencement**

1. (1) This Act may be cited as the Defence Forces (Evidence) Act 2022.

- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

## Interpretation

### 2. (1) In this Act—

“Act of 1954” means the Defence Act 1954;

“Act of 2014” means the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;

“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;

“conviction”, other than in *section 65(3)*, means a conviction by court-martial;

“court”, other than in *section 35(2)*, includes a court-martial;

“court-martial”, when used without qualification, means a general court-martial, a limited court-martial or a summary court-martial;

“crime scene” shall be construed in accordance with *section 27(2)*;

“crime scene (Military Police) index”, in relation to the DNA (Military Police) Database System, shall be construed in accordance with *section 27*;

“crime scene sample”, other than in *section 78*, means a sample of biological material found at, or recovered from, a crime scene from which a DNA profile in respect of a person may be generated;

“Defence Forces” has the same meaning as it has in the Act of 1954;

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

“Director of Military Prosecutions” means the person appointed, for the time being, under section 184C of the Act of 1954;

“DNA” means deoxyribonucleic acid;

“DNA Database System” has the same meaning as it has in the Act of 2014;

“DNA (Military Police) Database System” has the meaning assigned to it by *section 25*;

“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 (Military Police) index”, in relation to the DNA (Military Police) Database System, shall be construed in accordance with *section 29*;

“enactment” means a statute or an instrument made under a power conferred by statute;

“forensic testing”, in relation to a sample (other than in *sections 78* and *79*), means the examination and analysis of the sample and the carrying out of biochemical or other scientific tests and techniques used in connection with the detection and investigation of crime on the sample and, if appropriate, includes the generation of a DNA profile from the sample in respect of a person;

“FSI” means Forensic Science Ireland of the Department of Justice and Equality;

“inadequately labelled”, in relation to a sample, means incorrectly labelled or labelled in such a manner that it is not possible to identify with certainty the person from whom the sample was taken;

“insufficient”, in relation to a sample, means, subject to *section 4(5)*, insufficient in quantity or quality for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample for the forensic testing of it;

“intimate sample” means any of the following taken, or to be taken, from a person under *section 10*:

- (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;
- (c) a dental impression;

“item of forensic evidence” means a sample, swab, specimen, impression or print obtained from a person under *section 34*;

“match”, in relation to two DNA profiles, means that there is such a degree of correspondence between them that they are indistinguishable and it is probable that they relate to the same person, and the degree of that probability can be indicated statistically;

“member of the Military Police” means a member of the Defence Forces appointed or transferred to the Military Police Corps;

“member of the staff of FSI” means an officer of the Minister for Justice and Equality who is assigned to perform duties in FSI;

“military installation” means a place or building (or portion thereof) occupied by, used by, or under the control (whether temporarily or otherwise) of the Defence Forces;

“Minister” means the Minister for Defence;

“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 11*:

(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;

(c) a skin impression;

“offence against military law” has the same meaning as it has in the Act of 1954;

“prescribed”, other than in *section 5(4)*, means prescribed by regulations made by the Minister under *section 5*;

“provost marshal” means the person standing appointed, for the time being, under section 170 of the Act of 1954;

“reference (Military Police) index”, in relation to the DNA (Military Police) Database System, shall be construed in accordance with *section 28*;

“registered dentist” means a person whose name is entered for the time being in the Register of Dentists established under section 26 of the Dentists Act 1985;

“registered medical practitioner” means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 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;

“relevant offence” means an offence, other than a scheduled offence within the meaning of section 176A of the Act of 1954, committed or alleged to have been committed by a person arrested pursuant to section 171 of that Act for which a person may be punished by imprisonment for a term of 5 years or more;

“sample”, other than in *Part 6*, means a sample taken, or to be taken, from a person under *Part 2, 3 or 4* and, if the context so requires, a crime scene sample;

“service custody” has the same meaning as it has in the Act of 1954;

“skin impression”, in relation to a person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and

other physical characteristics or features of the whole or any part of his or her foot or of any other part of his or her body;

“specified military installation” means a military installation specified by a member of the Military Police.

- (2) References in *section 9* and in *Part 3* or *4* to a sample, 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.
- (3) In this Act, references to the mouth of a person shall be construed as including references to the inside of the mouth of the person.
- (4) In this Act, references to a person subject to military law shall be construed in accordance with section 2 of the Act of 1954.

### **Application of Act to persons subject to military law**

3. (1) The application of this Act to a person subject to military law shall not be affected by such person being, for the time being, outside the State or on board a ship or aircraft.
- (2) Where proceedings are initiated against a person—
  - (a) who is subject to military law, or
  - (b) who has, since commission of the offence to which the proceedings relate, ceased to be subject to military law, in a case in which the proceedings have been initiated within 6 months beginning on the date on which the person ceased to be subject to military law,

the following may be used in the proceedings:

- (i) a sample obtained under *section 10* or *11*;
- (ii) the results of the forensic testing of a sample obtained under *section 10* or *11*;
- (iii) a DNA profile generated under *section 10* or *11*;
- (iv) an item of forensic evidence, photograph or other item obtained under *section 34*;
- (v) the results of the forensic testing of an item of forensic evidence or other item obtained under *section 34*;
- (vi) the results of any analysis, testing or comparison carried out under *section 42*.

### **Supplementary provisions relating to samples and DNA profiles**

4. (1) In this Act, references to the giving of information regarding the effect of the entry of a DNA profile in respect of a person in any index of the DNA (Military Police) Database System shall include references to the giving of information regarding the following:
  - (a) that the DNA profile may be compared with other DNA profiles in the DNA (Military Police) Database System under *section 32*;

- (b) that the DNA profile may be compared with other DNA profiles in the DNA Database System under *section 32*;
  - (c) the effect of the DNA profile matching another DNA profile in the DNA (Military Police) Database System or matching another DNA profile in the DNA Database System;
  - (d) in the case of a DNA profile entered, or to be entered, in the reference index of the DNA (Military Police) Database System, other than a DNA profile entered, or to be entered, in that index of that System under *section 24*, that the DNA profile may be subject to an automated search or an automated comparison with DNA profiles under Chapter 2 of Part 12 of the Act of 2014 and the effect of the DNA profile matching another DNA profile following such an automated search or automated comparison.
- (2) In this Act, references to a person giving his or her consent in writing to the taking of a sample under this Act shall include references to—
- (a) the person signing a document, or
  - (b) in case the person is unable to write, the person making his or her mark on a document,
- to indicate his or her consent.
- (3) Where a sample of hair other than pubic hair is taken from a person under this Act—
- (a) the sample may be taken by plucking hairs with their roots and, in so far as it is reasonably practicable, the hairs shall be plucked singly, and
  - (b) no more hairs shall be plucked than the person taking the sample reasonably considers necessary to constitute a sufficient sample for the purpose of forensic testing.
- (4) For the purposes of *sections 10* and *11*, a sample taken from a person includes a sample taken from the person that consists of matter from the body of another person.
- (5) References in this Act to a sample proving to be insufficient (within the meaning of *section 2(1)*) shall include references to where, as a consequence of—
- (a) the loss, destruction or contamination of the whole or any part of the sample,
  - (b) any damage to the whole or a part of the sample, or
  - (c) the use of the whole or a part of the sample for analysis which produced no results or which produced results some or all of which have to be regarded, in the circumstances, as unreliable,
- the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.
- (6) Where an authorisation to take a sample from a person under this Act is given, nothing in this Act shall require such an authorisation to be given again to re-take such a sample from the person if the first or previous such sample taken from the



person proves to be insufficient or, where appropriate, is inadequately labelled and the insufficiency or, as may be appropriate, the inadequate labelling of that sample is apparent within a period of one hour of the taking of that sample.

- (7) Subject to *subsections (9) and (11)*, a person who is required under *Part 7* to destroy, or cause to be destroyed, a sample taken under this Act shall ensure that the sample, and every record relating to the sample insofar as it identifies the person from whom the sample has been taken, are destroyed.
- (8) Subject to *subsection (11)*, a person who is required under *Part 7* to destroy, or cause to be destroyed, a DNA profile generated from a sample taken under this Act shall ensure that the DNA profile, and every record relating to the DNA profile insofar as it identifies the person to whom the DNA profile relates, are destroyed.
- (9) Nothing in *subsection (7)* shall require—
  - (a) the removal from the DNA (Military Police) Database System of a DNA profile that may be retained in that System in accordance with this Act, or
  - (b) the destruction of a record that is required to identify the person to whom a DNA profile referred to in *paragraph (a)* relates.
- (10) Subject to *subsection (11)*, where the Director of FSI is required under *Part 7* to remove, or cause to be removed, a DNA profile from the DNA (Military Police) Database System, he or she shall ensure that that System is altered in a manner such that it is no longer possible to identify the person to whom the DNA profile related.
- (11) *Subsections (7), (8) and (10)* shall operate in a manner that permits the provost marshal, the Director of FSI or other person referred to in *section 61*—
  - (a) to retain such records as may be required by him or her to show that that section has been complied with, and
  - (b) to retain such records as may be required by him or her to show that *section 62* has been complied with.
- (12) In *subsections (7), (8), (9) and (11)*, “record”, in relation to a sample or a DNA profile, includes a copy of a record.

### **Orders and regulations**

5. (1) The Minister may make such orders as are provided for in this Act.
- (2) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect.
- (3) An order or regulation under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the order or regulation, as the case may be.
- (4) The Minister may prescribe by order—
  - (a) a form of certificate referred to in *section 75* or *79*, or

- (b) a form of authorisation given under *section 9(2), 10(2)(a), 11(2), 14(1)(i), 15(2), 16(3)(i) or 34(2)*.
- (5) Every order (other than an order under *section 1(2)*) or regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

### Expenses

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

### Objective of processing personal data

7. (1) The objective of the processing of personal data under this Act is to enhance and supplement the powers of members of the Military Police relating to the investigation of offences against military law.
- (2) In this section, “personal data” has the same meaning as it has in Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016<sup>1</sup>.

## PART 2

### TAKING OF SAMPLES FROM PERSONS IN CUSTODY OF MILITARY POLICE

#### Power to take samples from person who is subject to military law

8. A sample under *section 9*, an intimate sample, a non-intimate sample or more than one sample may be taken from a person who is subject to military law.

#### Taking of samples from persons in custody of Military Police for purposes of DNA (Military Police) Database System

9. (1) Subject to this Act, a member of the Military Police may take, or cause to be taken, from a person who is placed in service custody in connection with a relevant offence, a sample for the purpose of generating a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System.
- (2) A sample may only be taken from a person under *subsection (1)* if a member of the Military Police not below the rank of captain authorises it to be taken.
- (3) Before a member of the Military Police takes, or causes to be taken, a sample under this section from a person, the member shall inform the person of the following:

<sup>1</sup> OJ No. L 119, 4.5.2016, p. 89.

- (a) that an authorisation to take the sample from him or her has been given under *subsection (2)*;
- (b) in a case in which a sample already taken under this section from the person has proved to be insufficient—
  - (i) that that sample has proved to be insufficient, and
  - (ii) that either—
    - (I) another authorisation under *subsection (2)* is not, by virtue of *section 4(6)*, required, or
    - (II) an authorisation to take a second sample from him or her has, in accordance with *section 16(1)*, been given under *subsection (2)*;
- (c) that if the person fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 15*;
- (d) that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System and the effect of such an entry;
- (e) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of offences against military law and court-martial proceedings (whether within or outside the State) as provided for in, or permitted by, this Act;
- (f) that the sample may be destroyed, and the DNA profile in respect of the person entered in the reference (Military Police) index of the DNA (Military Police) Database System may be removed from that System, in accordance with *Part 7*.

#### **Taking of intimate samples from persons in custody of Military Police**

- 10.** (1) Subject to this Act, a member of the Military Police may take, or cause to be taken, from a person who is placed in service custody in connection with a relevant offence, an intimate sample under this section for the purposes of forensic testing and, if appropriate, the generation of a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System.
- (2) An intimate sample may be taken under this section only if—
- (a) a member of the Military Police not below the rank of captain authorises it to be taken for the purposes specified in *subsection (1)*, and
  - (b) consent has been given in writing to the taking of the sample by the person from whom the sample is to be taken.
- (3) An authorisation to take an intimate sample under this section shall not be given unless the member of the Military Police giving it has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in the commission of the relevant offence in respect of which he or she is placed in service custody, and

- (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of that offence.
- (4) Before a member of the Military Police seeks the consent of a person, from whom an intimate sample is required, to the taking of such a sample or the member takes, or causes to be taken, such a sample from the person, the member shall inform the person of the following:
- (a) the nature of the relevant offence in the commission of which it is suspected that the person has been involved;
  - (b) that an authorisation to take the sample from him or her has been given under *subsection (2)(a)* and the grounds on which it has been given;
  - (c) in a case in which an intimate sample already taken from the person has proved to be insufficient—
    - (i) that that sample has proved to be insufficient, and
    - (ii) that either—
      - (I) another authorisation under *subsection (2)(a)* is not, by virtue of *section 4(6)*, required, or
      - (II) an authorisation to take a second intimate sample from him or her has, in accordance with *section 16(1)*, been given under *subsection (2)(a)* and the grounds on which it has been given;
  - (d) that the results of the forensic testing of the sample may be given in evidence in any proceedings;
  - (e) if appropriate, that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System and the effect of such an entry;
  - (f) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of offences against military law and court-martial proceedings (whether within or outside the State) as provided for in, or permitted by, this Act;
  - (g) that the sample may be destroyed, and, if appropriate, the DNA profile in respect of the person entered in the reference (Military Police) index of the DNA (Military Police) Database System may be removed from that System, in accordance with *Part 7*.
- (5) If a person expressly withdraws the consent given under *subsection (2)(b)* (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of an intimate sample under this section—
- (a) that withdrawal of consent shall be treated as a refusal to give the consent to the taking of the sample under this section, and
  - (b) the provisions of this Part shall apply accordingly.

- (6) A withdrawal under *subsection (5)* of the consent given under *subsection (2)(b)* shall be recorded in writing by a member of the Military Police as soon as practicable after such withdrawal.
- (7) The consent given under *subsection (2)(b)* to the taking of an intimate sample under this section may not be withdrawn after the sample has been taken.

### **Taking of non-intimate samples from persons in custody of Military Police**

- 11.** (1) Subject to this Act, a member of the Military Police may take, or cause to be taken, from a person who is placed in service custody in connection with a relevant offence, a non-intimate sample under this section for the purposes of forensic testing and, if appropriate, the generation of a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System.
- (2) A non-intimate sample may be taken under this section only if a member of the Military Police not below the rank of captain authorises it to be taken for the purposes specified in *subsection (1)*.
- (3) An authorisation to take a non-intimate sample under this section shall not be given unless the member of the Military Police giving it has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in the commission of the relevant offence in respect of which he or she is placed in service custody, and
  - (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of that offence.
- (4) Before a member of the Military Police takes, or causes to be taken, a non-intimate sample from a person, the member shall inform the person of the following:
- (a) the nature of the relevant offence in the commission of which it is suspected that the person has been involved;
  - (b) that an authorisation to take the sample from him or her has been given under *subsection (2)* and the grounds on which it has been given;
  - (c) in a case in which a non-intimate sample already taken from the person has proved to be insufficient or was inadequately labelled—
    - (i) that that sample has proved to be insufficient or was inadequately labelled, as may be appropriate, and
    - (ii) that either—
      - (I) another authorisation under *subsection (2)* is not, by virtue of *section 4(6)*, required, or
      - (II) an authorisation to take a second non-intimate sample from him or her has, in accordance with *section 16(1)*, been given under *subsection (2)* and the grounds on which it has been given;

- (d) if appropriate, that if the person fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 15*;
- (e) that the results of the forensic testing of the sample may be given in evidence in any proceedings;
- (f) if appropriate, that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System and the effect of such an entry;
- (g) that the sample, or the DNA profile generated from the sample in respect of the person, may be transmitted or provided to a person or body in connection with the investigation of offences against military law and court-martial proceedings (whether within or outside the State) as provided for in, or permitted by, this Act;
- (h) that the sample may be destroyed, and, if appropriate, the DNA profile in respect of the person entered in the reference (Military Police) index of the DNA (Military Police) Database System may be removed from that System, in accordance with *Part 7*.

#### **Persons authorised to take intimate samples**

- 12.** (1) A sample of blood or pubic hair or a swab from a genital region or a body orifice other than the mouth may be taken under this Part only by a registered medical practitioner or a registered nurse.
- (2) A dental impression may be taken under this Part only by a registered dentist or a registered medical practitioner.
- (3) An intimate sample other than a sample of blood or a dental impression shall, in so far as practicable, be taken by a person who is of the same sex as the person from whom the sample is being taken under this Part.

#### **Inferences from refusal to consent, or withdrawal of consent, to taking of intimate sample**

- 13.** (1) Subject to *subsection (5)*, this section applies where, in any proceedings against a person for a relevant offence, evidence is given that the accused—
- (a) refused without reasonable cause to give the consent required under *section 10(2)(b)*, or
  - (b) without reasonable cause withdrew the consent given thereunder.
- (2) Where this section applies—
- (a) the court-martial (or, subject to the military judge's directions, the court-martial board), in determining whether the accused is guilty of the relevant offence charged (or of any offence against military law of which he or she could lawfully be convicted on that charge), may draw such inferences from the refusal or withdrawal concerned, as the case may be, as appear proper, and

- (b) the refusal or withdrawal concerned may, on the basis of such inferences, be treated as, or as being capable of amounting to, corroboration of any evidence in relation to which the refusal or withdrawal is material.
- (3) A person shall not be convicted of the relevant offence charged concerned (or of any offence against military law of which he or she could lawfully be convicted on that charge) solely or mainly on an inference drawn from the refusal or withdrawal concerned.
- (4) *Subsection (2)* shall not have effect in relation to an accused unless—
  - (a) he or she has been told in ordinary language by a member of the Military Police when seeking his or her consent that—
    - (i) the sample was required for the purpose of forensic testing,
    - (ii) his or her consent was necessary, and
    - (iii) if his or her consent was not given, what the effect of a refusal or withdrawal by him or her of such consent might be,and
  - (b) he or she was informed before such refusal or withdrawal of consent occurred that he or she had the right to consult a solicitor and, other than where he or she waived that right, he or she was afforded an opportunity to so consult before such refusal or withdrawal occurred.
- (5) This section shall not apply to a refusal by a person to give consent, or the withdrawal of such consent, unless the seeking of such consent by a member of the Military Police is recorded by electronic or similar means or the person consents in writing to it not being so recorded.
- (6) In this section, “military judge” means a person appointed, for the time being, under section 184J of the Act of 1954.

**When sample taken for purposes of DNA (Military Police) Database System may also be used for evidential purposes**

- 14.** (1) Where a person is placed in service custody for a period in connection with a relevant offence and—
- (a) a sample is taken from the person under *section 9* during the period, and
  - (b) a non-intimate sample is required from the person during the period,
- then, subject to *subsection (4)*, the sample that has already been taken from the person under *section 9* may be regarded as a non-intimate sample taken from the person during the period under this Part only if—
- (i) a member of the Military Police not below the rank of captain authorises the first-mentioned sample to be so regarded for the purposes of forensic testing and the generation of a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System, and

- (ii) a member of the Military Police has informed the person of the following:
  - (I) the nature of the offence against military law in the commission of which it is suspected that the person has been involved;
  - (II) that an authorisation to regard that sample as a non-intimate sample has been given under *paragraph (i)* and the grounds on which it has been given;
  - (III) that the results of the forensic testing of that sample may be given in evidence in any proceedings (including proceedings other than court-martial proceedings).
- (2) An authorisation under *subsection (1)(i)* to regard a sample taken from a person under *section 9* as a non-intimate sample shall not be given unless the member of the Military Police giving it has reasonable grounds—
  - (a) for suspecting the involvement of the person from whom the first-mentioned sample was taken in the commission of the relevant offence in respect of which he or she is placed in service custody, and
  - (b) for believing that that sample will tend to confirm or disprove the involvement of that person in the commission of the relevant offence concerned.
- (3) A sample taken from a person under *section 9* that is regarded as a non-intimate sample in accordance with this section shall, for the purposes of this Act, be regarded as a non-intimate sample taken from the person under *section 11*.
- (4) Where, during a period for which a person is placed in service custody in connection with a relevant offence, a sample is taken from the person under *section 9*, nothing in *subsection (1)* shall prevent the taking of an intimate sample or a non-intimate sample under this Part from the person during the period for which the person is placed in service custody.
- (5) Where, during a period for which a person is placed in service custody an intimate sample or a non-intimate sample is taken from the person, nothing in this Part shall prevent the taking of a sample under *section 9* from the person during the period for which the person is placed in service custody.

#### **Use of reasonable force to take sample under *section 9* or non-intimate sample**

- 15.** (1) Without prejudice to the generality of *sections 9* and *11* and subject to *subsection (2)*, where a person fails or refuses to allow a sample to be taken from him or her pursuant to either of those sections, a member of the Military Police, and the member or members of the Military Police assisting that member, may use such force as is reasonably considered necessary to take the sample, or to prevent the loss, destruction or contamination of the sample, or both.
- (2) The power referred to in *subsection (1)* shall not be exercised unless a member of the Military Police not below the rank of commandant authorises it.
- (3) Where it is intended to exercise the power conferred by *subsection (1)*, one of the members of the Military Police concerned shall inform the person concerned—



- (a) of that intention, and
  - (b) that an authorisation to do so has been given under *subsection (2)*.
- (4) A sample to be taken pursuant to this section shall be taken in the presence of a member of the Military Police not below the rank of captain and that member shall determine the number of members of the Military Police that is reasonably necessary for the purposes of *subsection (1)*.
- (5) The taking of a sample pursuant to this section shall be recorded by electronic or similar means.

### Re-taking of certain samples under *Part 2* in certain circumstances

#### 16. (1) Where—

- (a) a person is placed in service custody for a period in connection with a relevant offence, and
- (b) a sample under *section 9* taken from the person during the period for which the person is placed in service custody proves to be insufficient or inadequately labelled or an intimate sample or a non-intimate sample taken from the person during the period for which the person is placed in service custody proves to be insufficient or is inadequately labelled,

a second sample under *section 9*, a second intimate sample or a second non-intimate sample, as the case may be, may be taken from the person in accordance with this Part while he or she is so placed in service custody only if, subject to *subsection (2)* and *section 4(6)*, an authorisation to take the second sample is given under *section 9(2)*, *10(2)(a)* or *11(2)*, as the case may be.

- (2) An authorisation under *section 9(2)*, *10(2)(a)* or *11(2)*, as the case may be, to take a second sample from a person referred to in *subsection (1)* may be given on one occasion only during a period for which a person is placed in service custody in connection with a relevant offence.
- (3) Where—
- (a) a non-intimate sample is taken from a person who is placed in service custody,
  - (b) the person is released without any charge having been made against him or her, and
  - (c) the sample proves to be insufficient or is inadequately labelled,
- a second non-intimate sample may be taken from the person in accordance with this Part only if—
- (i) a member of the Military Police not below the rank of commandant authorises it to be taken, and
  - (ii) the person attends at a specified military installation in accordance with this section for the purpose of having the second non-intimate sample taken from him or her.

- (4) An authorisation under *subsection (3)* to take a second non-intimate sample from a person in accordance with that subsection shall not be given unless the member of the Military Police giving it has reasonable grounds—
  - (a) for suspecting the involvement of the person from whom the first non-intimate sample concerned was taken in the relevant offence in respect of which he or she was placed in service custody when that sample was taken, and
  - (b) for believing that a second non-intimate sample will tend to confirm or disprove the involvement of that person in that relevant offence.
- (5) An authorisation under *subsection (3)* to take a second non-intimate sample from a person in accordance with that subsection—
  - (a) may be given on one occasion only, and
  - (b) may not be given if a period of more than 6 months has elapsed since the first non-intimate sample concerned was taken from the person.
- (6) If an authorisation under *subsection (3)* to take a second non-intimate sample from a person has been given, a member of the Military Police, not below the rank of commandant, may, within the period specified in *subsection (7)*, require the person by notice in writing to attend at a specified military installation for the purpose of having a second non-intimate sample taken from him or her.
- (7) The period referred to in *subsection (6)* is one month from the date on which a member of the Military Police not below the rank of commandant is informed of the fact that that sample has proved to be insufficient or was inadequately labelled, as the case may be.
- (8) A notice under *subsection (6)* shall state that the first non-intimate sample concerned taken from the person concerned has proved to be insufficient or was inadequately labelled, as may be appropriate, and a requirement in the notice to attend at a specified military installation shall direct the person concerned to so attend on specified days and at a specified time of day or between specified times of day.
- (9) Nothing in this section shall require the second non-intimate sample to be taken from a person under this section to be of the same type of biological material as the first sample taken from the person which proved to be insufficient or was inadequately labelled, provided that the second sample concerned is one that is permitted to be taken under *section 11*.
- (10) If a second non-intimate sample is taken from a person under *subsection (1)*, the references in this section other than in that subsection—
  - (a) to a first non-intimate sample shall be construed as references to a second non-intimate sample, and
  - (b) to a second non-intimate sample shall be construed as references to a third non-intimate sample,taken, or to be taken, from the person.

- (11) A sample taken, or to be taken, from a person under this section shall, for the purposes of this Act, be regarded as if it is to be taken, or had been taken, from the person under *section 9, 10 or 11*, as may be appropriate.

**Samples not to be taken from persons in custody of Military Police other than in accordance with this Part**

17. Subject to *section 77*, a member of the Military Police shall not, following the commencement of this Part, take, or cause to be taken, a sample for forensic testing from a person who is placed in service custody in connection with a relevant offence other than in accordance with this Part.

PART 3

TAKING OF SAMPLES FOR ELIMINATION PURPOSES

**Definition (*Part 3*)**

18. In this Part, “contamination”, in relation to a crime scene sample, means the inadvertent incorporation in the crime scene sample of the DNA of a person to whom this Part applies during—
- (a) his or her attendance at the crime scene concerned in the execution of his or her duties,
  - (b) the conduct of the investigation of an offence against military law or incident that may have involved the commission of an offence against military law, or
  - (c) the examination or analysis of that sample.

**Taking of samples from Military Police personnel for elimination (Military Police) index**

19. (1) A sample taken under this section from a person shall be used to generate a DNA profile in respect of the person to be entered in the elimination (Military Police) index of the DNA (Military Police) Database System for the purpose, in relation to the investigation of offences against military law, of ascertaining whether that person has contaminated a crime scene sample.
- (2) A sample shall be taken under this section from a member of the Military Police who is appointed as such a member or transferred to the Military Police Corps after the commencement of this section.
- (3) A sample may be taken under this section from a member of the Military Police, who is such a member upon the commencement of this section, only if he or she consents in writing to having such a sample taken from him or her.
- (4) A member of the Military Police shall inform a person to whom this section applies of the following before taking, or causing to be taken, a sample under this section from him or her:

- (a) that the sample is to be taken from him or her under this section;
  - (b) in a case in which a sample already taken under this section from the person has proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 21* a second or further sample under this section is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second or further sample under this section is, in accordance with *section 21*, to be taken from him or her;
  - (c) that the sample will be used to generate a DNA profile in respect of the person to be entered in the elimination (Military Police) index of the DNA (Military Police) Database System and the effect of such an entry;
  - (d) that the sample may be destroyed, and the DNA profile in respect of the person entered in the elimination (Military Police) index of the DNA (Military Police) Database System may be removed from that System, in accordance with *Part 7*.
- (5) Subject to this Act, a member of the Military Police may take, or cause to be taken, a sample under this section from a person to whom this section applies.

#### **Direction from provost marshal for sample to be taken for elimination purposes**

- 20.** (1) A sample taken under this section from a person shall be used to generate a DNA profile in respect of the person to be entered in the elimination (Military Police) index of the DNA (Military Police) Database System for the purpose, in relation to the investigation of offences against military law, of ascertaining whether that person has contaminated a crime scene sample.
- (2) If the provost marshal has good reason to believe that, in relation to the investigation of an offence against military law, a person specified in *subsection (3)* has, or may have, contaminated a particular crime scene sample, the provost marshal may direct that the person shall have a sample taken from him or her under this section for the purpose, in relation to the investigation of that offence against military law, of ascertaining whether that person has contaminated that crime scene sample.
- (3) A direction may be given under *subsection (2)* in respect of any of the following persons, other than a person to whom *section 19(2)* applies:
- (a) a member of the Defence Forces;
  - (b) an employee of the Minister;
  - (c) any person who at the time the direction is given is subject to military law in accordance with—
    - (i) paragraph (d) or (e) of section 118, or
    - (ii) paragraph (c) or (d) of section 119,

of the Act of 1954.

- (4) A direction under *subsection (2)* shall be given in writing and the provost marshal shall give, or cause to be given, a copy of it to the person to whom it relates.
- (5) A member of the Military Police shall inform a person of the following before taking, or causing to be taken, a sample under this section from him or her:
  - (a) that the sample is to be taken from him or her pursuant to a direction given under this section;
  - (b) in a case in which a sample already taken under this section from the person had proved to be insufficient or was inadequately labelled or for any other reason mentioned in *section 21* a second or further sample under this section is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second and further sample under this section is, in accordance with *section 21*, to be taken from him or her;
  - (c) that the sample will be used to generate a DNA profile in respect of the person for the purpose of ascertaining whether he or she has contaminated the crime scene sample concerned;
  - (d) that the sample, and the DNA profile in respect of the person generated from it, may be destroyed in accordance with *Part 7*.
- (6) Subject to this Act, a member of the Military Police may take, or cause to be taken, a sample under this section from a person in respect of whom a direction is given under *subsection (2)*.

### **Re-taking of samples under *Part 3***

21. Where a sample taken from a person under *section 19* or *20* proves to be insufficient or was inadequately labelled or, for any other good reason, the provost marshal considers that it is necessary for a second or further such sample to be taken from the person, a second or further sample may be taken from him or her in accordance with whichever of those sections is appropriate.

## **PART 4**

### **TAKING OF SAMPLES FROM VOLUNTEERS**

#### **Taking of samples from volunteers to generate DNA profiles**

22. (1) A member of the Military Police may request a person (in this Part referred to as a “volunteer”) other than a person to whom *section 9, 10* or *11* applies to have a sample

taken from him or her under this section for the purpose of generating a DNA profile in respect of the volunteer in relation to—

- (a) the investigation of a particular relevant offence, or
  - (b) the investigation of a particular incident that may have involved the commission of a relevant offence.
- (2) A person who is a victim, or is reasonably considered to be a victim, of the relevant offence or incident that may have involved the commission of a relevant offence being investigated may be a volunteer.
- (3) A member of the Military Police shall inform a volunteer of the following before seeking his or her consent to the taking of a sample under this section or the member takes, or causes to be taken, such a sample from him or her:
- (a) that the volunteer is not obliged to have the sample taken from him or her;
  - (b) in a case in which a sample already taken under this section from the volunteer has proved to be insufficient or was inadequately labelled or for any other reason, mentioned in *section 23*, a second or further sample is required to be taken from him or her—
    - (i) that the first-mentioned sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second or further sample under this section to be taken, as may be appropriate, and
    - (ii) that a second sample or further sample is, in accordance with *section 23*, to be taken from him or her;
  - (c) that the sample will be used to generate a DNA profile in respect of the volunteer for the purposes of the investigation of the relevant offence, or incident that may have involved the commission of a relevant offence, in relation to which it is being taken;
  - (d) that the sample and the DNA profile generated from the sample in respect of the volunteer may be destroyed in accordance with *Part 7*.
- (4) A volunteer shall, before a sample is taken from him or her under this section, consent in writing to the taking of the sample and the consent shall specify the particular relevant offence, or incident that may have involved the commission of a relevant offence, that is being investigated to which the consent relates.
- (5) Subject to this Act, a member of the Military Police may take, or cause to be taken, from a volunteer a sample under this section.
- (6) A sample may be taken under this section from a volunteer in a specified military installation or such place as nominated by a member of the Military Police not below the rank of sergeant or, subject to the agreement of the member of the Military Police taking the sample, at a place designated by the volunteer.
- (7) If a volunteer expressly withdraws consent given under *subsection (4)* (or if the withdrawal of that consent can reasonably be inferred from the conduct of the person) before or during the taking of a sample under this section, that withdrawal of consent

shall be treated as a refusal to give consent to the taking of the sample under this section.

- (8) A withdrawal under *subsection (7)* of consent given under *subsection (4)* shall be confirmed in writing as soon as practicable after such withdrawal.
- (9) Where a person subject to military law refuses to give consent under *subsection (4)*, that refusal shall not of itself constitute reasonable cause for a member of the Military Police to suspect the person of having committed the relevant offence concerned for the purpose of placing him or her in service custody in connection with the investigation of that relevant offence.

#### **Re-taking of samples under *Part 4***

23. Where a sample taken from a person in accordance with *section 22* proves to be insufficient or is inadequately labelled or, for any other good reason, the provost marshal considers that it is necessary for a second or further such sample to be taken from the person, a second or further sample may be taken from him or her in accordance with that section.

#### **Entry of DNA profiles of volunteers in reference (Military Police) index of DNA (Military Police) Database System**

24. (1) A member of the Military Police not below the rank of sergeant may, at the time a sample is taken under *section 22* or at any time thereafter, inform a volunteer from whom the sample is being, or was, taken (other than a victim, or a person reasonably considered to be a victim, of the relevant offence, or incident that may have involved the commission of a relevant offence, being investigated), that he or she may consent to the entry of his or her DNA profile generated from the sample in the reference (Military Police) index of the DNA (Military Police) Database System.
- (2) A member of the Military Police shall inform a volunteer to whom *subsection (1)* applies of the following before the DNA profile in respect of the volunteer may be entered in the reference (Military Police) index of the DNA (Military Police) Database System:
  - (a) that the volunteer concerned is not obliged to consent to his or her DNA profile being entered in the reference (Military Police) index of the DNA (Military Police) Database System;
  - (b) the effect of the entry of the DNA profile in that index of that System;
  - (c) that the sample taken from the volunteer concerned under *section 22* may be destroyed if not previously destroyed, and his or her DNA profile entered in the reference (Military Police) index of the DNA (Military Police) Database System may be removed from that System, in accordance with *Part 7*.
- (3) A volunteer to whom *subsection (1)* applies shall consent in writing before his or her DNA profile may be entered in the reference (Military Police) index of the DNA (Military Police) Database System and, if he or she so consents, his or her DNA profile may be entered in that index of that System.

## PART 5

## DNA (MILITARY POLICE) DATABASE SYSTEM

## CHAPTER 1

*Structure and purposes of DNA (Military Police) Database System***DNA (Military Police) Database System**

- 25.** (1) The Director of FSI shall, as soon as may be after the commencement of this section, establish in accordance with this Part a database to be known as the DNA (Military Police) Database System (in this Act referred to as the “DNA (Military Police) Database System”).
- (2) The DNA (Military Police) Database System shall contain the following indexes of DNA profiles and information that may be used to identify the person from whose biological material each DNA profile was generated:
- (a) the crime scene (Military Police) index;
  - (b) the reference (Military Police) index;
  - (c) the elimination (Military Police) index.

**Purposes of DNA (Military Police) Database System**

- 26.** (1) The DNA (Military Police) Database System shall be used only for the following purposes:
- (a) the investigation and prosecution of an offence against military law, whether committed within or outside the State;
  - (b) the facilitation of the performance by the Committee (within the meaning of the Act of 2014) of its functions under Part 9 of the Act of 2014 in relation to the management and operation of that System;
  - (c) the automated searching of certain DNA profiles in that System in accordance with Chapter 2 of Part 12 of the Act of 2014;
  - (d) the automated comparison of certain DNA profiles in that System with other DNA profiles in accordance with Chapter 2 of Part 12 of the Act of 2014.
- (2) Without prejudice to the generality of *subsection (1)*, the DNA (Military Police) Database System (in this subsection referred to as the “System”) may be used for all or any of the following:
- (a) the conduct of permitted searching under *section 32*;
  - (b) the compilation of statistics on the operation of the System under *section 71*;
  - (c) the facilitation of a review of an alleged miscarriage of justice under *section 2* of the Criminal Procedure Act 1993;
  - (d) any other related purpose.



**Crime scene (Military Police) index**

27. (1) The crime scene (Military Police) index in the DNA (Military Police) Database System shall comprise the DNA profiles of persons generated from samples of biological material found at, or recovered from, a crime scene whether before or after the commencement of this section.
- (2) For the purposes of this Act, a crime scene, in relation to an offence or suspected offence against military law, means all or any of the following (whether within or outside the State):
- (a) a place—
    - (i) where the offence or suspected offence was, or is reasonably suspected of having been, committed, or
    - (ii) where there is, or may be, evidence of, or relating to, the commission of the offence or suspected offence that was, or is reasonably suspected of having been, committed elsewhere;
  - (b) the body of the victim, whether living or deceased, of the offence or suspected offence;
  - (c) anything worn or carried by or in contact with the victim, or a person reasonably considered to be a victim, at the time the offence or suspected offence was, or is reasonably suspected of having been, committed;
  - (d) the body of any other person who was, or is reasonably suspected of having been, connected with the commission of the offence or suspected offence;
  - (e) anything (including a mode of transport) that was, or is reasonably suspected of having been, connected with the commission of the offence or suspected offence.

**Reference (Military Police) index**

28. The reference (Military Police) index in the DNA (Military Police) Database System shall comprise the DNA profiles of persons—
- (a) generated from samples taken from persons under *sections 9, 10 and 11* and entered in that index under those sections, and
  - (b) generated from samples taken from persons under *section 22* and entered in that index under *section 24*.

**Elimination (Military Police) index**

29. The elimination (Military Police) index in the DNA (Military Police) Database System shall comprise the DNA profiles of persons generated from samples taken from persons under *section 19* or *20*.

## CHAPTER 2

*Functions of Director of FSI in relation to DNA (Military Police) Database System***Functions of Director of FSI in relation to DNA (Military Police) Database System**

- 30.** (1) The Director of FSI shall establish and operate the DNA (Military Police) Database System in accordance with this Act.
- (2) Without prejudice to the generality of *subsection (1)*, the Director of FSI shall perform, or cause to be performed, the following functions in relation to the DNA (Military Police) Database System:
- (a) the generation of DNA profiles from the samples taken under this Act;
  - (b) if appropriate, the entry of the DNA profiles generated in the appropriate index of the DNA (Military Police) Database System;
  - (c) the searching of the DNA (Military Police) Database System and the DNA Database System in accordance with *section 32* to ascertain whether there is a match between two DNA profiles in either of those Systems, or in both of those Systems;
  - (d) the reporting to the provost marshal of the results of searches of the DNA (Military Police) Database System and the DNA Database System;
  - (e) the destruction of samples taken under this Act in accordance with *Part 7*;
  - (f) the removal of DNA profiles from the DNA (Military Police) Database System in accordance with *Part 7* or for the purpose of the administration of the System;
  - (g) the maintenance of the security of the DNA profiles and information in the DNA (Military Police) Database System in accordance with this Act;
  - (h) the automated searching of certain DNA profiles in the DNA (Military Police) Database System in accordance with Chapter 2 of Part 12 of the Act of 2014;
  - (i) the automated comparison of certain DNA profiles in the DNA (Military Police) Database System with other DNA profiles in accordance with Chapter 2 of Part 12 of the Act of 2014.
- (3) The Director of FSI shall not—
- (a) generate a DNA profile from a sample taken under this Act, or
  - (b) enter a DNA profile in an index of the DNA (Military Police) Database System,
- unless such generation or entry, as the case may be, is necessary for the purposes of the investigation of an offence against military law.
- (4) Subject to *subsection (5)*, the Director of FSI may make such arrangements, including contractual arrangements, as he or she considers appropriate with such other laboratories (whether within or outside the State) for the performance of the function under *subsection (2)(a)* or the performance of that function in any particular case or class of cases.

- (5) Arrangements under *subsection (4)* shall be subject to compliance with the requirements of this Act and such terms and conditions as may be agreed.

### **Annual report of Director of FSI in relation to DNA (Military Police) Database System**

- 31.** (1) The Director of FSI shall as soon as may be, but not later than 4 months after the end of each year, make a report in writing to the Minister regarding the performance by him or her of the functions assigned to him or her by this Act during that year, and the Minister shall as soon as may be after the receipt by him or her of the report cause a copy of the report to be laid before each House of the Oireachtas and to be published in such manner as the Minister considers appropriate.
- (2) A report made under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.
- (3) Notwithstanding *subsection (1)*, if, but for this subsection, the first report under that subsection would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 4 months, after the end of that year.

## CHAPTER 3

### *Permitted searching*

#### **Permitted searching**

- 32.** (1) A DNA profile entered in the DNA (Military Police) Database System may only be compared with another DNA profile entered in the DNA (Military Police) Database System or the DNA Database System where—
- (a) the comparison is—
- (i) necessary for the purposes of the investigation of an offence against military law, and
- (ii) in accordance with this section,
- or
- (b) the comparison is done solely for the purpose of the administration of the DNA (Military Police) Database System.
- (2) A DNA profile entered in the crime scene (Military Police) index may be compared with—
- (a) the other DNA profiles entered in that index,
- (b) the DNA profiles entered in the reference (Military Police) index,
- (c) the DNA profiles entered in the elimination (Military Police) index, where the comparison is carried out in accordance with *subsection (4)*,
- (d) the DNA profiles entered in the crime scene index under the Act of 2014,

- (e) the DNA profiles entered in the reference index under the Act of 2014,
  - (f) the DNA profiles entered in the elimination (Garda Síochána) index under the Act of 2014, where the comparison is carried out in accordance with *subsection (6)*,
  - (g) the DNA profiles entered in the elimination (crime scene investigators) index under the Act of 2014, where the comparison is carried out in accordance with *subsection (6)*, or
  - (h) the DNA profiles entered in the elimination (prescribed persons) index under the Act of 2014, where the comparison is carried out in accordance with *subsection (6)*.
- (3) A DNA profile entered in the reference (Military Police) index may be compared with—
- (a) the other DNA profiles entered in that index,
  - (b) the DNA profiles entered in the crime scene (Military Police) index,
  - (c) the DNA profiles entered in the crime scene index under the Act of 2014, or
  - (d) the DNA profiles entered in the reference index under the Act of 2014.
- (4) A DNA profile in respect of a person that is entered in the elimination (Military Police) index may be compared with—
- (a) the other DNA profiles in that index, or
  - (b) a DNA profile that is generated from a crime scene sample found at, or recovered from, a particular crime scene and entered in the crime scene (Military Police) index where—
    - (i) such comparison is necessary in relation to the investigation of an offence against military law to ascertain whether the person has contaminated that crime scene sample, and
    - (ii) that comparison is in accordance with a direction given by the Director of FSI under *subsection (5)*.
- (5) The Director of FSI, following consultation with the provost marshal, may, for the purposes of *subsection (4)(b)*, give a general direction in writing regarding the circumstances in which it is necessary for DNA profiles entered in the elimination (Military Police) index to be compared with DNA profiles entered in the crime scene (Military Police) index.
- (6) A DNA profile in respect of a person that is entered in—
- (a) the elimination (Garda Síochána) index,
  - (b) the elimination (crime scene investigators) index, or
  - (c) the elimination (prescribed persons) index,

under the Act of 2014 may be compared with a DNA profile that is generated from a crime scene sample found at, or recovered from, a particular crime scene and entered in the crime scene (Military Police) index where—

- (i) such comparison is necessary in relation to the investigation of an offence against military law to ascertain whether the person concerned has contaminated that crime scene sample, and
  - (ii) that comparison is in accordance with a direction given by the Director of FSI under *subsection (7)*.
- (7) The Director of FSI, following consultation with the provost marshal, may, for the purposes of *paragraph (ii)* of *subsection (6)*, give a general direction in writing regarding the circumstances in which it is necessary for DNA profiles entered in the elimination (Garda Síochána) index, the elimination (crime scene investigators) index or the elimination (prescribed persons) index under the Act of 2014 to be compared with DNA profiles entered in the crime scene (Military Police) index.
- (8) In this section, “crime scene index”, “reference index”, “elimination (Garda Síochána) index”, “elimination (crime scene investigators) index” and “elimination (prescribed persons) index” have the meanings they have in the Act of 2014.

## PART 6

### OTHER POWERS OF MEMBERS OF MILITARY POLICE IN RELATION TO PERSON PLACED IN SERVICE CUSTODY

#### CHAPTER 1

##### *Obtaining and destruction of evidence*

###### **Definition (*Part 6*)**

- 33.** For the purposes of this Part, “retention period”, in relation to an item of forensic evidence or photograph taken pursuant to the powers conferred by *section 34*, means the period from the taking of the item of forensic evidence or photograph concerned, from or of a person, to the latest date for the destruction of that item of forensic evidence or photograph under *section 36(2)*.

###### **Other powers of members of Military Police in relation to person placed in service custody**

- 34.** (1) Where a person is placed in service custody pursuant to *section 172* of the Act of 1954, a member of the Military Police may do one or more of the following:
- (a) demand of him or her, his or her name, service number, rank and unit;
  - (b) search him or her or cause him or her to be searched;
  - (c) photograph him or her or cause him or her to be photographed;
  - (d) take, or cause to be taken, his or her fingerprints and palm prints;

- (e) take, or cause to be taken, from the person a sample of a footprint or similar impression of any part of the person's body other than a part of the hand or mouth;
  - (f) carry out, or cause to be carried out, any test designed for the purpose of ascertaining whether he or she has been in contact with any firearm (within the meaning of the Firearms Acts 1925 to 2009) or with any explosive and for that purpose take swabs from the person's skin or samples of the person's hair;
  - (g) require the person to permit a registered medical practitioner or a registered nurse to take a specimen of blood from him or her for analysis as to the concentration of alcohol or other drug in the blood;
  - (h) with the prior consent in writing of the person placed in service custody, cause to be taken by a registered dentist or a registered medical practitioner, a dental impression;
  - (i) seize and retain for testing anything that he or she has in his or her possession.
- (2) A power conferred by *subsection (1)(c) to (h)* shall not be exercised unless a member of the Military Police not below the rank of captain authorises it.
- (3) *Subsection (1)(b)* does not empower a member of the Military Police to require a person to remove his or her underclothing, except where such member, with reasonable cause, suspects that he or she has concealed on his or her person a controlled drug (within the meaning of section 2 of the Misuse of Drugs Act 1977) or an explosive and a member of the Military Police not below the rank of captain so authorises.
- (4) In this section, "explosive" means an explosive within the meaning of the Explosives Act 1875 and any other substance or thing that is an explosive substance within the meaning of the Explosive Substances Act 1883.

### **Property in possession of Military Police**

35. (1) Subject to *subsections (2) and (3)*, where any property has come into the possession of a member of the Military Police under *section 34(1)(i)*, a summary court-martial may on application to it, either by a member of the Military Police not below the rank of captain or by a claimant of the property, make an order for the delivery of the property to the person appearing to the summary court-martial to be the owner thereof or, if the owner cannot be ascertained, make such other order with respect to the property (including the destruction or disposal of the property) as the summary court-martial sees fit.
- (2) Subject to *subsection (3)*, where any property has come into the possession of a member of the Military Police under *section 34(1)(i)* and the claimant of the property is not subject to military law, the District Court (in this subsection referred to as the "court") may, on application to it by the claimant of the property, make an order for the delivery of the property to the person appearing to the court to be the owner thereof or, if the owner cannot be ascertained, make such other order with respect to

the property (including the destruction or disposal of the property) as the court sees fit.

- (3) Where property that has come into the possession of a member of the Military Police under *section 34(1)(i)* is believed by that member to be evidence of any offence (or suspected offence) against military law—
  - (a) the property may be retained for use as evidence in any proceedings in relation to that offence for such period from the date of seizure of the property as is reasonable or, if proceedings are commenced in which the property is required for use in evidence, until the conclusion of the proceedings, and
  - (b) an order may not be made under *subsection (1)* or *(2)* until the expiry of the period or the conclusion of the proceedings, as the case may be, referred to in *paragraph (a)*.
- (4) The jurisdiction conferred on the District Court by *subsection (2)* may be exercised by a judge of the District Court for the time being assigned to the District Court district in which the person making the application resides or carries on any profession, business or occupation or, where the person making the application does not reside, or carry on any profession, business or occupation, in the State, a judge who is assigned to the Dublin Metropolitan District.
- (5) An order under *subsection (1)* or *(2)* shall not affect the right of any person to take, not later than 6 months after the date of the order, legal proceedings against any person in possession of the property delivered by virtue of the order for the recovery of the property.

#### **Destruction of item of forensic evidence or photograph taken under *section 34***

- 36.** (1) An item of forensic evidence taken from, or photograph taken of, a person pursuant to powers conferred by *section 34* shall, if not previously destroyed, be destroyed in accordance with this section or, if appropriate, *section 37, 38* or *44*.
- (2) Subject to *section 37*, an item of forensic evidence or photograph referred to in *subsection (1)* shall, if not previously destroyed, be destroyed in any of the following circumstances not later than the expiration of the period of 3 months from the date on which such circumstances first apply to the person referred to in *subsection (1)*:
- (a) where proceedings for an offence against military law—
    - (i) are not instituted against the person within the period of 12 months from the date of the taking of the item of forensic evidence or photograph concerned, and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or
    - (ii) have been instituted and—
      - (I) the person is acquitted of the offence against military law,
      - (II) the charge against the person in respect of the offence against military law is dismissed under *section 177* or *178* of the Act of 1954, or

- (III) the proceedings for the offence against military law are discontinued;
- (b) the person's conviction for the offence against military law concerned in connection with which the item of forensic evidence or photograph concerned was taken is quashed;
- (c) the person's conviction for the offence against military law concerned in connection with which the item of forensic evidence or photograph concerned was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.

**Extension of retention period under *section 36* for items of forensic evidence taken under *section 34* in certain circumstances**

- 37.** (1) An item of forensic evidence taken from, or photograph taken of, a person pursuant to powers conferred by *section 34* shall not be destroyed under *section 36* in any case in which the provost marshal determines that any of the following circumstances apply:
- (a) a decision has not been taken whether or not to institute proceedings against the person for the offence against military law concerned in connection with which the item of forensic evidence or photograph concerned was taken;
  - (b) the investigation of the offence against military law concerned has not been concluded;
  - (c) the item of forensic evidence or photograph concerned, and the results of any examination or analysis of it, are likely to be required for the prosecution of an offence against military law connected with the event, incident or circumstances the subject of the offence concerned—
    - (i) for use as evidence in such proceedings,
    - (ii) for disclosure to, or use by, an accused in such proceedings, or
    - (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings;
  - (d) having regard to the matters specified in *subsection (2)*, the provost marshal believes it is necessary to retain the item of forensic evidence or photograph concerned in connection with the investigation of the offence against military law concerned taking account of all the circumstances of the case and the reasons why—
    - (i) proceedings for that offence have not been instituted against the person, or
    - (ii) if such proceedings have been instituted against the person, they were determined without he or she being convicted of the offence concerned;
  - (e) there are reasonable grounds for believing that the item of forensic evidence or photograph of the person may be required in connection with the investigation of an offence against military law, other than the offence in connection with which the item of forensic evidence or photograph was taken, which the person is suspected of having committed.



- (2) The matters referred to in *subsection (1)(d)* to which the provost marshal shall have regard are the following:
  - (a) whether the person concerned has any previous conviction for an offence against military law similar in nature or gravity to the offence concerned in connection with which the item of forensic evidence concerned was taken from, or the photograph concerned was taken of, him or her;
  - (b) the nature and seriousness of that offence;
  - (c) any other matter that the provost marshal considers appropriate for the purposes of the determination.
- (3) If, in relation to an item of forensic evidence taken from, or a photograph taken of, a person pursuant to powers conferred by *section 34*, the provost marshal determines that one of the paragraphs of *subsection (1)* applies, then he or she may, during the retention period, give an authorisation to extend that period by a period of 12 months.
- (4) The provost marshal may, while an authorisation under *subsection (3)* or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she determines that one of the paragraphs of *subsection (1)* applies.
- (5) Whenever the provost marshal gives an authorisation under *subsection (3)* or *(4)*, he or she shall, in relation to an item of forensic evidence taken from, or a photograph taken of, a person to whom the authorisation concerned relates, cause the person to be informed by notice in writing that the authorisation has been given under *subsection (3)* or *(4)*, as may be appropriate, the date on which that authorisation was given and of the right of appeal under *subsection (6)*.
- (6) The person to whom the authorisation concerned relates may, within the period of 3 months from the date of the notice under *subsection (5)* concerned, appeal to the summary court-martial against that authorisation.
- (7) An appeal under *subsection (6)* shall—
  - (a) be on notice to the provost marshal, and
  - (b) be heard otherwise than in public.
- (8) If, on an appeal under *subsection (6)*, the summary court-martial—
  - (a) confirms the authorisation concerned, or
  - (b) allows the appeal,the provost marshal shall give effect to the decision of the summary court-martial.
- (9) Nothing in this section shall—
  - (a) prevent or restrict the exercise of powers conferred by *section 34*, or

- (b) pending the conclusion of proceedings under this section, prevent or restrict the use of the item of forensic evidence or photograph concerned for the purposes of—
  - (i) this Act,
  - (ii) an investigation into an alleged offence against military law, or
  - (iii) other proceedings.

**Destruction of items of forensic evidence taken under *section 34* in exceptional circumstances**

- 38.** (1) Notwithstanding *sections 36* and *37*, if the provost marshal is satisfied that exceptional circumstances, specified in *subsection (2)*, exist that justify the destruction of an item of forensic evidence or photograph of a person, the item of forensic evidence or photograph concerned shall be destroyed as soon as practicable after the provost marshal is so satisfied.
- (2) The exceptional circumstances referred to in *subsection (1)* are the existence of one or more of the following:
- (a) it is established, at any time after the placing in service custody of the person concerned for the purposes of the investigation of an offence against military law during which the item of forensic evidence or photograph concerned was taken, that no such offence was committed;
  - (b) it is established that the placing in service custody of the person concerned for the purposes of the investigation of an offence against military law during which the item of forensic evidence or photograph concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that offence;
  - (c) it is determined by a court that the placing in service custody of the person concerned for the purposes of the investigation of an offence against military law during which the item of forensic evidence or photograph concerned was taken was unlawful.

**Retrial, quashing of convictions and determination of proceedings**

- 39.** (1) In *sections 36* and *37*, references to a conviction of a person for an offence against military law shall be construed as including references to a conviction of the person for such an offence after a re-trial for that offence.
- (2) In *section 36*, a reference to a conviction of a person for an offence against military law being quashed shall be construed as a reference to where a court hearing an appeal against the conviction makes an order quashing the conviction and, if the court is the Court of Appeal, either—
- (a) it does not order the person to be re-tried for the offence concerned, or

- (b) it does not substitute for the verdict a verdict of guilty of another offence against military law.
- (3) In *section 37*, references to the proceedings in respect of an offence against military law being determined shall be construed as references to where those proceedings are finally determined (including any appeal, whether by way of case stated or otherwise, rehearing or re-trial).

**Circumstances in which person to be informed of destruction of items of forensic evidence or photograph taken under *section 34***

40. If, in relation to an item of forensic evidence taken from, or a photograph taken of, a person pursuant to powers conferred by *section 34*, the retention period is extended on one or more occasions under *section 37*, the provost marshal shall, upon the expiration of that period (as so extended), cause the person to be informed by notice in writing as soon as may be after the item of forensic evidence or photograph has been destroyed of its destruction.

**Records**

41. (1) Subject to *subsection (2)*, where a person, in accordance with *section 36* or *38*, destroys, or causes to be destroyed, an item of forensic evidence or photograph, he or she shall ensure that the item of forensic evidence or photograph, every copy thereof and every record relating to the item of forensic evidence or photograph insofar as it identifies the person from or of whom the item of forensic evidence or photograph has been taken, are destroyed.
- (2) *Subsection (1)* shall operate in a manner that permits the provost marshal to retain such records as may be required by him or her to show that *section 40* has been complied with.
- (3) In this section, “record”, in relation to an item of forensic evidence or photograph, includes a copy of a record.

CHAPTER 2

*Fingerprints or palm prints obtained under section 34*

**Analysis of fingerprints or palm prints taken under *section 34***

42. (1) Subject to *subsection (2)*, the provost marshal may, in respect of a fingerprint or palm print taken under *section 34(1)(d)*, request the Garda Síochána to carry out such analysis or testing of the fingerprint or palm print, as the case may be, as he or she considers necessary for the purposes of the investigation of an offence against military law, and the Garda Síochána shall, subject to *subsection (3)*, where so requested, carry out such analysis or testing.
- (2) The provost marshal shall not make a request under *subsection (1)* unless the carrying out of the requested analysis or testing of the fingerprint or palm print concerned is necessary for the purposes of the investigation of an offence against military law.

- (3) The Garda Síochána may, for the purposes of the analysis or testing of a fingerprint or palm print requested under *subsection (1)*, request the Director of FSI to carry out analysis or testing of the fingerprint or palm print concerned and the Director shall, where so requested, carry out such analysis or testing.
- (4) The Garda Síochána may, for the purposes of the analysis or testing of a fingerprint or palm print requested under *subsection (1)*, compare the fingerprint or palm print concerned with other fingerprints or palm prints, as the case may be, held by the Garda Síochána.
- (5) The Garda Síochána shall send the results of any analysis, testing or comparison carried out under *subsection (1)*, (3) or (4) (including the reference data, if any, generated as a consequence of such analysis, testing or comparison) to the provost marshal.
- (6) Analysis, testing or comparison may only be carried out, and the results of such analysis, testing or comparison may only be sent, under this section, where it is necessary for the purposes of the investigation of an offence against military law.
- (7) In this section, “reference data” has the same meaning as it has in Part 12 of the Act of 2014 in relation to dactyloscopic data (within the meaning of that Part of that Act).

#### **Provision of prints for purposes of Chapter 3 of Part 12 of Act of 2014**

43. The provost marshal shall provide a fingerprint or palm print taken under *section 34* to the Garda Síochána for the purposes of facilitating the conduct of searches under Chapter 3 of Part 12 of the Act of 2014.

#### CHAPTER 3

#### *Destruction of items taken under section 34 not previously destroyed*

#### **Destruction of items of forensic evidence taken under *section 34* not previously destroyed**

44. Subject to *section 45*, an item of forensic evidence taken from, or photograph taken of, a person pursuant to powers conferred by *section 34* shall, if not previously destroyed, be destroyed not later than the expiration of 25 years from the date of the taking of the evidence or photograph.

#### **Application to retain forensic evidence beyond period specified in *section 44***

45. (1) If a summary court-martial is satisfied, on an application in that behalf by the provost marshal made within the period referred to in *section 44*, that there is good reason why an item of forensic evidence taken from, or photograph taken of, a person pursuant to powers conferred by *section 34* should not be destroyed in accordance with *section 44* within that period, the summary court-martial may make an order authorising the retention of the item of forensic evidence or photograph, as the case may be, for such period as it considers appropriate.

- (2) If the provost marshal intends to make an application under *subsection (1)*, the provost marshal shall inform, or cause to be informed, by notice in writing, the person from whom the item of forensic evidence was taken or of whom the photograph was taken, as the case may be, of that intention.
- (3) If, on an application under *subsection (1)*, the person from whom the item of forensic evidence was taken or of whom the photograph was taken, as the case may be, applies to be heard by the summary court-martial, an order shall not be made under this section unless a reasonable opportunity has been given to that person to be heard.
- (4) An application under this section shall be heard otherwise than in public.

## PART 7

### DESTRUCTION OF SAMPLES AND DESTRUCTION, OR REMOVAL FROM DNA (MILITARY POLICE) DATABASE SYSTEM, OF DNA PROFILES

#### CHAPTER 1

#### *Interpretation*

#### **Interpretation (Part 7)**

**46.** In this Part—

- (a) references to a conviction of a person for a relevant offence shall be construed as including references to a conviction of the person for such an offence after a re-trial for that offence,
- (b) references to a conviction of a person for a relevant offence being quashed shall be construed as references to where a court hearing an appeal against the conviction makes an order quashing the conviction and, if the court is the Court of Appeal, either—
  - (i) it does not order the person to be re-tried for the offence concerned, or
  - (ii) it does not substitute for the verdict a verdict of guilty of another offence that is a relevant offence,and
- (c) references to the proceedings in respect of a relevant offence being determined shall be construed as references to where those proceedings are finally determined (including any appeal, whether by way of case stated or otherwise, rehearing or re-trial).

## CHAPTER 2

*Application of this Part to persons from whom samples were taken under Part 2***Destruction of intimate samples and non-intimate samples in certain circumstances**

47. (1) Subject to *section 48*, an intimate sample or a non-intimate sample taken from a person shall, if not previously destroyed, be destroyed in any of the following circumstances not later than the expiration of the period of 3 months from the date on which such circumstances first apply to the person:

(a) where proceedings for a relevant offence—

(i) are not instituted against the person within the period of 12 months from the date of the taking of the sample concerned, and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or

(ii) have been instituted and—

(I) the person is acquitted of the relevant offence,

(II) the charge against the person in respect of the relevant offence is dismissed in accordance with section 177, 177C, 177D, 178, 178C or 178D of the Act of 1954, or

(III) the proceedings for the relevant offence are discontinued;

(b) the person's conviction for the relevant offence concerned in connection with which the sample concerned was taken is quashed;

(c) the person's conviction for the offence against military law concerned in connection with which the sample concerned was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.

(2) For the purposes of this section, "retention period", in relation to an intimate sample or a non-intimate sample, means the period from the taking of the sample concerned from a person to the latest date for the destruction of that sample under *subsection (1)*.

**Extension of retention period under *section 47* for intimate samples and non-intimate samples in certain circumstances**

48. (1) An intimate sample or a non-intimate sample taken from a person shall not be destroyed under *section 47* in any case in which the provost marshal determines that any of the following circumstances apply:

(a) a decision has not been taken whether or not to institute proceedings against the person for the relevant offence concerned in connection with which the sample concerned was taken;

(b) the investigation of that relevant offence has not been concluded;

- (c) the sample concerned, and the results of any forensic testing of it, are likely to be required for the prosecution of an offence against military law connected with the event, incident or circumstances the subject of the relevant offence concerned—
    - (i) for use as evidence in such proceedings,
    - (ii) for disclosure to, or use by, an accused in such proceedings, or
    - (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings;
  - (d) having regard to the matters specified in *subsection (2)*, the provost marshal believes it is necessary to retain the sample concerned in connection with the investigation of the relevant offence concerned taking account of all the circumstances of the case and the reasons why—
    - (i) proceedings for that offence against military law have not been instituted against the person, or
    - (ii) if such proceedings have been instituted against the person, they were determined without he or she being convicted of the relevant offence concerned.
- (2) The matters referred to in *subsection (1)(d)* to which the provost marshal shall have regard are the following:
- (a) whether the person concerned has any previous conviction for an offence against military law similar in nature or gravity to the relevant offence concerned in connection with which the sample concerned was taken from him or her;
  - (b) the nature and seriousness of that relevant offence;
  - (c) any other matter that the provost marshal considers appropriate for the purposes of the determination.
- (3) If, in relation to an intimate sample or a non-intimate sample taken from a person, the provost marshal determines that one of the paragraphs of *subsection (1)* applies, then, he or she may, during the retention period referred to in *section 47*, give an authorisation to extend that period by a period of 12 months.
- (4) The provost marshal may, while an authorisation under *subsection (3)* or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she determines that one of the paragraphs of *subsection (1)* applies.
- (5) Whenever the provost marshal gives an authorisation under *subsection (3)* or (4), he or she shall, in relation to an intimate sample or a non-intimate sample taken from a person to whom the authorisation concerned relates, cause the person from whom the sample concerned was taken to be informed by notice in writing that the authorisation has been given under *subsection (3)* or (4), as may be appropriate, the date on which that authorisation was given and the right of appeal under *subsection (6)*.

- (6) The person to whom the authorisation concerned relates may, within the period of 3 months from the date of the notice under *subsection (5)* concerned, appeal to the summary court-martial against that authorisation.
- (7) An appeal under *subsection (6)* shall—
  - (a) be on notice to the provost marshal, and
  - (b) be heard otherwise than in public.
- (8) If, on an appeal under *subsection (6)*, the summary court-martial—
  - (a) confirms the authorisation concerned, or
  - (b) allows the appeal,the provost marshal shall give effect to the decision of the summary court-martial.
- (9) Nothing in this section shall—
  - (a) prevent or restrict the exercise of powers conferred by *section 10* or *11*, or
  - (b) pending the conclusion of proceedings under this section, prevent or restrict the use of the sample concerned for the purposes of—
    - (i) this Act,
    - (ii) an investigation into an alleged offence against military law, or
    - (iii) other proceedings.

#### **Destruction of intimate samples and non-intimate samples in exceptional circumstances**

- 49.** (1) Notwithstanding *sections 47* and *48*, if the provost marshal is satisfied that exceptional circumstances, specified in *subsection (2)*, exist that justify the destruction of an intimate sample or a non-intimate sample, the sample concerned shall be destroyed as soon as practicable after the application of those circumstances in relation to that sample becomes known.
- (2) The exceptional circumstances referred to in *subsection (1)* are the existence of one or more of the following:
- (a) it is established, at any time after the person concerned is placed in service custody for the purposes of the investigation of a relevant offence during which the sample concerned was taken, that no such offence was committed;
  - (b) it is established that the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that relevant offence;
  - (c) it is determined by a court that the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken was unlawful.



**Destruction of certain samples taken for purposes of DNA (Military Police) Database System**

50. (1) Subject to *subsection (2)*, a sample taken from a person under *section 9* shall, if not previously destroyed, be destroyed—
- (a) as soon as a DNA profile has been generated from the sample, or
  - (b) before the expiration of the period of 6 months from the date of the taking of the sample,
- whichever occurs later.
- (2) If the provost marshal is satisfied that exceptional circumstances, specified in *subsection (3)*, exist that justify the destruction of a sample taken from a person under *section 9*, the sample shall, if not previously destroyed, be destroyed as soon as practicable after the application of those circumstances in relation to the sample becomes known.
- (3) The exceptional circumstances referred to in *subsection (2)* are the existence of one or more of the following:
- (a) it is established, at any time after the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken, that no such offence was committed;
  - (b) it is established that the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken was on the basis of the mistaken identity of the person concerned as the perpetrator of that relevant offence; or
  - (c) it is determined by a court that the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken was unlawful.

**Removal of certain DNA profiles from reference (Military Police) index of DNA (Military Police) Database System in certain circumstances**

51. (1) Subject to *section 52*, a DNA profile of a person generated from a sample taken from him or her under *section 9, 10 or 11* and entered in the reference (Military Police) index of the DNA (Military Police) Database System shall, if not previously removed, be removed from that System in any of the following circumstances not later than the expiration of a period of 3 months from the date on which such circumstances first apply to the person:
- (a) in a case where the sample was taken from the person under *section 9, 10 or 11* and proceedings for a relevant offence—
    - (i) are not instituted against the person within the period of 12 months from the date of the taking of that sample and the failure to institute such proceedings within that period is not due to the fact that he or she has absconded or cannot be found, or

- (ii) have been instituted and—
    - (I) the person is acquitted of the relevant offence,
    - (II) the charge against the person in respect of the relevant offence is dismissed in accordance with section 177, 177C, 177D, 178, 178C or 178D of the Act of 1954, or
    - (III) the proceedings for the relevant offence are discontinued;
  - (b) in a case where the sample was taken from the person under *section 9, 10 or 11* and his or her conviction for the relevant offence concerned, in connection with which that sample was taken, is quashed;
  - (c) the person’s conviction for the offence against military law concerned in connection with which the sample concerned was taken is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.
- (2) For the purposes of this section, “retention period”, in relation to the DNA profile of a person that is entered in the reference (Military Police) index of the DNA (Military Police) Database System, means the period from the generation of that DNA profile from the sample concerned taken from the person to the latest date for the removal of that DNA profile from that System under *subsection (1)*.

**Extension of retention period under *section 51* for certain DNA profiles in reference (Military Police) index of DNA (Military Police) Database System in certain circumstances**

- 52.** (1) A DNA profile of a person in the reference (Military Police) index of the DNA (Military Police) Database System shall not be removed from that System under *section 51* in any case in which the provost marshal determines that it is necessary to retain the DNA profile in that index of that System to assist in the investigation or prosecution of a relevant offence.
- (2) The provost marshal may determine under *subsection (1)* that the DNA profile of a person shall be retained in the reference (Military Police) index of the DNA (Military Police) Database System in either of the following circumstances:
- (a) in relation to the investigation of the relevant offence concerned in connection with which the sample concerned was taken from the person (from which his or her DNA profile was generated)—
    - (i) a decision whether or not to institute proceedings against the person for that offence has not been taken, or
    - (ii) the investigation of that offence has not been concluded;
  - (b) having regard to the matters specified in *subsection (3)*, the provost marshal believes it is necessary to do so taking account of all the circumstances of the case and the reasons why—
    - (i) proceedings for that offence have not been instituted against the person, or

- (ii) if such proceedings have been instituted against the person, they were determined without him or her being convicted of the relevant offence concerned.
- (3) The matters referred to in *subsection (2)(b)* to which the provost marshal shall have regard are the following:
- (a) whether the person concerned has any previous conviction for an offence against military law similar in nature or gravity to the relevant offence concerned in connection with which the sample concerned was taken from him or her (from which his or her DNA profile was generated);
  - (b) the nature and seriousness of that relevant offence;
  - (c) any other matter that the provost marshal considers appropriate for the purposes of the determination.
- (4) Subject to *subsection (7)*, if, in relation to the DNA profile of a person, the provost marshal makes a determination under *subsection (1)* on the basis that *subsection (2)(a)* applies, he or she may, during the retention period referred to in *section 51*, give an authorisation to extend that period by a period of 12 months.
- (5) Subject to *subsection (7)*, the provost marshal may, while an authorisation under *subsection (4)* or this subsection, as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a period of not more than 12 months commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she makes a determination under *subsection (1)* on the basis that *subsection (2)(a)* applies.
- (6) Subject to *subsection (7)*, the provost marshal may, while an authorisation under *subsection (4)* or (5), as may be appropriate, is still in force, give an authorisation under this subsection to extend the retention period on a second or further occasion for a further period commencing on the expiration of the period of 12 months to which the authorisation previously given relates if he or she makes a determination under *subsection (1)* on the basis that *subsection (2)(b)* applies.
- (7) An authorisation under *subsection (4)*, (5) or (6) may not be given if to do so would involve the retention of the DNA profile of the person concerned for a period of more than 6 years from—
- (a) the date of the taking of the sample concerned from the person, or
  - (b) if appropriate, the date on which that sample is deemed under *section 55* to have been taken from him or her,
- whichever is the later.
- (8) Subject to *subsection (9)*, if, in relation to the DNA profile of a person, the provost marshal makes a determination under *subsection (1)* on the basis that *subsection (2)(b)* applies, he or she may, during the retention period referred to in *section 51*, give an authorisation to extend that period.

- (9) An authorisation under *subsection (8)* may extend the retention period referred to in *section 51* for no longer than, in the case of any person, a period of 6 years from—
- (a) the date of the taking of the sample concerned from the person, or
  - (b) if appropriate, the date on which that sample is deemed under *section 55* to have been taken from him or her,
- whichever is the later.
- (10) Whenever the provost marshal gives an authorisation under *subsection (4), (5), (6) or (8)*, he or she shall, in relation to the DNA profile of the person to whom the authorisation concerned relates, cause the person to be informed by notice in writing that the authorisation has been given under *subsection (4), (5), (6) or (8)*, as may be appropriate, the date on which that authorisation was given and of the right of appeal under *subsection (11)*.
- (11) The person to whom the authorisation concerned relates may, within the period of 3 months from the date of the notice under *subsection (10)* concerned, appeal to the summary court-martial against that authorisation.
- (12) An appeal under *subsection (11)* shall—
- (a) be on notice to the provost marshal, and
  - (b) be heard otherwise than in public.
- (13) If, on an appeal under *subsection (11)*, the summary court-martial—
- (a) confirms the authorisation concerned, or
  - (b) allows the appeal,
- the provost marshal shall give effect to the decision of the summary court-martial.
- (14) Nothing in this section shall—
- (a) prevent or restrict the exercise of powers conferred by *section 9, 10 or 11*, or
  - (b) pending the conclusion of proceedings under this section, prevent or restrict the use of the DNA profile concerned for the purposes of—
    - (i) this Act,
    - (ii) an investigation into an alleged offence against military law, or
    - (iii) other proceedings.

**Removal in exceptional circumstances of certain DNA profiles in reference (Military Police) index of DNA (Military Police) Database System from that system**

- 53.** (1) Notwithstanding *sections 51 and 52*, if the provost marshal is satisfied that exceptional circumstances, specified in *subsection (2)*, exist that justify the removal from the DNA (Military Police) Database System of a DNA profile that was generated from a sample taken from a person under *section 9, 10 or 11* and entered in the reference (Military Police) index of that System, the DNA profile concerned shall be

so removed as soon as practicable after the application of those circumstances in relation to that DNA profile becomes known.

- (2) The exceptional circumstances referred to in *subsection (1)* are the existence of one or more of the following:
- (a) it is established, at any time after the person concerned is placed in service custody for the purposes of the investigation of a relevant offence during which the sample concerned was taken (from which his or her DNA profile was generated), that no such offence was committed;
  - (b) it is established that the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken (from which his or her DNA profile was generated) was on the basis of the mistaken identity of the person concerned as the perpetrator of that relevant offence;
  - (c) it is determined by a court that the placing in service custody of the person concerned for the purposes of the investigation of a relevant offence during which the sample concerned was taken (from which his or her DNA profile was generated) was unlawful.

**DNA profiles not to be removed from DNA (Military Police) Database System in certain circumstances**

54. (1) *Section 51* shall not apply to a person if, during the retention period—

- (a) proceedings for a relevant offence (“the subsequent relevant offence”) other than the offence in connection with which the sample concerned was taken (from which his or her DNA profile was generated and entered in the reference (Military Police) index of the DNA (Military Police) Database System) have not been instituted against the person, where the failure to institute such proceedings against him or her within the retention period is due to the fact that he or she absconded or could not be found,
- (b) proceedings for a relevant offence (“the subsequent relevant offence”) other than the offence in connection with which the sample concerned was taken (from which his or her DNA profile was generated and entered in the reference (Military Police) index of the DNA (Military Police) Database System) have been instituted against the person, unless—
  - (i) the person has been acquitted of that relevant offence,
  - (ii) the charge against the person in respect of that relevant offence is dismissed in accordance with section 177, 177C, 177D, 178, 178C or 178D of the Act of 1954, or
  - (iii) the proceedings for that relevant offence have been discontinued,or
- (c) the person has been convicted of another relevant offence (“the subsequent relevant offence”), unless—

- (i) the conviction for that relevant offence is quashed, or
  - (ii) the conviction for that relevant offence is declared to be a miscarriage of justice under section 2 of the Criminal Procedure Act 1993.
- (2) In the circumstances referred to in *subsection (1)*, this Part shall apply in relation to the retention of the DNA profile of the person concerned in the reference (Military Police) index of the DNA (Military Police) Database System by reference to the subsequent relevant offence referred to in *paragraph (a), (b) or (c)* of that subsection, as may be appropriate.
- (3) In this section, references to the retention period shall be construed as references to the retention period under *section 51* and any extension of that period under an authorisation given under *subsection (4), (5), (6) or (8) of section 52*, that, but for *subsection (1)*, would have applied.

**Date on which sample under *section 9, 10 or 11* may be deemed to have been taken in certain circumstances**

- 55.** (1) This section applies where a sample (in this section referred to as the “first sample”) is taken from a person under *section 9, 10 or 11* while he or she is placed in service custody for the purposes of the investigation of a relevant offence and a DNA profile in respect of the person is generated from that sample and entered in the reference (Military Police) index of the DNA (Military Police) Database System.
- (2) If, in the circumstances referred to in *subsection (1)* in relation to a person—
- (a) but for the taking from him or her of the first sample, a sample may be, but is not, taken from him or her on a date after the first sample was taken (“the subsequent date”) under *section 9* while the person is placed in service custody for the purposes of the investigation of a relevant offence other than the offence in connection with which the first sample was taken, or
  - (b) an intimate sample or a non-intimate sample taken from the person on a date after the taking of the first sample (“the subsequent date”) for the investigation of a relevant offence other than the offence in connection with which the first sample was taken is not used to generate a DNA profile in respect of the person to be entered in the reference (Military Police) index of the DNA (Military Police) Database System as his or her DNA profile has already been entered in that index,
- the first sample shall be deemed to have been taken from him or her on the subsequent date for the purposes of the application of *subsection (7) or (9) of section 52* to the person.
- (3) The subsequent date for the purposes of *subsection (2)(a)* shall be the latest date on which a sample under *section 9* may have been taken from the person concerned.

## CHAPTER 3

*Application of this Part to persons from whom samples were taken under Part 3***Destruction of samples taken from persons under *section 19* and removal of their DNA profiles from DNA (Military Police) Database System**

56. (1) Subject to *subsection (4)*, a sample taken from a person under *section 19* shall be destroyed—
- (a) as soon as a DNA profile has been generated from the sample, or
  - (b) before the expiration of the period of 6 months from the date of the taking of the sample,
- whichever occurs later.
- (2) Subject to *subsections (5) and (6)*, the DNA profile in respect of a person to whom *section 19(2)* applies entered in the elimination (Military Police) index of the DNA (Military Police) Database System shall not be removed from that System until the expiration of the period of 10 years after the person ceases to be a member of the Military Police and the DNA profile concerned shall be removed from that System as soon as practicable after that period.
  - (3) A person to whom *section 19(3)* applies and from whom a sample was taken under that section may, at any time and without specifying a reason, request the destruction of the sample, if not already destroyed, and the removal of his or her DNA profile from the DNA (Military Police) Database System by notice in writing sent or given to the provost marshal.
  - (4) Subject to *subsections (5) and (6)*, a sample taken under *section 19* from a person referred to in *subsection (3)* shall be destroyed if not previously destroyed, and his or her DNA profile shall be removed from the DNA (Military Police) Database System, not more than 3 months after the receipt by the provost marshal of the notice under *subsection (3)*.
  - (5) If the Director of FSI, following consultation with the provost marshal, is satisfied that there is good reason relating to the investigation of offences against military law why a DNA profile in respect of a person entered in the elimination (Military Police) index of the DNA (Military Police) Database System should not be removed from that System under *subsection (2) or (4)*, the Director of FSI may, subject to *subsection (6)*, direct that the DNA profile should not be removed from that System.
  - (6) At the end of each year, the Director of FSI shall carry out a review to determine whether any of the DNA profiles in respect of persons referred to in *subsection (5)* shall be removed from the DNA (Military Police) Database System and he or she shall consult the provost marshal for the purposes of that review.
  - (7) The Director of FSI shall inform by notice in writing a person from whom a sample was taken under *section 19*—
    - (a) if a direction is given by the Director of FSI under *subsection (5)* in relation to the DNA profile in respect of the person, and

- (b) if appropriate, of a determination under *subsection (6)* in relation to the DNA profile in respect of the person.

**Destruction of samples taken from person under *section 20* and removal of their profiles from DNA (Military Police) Database System**

57. (1) When the DNA profile of a person from whom a sample was taken under *section 20* has been compared with a DNA profile that was generated from a crime scene sample, then, subject to *subsections (2)* and *(3)*, the sample taken from the person, and the DNA profile generated from that sample in respect of the person, shall be destroyed as soon as practicable.
- (2) Where the provost marshal, in the case of a sample taken from a person under *section 20*, is satisfied that there is good reason relating to the investigation of a particular offence against military law why the sample taken from the person under *section 20* or the DNA profile generated from the sample, as the case may be, in respect of the person, or both, should not be destroyed, he or she may direct that the sample or DNA profile, or both, shall not be destroyed until a period of not more than 3 months has elapsed after the investigation of that offence against military law is concluded or any proceedings in respect of that offence against military law are determined, whichever is the later.
- (3) The member of the Military Police who is in charge of the investigation of the offence referred to in *subsection (2)* shall determine, for the purposes of that subsection, when the investigation of that offence is concluded.
- (4) The provost marshal shall, by notice in writing, inform a person from whom a sample was taken under *section 20* where a direction is given by the provost marshal under *subsection (2)* in relation to the DNA profile in respect of the person.

CHAPTER 4

*Application of this Part to persons from whom samples were taken under Part 4*

**Destruction of samples taken from persons under *section 22* and destruction, or removal from DNA (Military Police) Database System, of their DNA profiles**

58. (1) Subject to *subsection (2)*, a person from whom a sample was taken under *section 22* may request the destruction of the sample or the DNA profile generated from the sample, or both, by notice in writing sent or given to the provost marshal.
- (2) Where the DNA profile in respect of a person from whom a sample was taken under *section 22* is entered in the reference (Military Police) index of the DNA (Military Police) Database System under *section 24*, a request by the person under *subsection (1)* to have his or her DNA profile destroyed shall be regarded as including a request to have his or her DNA profile removed from that System.
- (3) Subject to *subsections (4)* to *(7)* and *section 60*, a sample taken from a person under *section 22*, and the DNA profile generated from the sample in respect of the person



from whom it was taken, shall be destroyed not more than 3 months after the receipt by the provost marshal of the notice under *subsection (1)*.

- (4) Where the DNA profile in respect of a person from whom a sample was taken under *section 22* is entered in the reference (Military Police) index of the DNA (Military Police) Database System under *section 24*, the provost marshal may request the person to consent to the removal of the DNA profile in respect of the person from that System and its retention solely for the purposes of the investigation of the particular offence in connection with the investigation of which the sample was taken.
- (5) If the person referred to in *subsection (4)* consents in writing to the retention of his or her DNA profile in relation to the investigation of the particular offence concerned, then, subject to *subsection (6)*, the DNA profile that was generated from the sample in respect of that person shall be removed from the DNA (Military Police) Database System and retained solely for the purposes of the investigation of that offence.
- (6) A member of the Military Police shall, before the consent of the person concerned is obtained under *subsection (5)*, inform that person of the following effects of giving that consent:
  - (a) that the DNA profile in respect of that person generated from the sample that has already been taken from him or her shall be removed from the DNA (Military Police) Database System and retained solely for the purposes of the investigation of the particular offence concerned;
  - (b) that the DNA profile in respect of that person may be destroyed in accordance with *subsections (1)* and *(3)*.
- (7) A consent under *subsection (5)* shall specify the particular offence that is being investigated to which it relates.
- (8) Subject to *subsection (10)*, a sample taken from a person under *section 22*, and the DNA profile generated from the sample in respect of the person from whom it was taken, shall, if not previously destroyed, be destroyed not more than 3 months after the investigation of the offence in relation to which the sample was taken is concluded or any proceedings in respect of that offence are determined, whichever is the later.
- (9) The member of the Military Police in charge of the investigation of the offence referred to in *subsection (8)* shall determine, for the purposes of that subsection, when the investigation of that offence is concluded.
- (10) Where the DNA profile in respect of a person from whom a sample was taken under *section 22* is entered in the reference (Military Police) index of the DNA (Military Police) Database System under *section 24*, that DNA profile shall not be removed from that System unless the person makes a request, or is regarded under *subsection (2)* as having made such a request, to have it so removed and, on such a request being made or regarded as having been made, his or her DNA profile shall be removed as soon as practicable thereafter from that System.

## CHAPTER 5

*Miscellaneous matters relating to destruction of samples and destruction, or removal from DNA (Military Police) Database System, of DNA profiles***Destruction of samples and destruction or removal of DNA profiles not previously destroyed or removed from DNA (Military Police) Database System**

59. (1) An intimate or non-intimate sample taken from a person shall, if not previously destroyed, be destroyed not later than the expiration of the period of 25 years from the date of the taking of the sample.
- (2) A DNA profile of a person entered in the DNA (Military Police) Database System shall, if not previously removed, be removed from that System not later than the expiration of the period of 25 years from the date of the taking of the sample from which that profile was generated.

**Application to summary court-martial to retain certain samples and certain DNA profiles beyond retention period**

60. (1) If a summary court-martial is satisfied, on an application in that behalf by the provost marshal made within the retention period under *section 51* and any extension of that period under an authorisation given under *section 52*, that there is good reason why a DNA profile in respect of a person generated from a sample taken from him or her under *section 9, 10 or 11* should not be removed from the DNA (Military Police) Database System in accordance with *section 51* within that retention period as so extended, the summary court-martial may make an order authorising the retention of the DNA profile in that System for such period as it considers appropriate.
- (2) If a summary court-martial is satisfied, on an application in that behalf by the provost marshal, that there is good reason relating to the investigation of a particular offence in connection with which a sample was taken under *section 22* why that sample and the DNA profile generated from it in respect of the person from whom it was taken should not be destroyed in accordance with *section 58*, the summary court-martial may make an order authorising the retention of the sample or the DNA profile, or both, for such period as it considers appropriate.
- (3) If a summary court-martial is satisfied, on an application in that behalf by the provost marshal made within the period referred to in *section 59(1)*, that there is good reason why an intimate or non-intimate sample taken from a person should not be destroyed in accordance with *section 59(1)* within that period, the summary court-martial may make an order authorising the retention of the sample for such period as it considers appropriate.
- (4) If a summary court-martial is satisfied, on an application in that behalf by the provost marshal made within the period referred to in *section 59(2)*, that there is good reason why a DNA profile entered in the DNA (Military Police) Database System should not be removed from that System in accordance with *section 59(2)* within that period, the summary court-martial may make an order authorising the retention of the DNA profile in that System for such period as it considers appropriate.

- (5) If the provost marshal intends to make an application under *subsection (1), (2), (3) or (4)*, the provost marshal shall inform, or cause to be informed, by notice in writing the person from whom the sample concerned was taken or in respect of whom the DNA profile was generated, as the case may be, of that intention.
- (6) If, on an application under *subsection (1), (2), (3) or (4)*, the person from whom the sample concerned was taken or in respect of whom the DNA profile was generated, as the case may be, applies to be heard by the summary court-martial, an order shall not be made under this section unless a reasonable opportunity has been given to that person to be heard.
- (7) An application under this section shall be heard otherwise than in public.

**Request to FSI or other person to destroy sample or destroy, or remove from DNA (Military Police) Database System, DNA profile**

**61.** Where a sample taken under this Act from a person is required by this Act to be destroyed, or the DNA profile in respect of the person generated from the sample is required by this Act to be destroyed or removed from the DNA (Military Police) Database System, the provost marshal shall request, or cause to be requested—

- (a) the Director of FSI or other person who holds the sample, to destroy the sample, or
- (b) the Director of FSI, to destroy the DNA profile in respect of the person or remove it from that System, as may be appropriate,

or both, within the period permitted by this Act for the destruction of the sample concerned or the destruction of the DNA profile concerned or its removal from that System, as the case may be.

**Circumstances in which person to be informed of destruction of sample or destruction, or removal from DNA (Military Police) Database System, of DNA profile**

**62.** (1) Where, in relation to an intimate sample or a non-intimate sample taken from a person, the retention period under *section 47* is extended on one or more occasions under *section 48*, the provost marshal shall, upon the expiration of that period (as so extended), cause the person from whom the sample concerned was taken to be informed by notice in writing as soon as may be after the sample concerned has been destroyed under this Part of its destruction.

- (2) Where, in relation to the DNA profile of a person that is entered in the reference (Military Police) index of the DNA (Military Police) Database System—
  - (a) the retention period under *section 51* is extended on one or more occasions under *section 52*, or
  - (b) a summary court-martial makes an order under *section 60(1)* authorising the retention of the DNA profile in that System for such period as it considers appropriate,

the provost marshal shall, upon the expiration of the period (as so extended) concerned, cause the person to whom the DNA profile relates to be informed by notice in writing as soon as may be after the removal of the DNA profile from that System of its removal.

- (3) The provost marshal shall inform, or cause to be informed, by notice in writing a person from whom a sample was taken under *section 19* or *20*, as soon as may be after—
- (a) the sample has been destroyed under this Part, of its destruction, or
  - (b) the removal of the DNA profile in respect of the person from the DNA (Military Police) Database System under this Part, of its removal from that System.
- (4) The provost marshal shall, in relation to a sample taken under *section 22*, cause the person from whom the sample was taken if he or she applied for or requested—
- (a) the destruction of the sample, or
  - (b) the destruction, or removal from the DNA (Military Police) Database System, of his or her DNA profile,
- or both, to be informed by notice in writing as soon as may be after—
- (i) the sample has been destroyed under this Part, of its destruction, or
  - (ii) the destruction of the DNA profile in respect of the person, of its destruction, or its removal from the DNA (Military Police) Database System under this Part, of its removal from that System, or both.

## PART 8

### OFFENCES AND PENALTIES

#### **Offences and penalties**

- 63.** A person subject to military law who obstructs or attempts to obstruct any member of the Military Police, or other person, acting under powers conferred by *Part 2* or *6*, commits an offence against military law and shall, where a charge under this section is disposed of summarily under *section 177C* or *178C* of the Act of 1954, be liable to suffer any punishment awardable thereunder or, on conviction by court-martial, be liable to suffer imprisonment for—
- (a) any term not exceeding 2 years, or
  - (b) any less punishment awardable by a court-martial.

#### **Admissibility of evidence in case of non-compliance by member of Military Police with this Act or regulations thereunder**

- 64.** A failure to observe any provision of this Act or of any regulations made thereunder on the part of any member of the Military Police in the performance by him or her of any

function under this Act, shall not, without prejudice to the power of the court-martial to exclude evidence at its discretion, of itself affect the admissibility of any evidence thereby obtained.

### Disclosure of information

65. (1) Without prejudice to the Official Secrets Act 1963 and subject to *section 71*, a person who has, or has had, access to information relating to a sample taken from a person under this Act, or information in the DNA (Military Police) Database System, shall not disclose the information except for one or more of the following purposes:
- (a) the purposes of the investigation of an offence against military law;
  - (b) the purpose of a decision whether to institute proceedings for an offence against military law;
  - (c) the purposes of court-martial proceedings;
  - (d) the purpose of determining whether it is necessary to take a sample under this Act;
  - (e) the purposes of the investigation or prosecution of a criminal offence, other than an offence against military law;
  - (f) the purposes of an inquest under the Coroners Act 1962;
  - (g) the purpose of making the information available to the person to whom the information relates;
  - (h) the purposes of a review of an alleged miscarriage of justice under section 2 of the Criminal Procedure Act 1993;
  - (i) the purposes of administering the DNA (Military Police) Database System;
  - (j) the purposes of the performance by the Data Protection Commission of its functions under the Data Protection Acts 1988 to 2018;
  - (k) the purposes of civil proceedings regarding the manner in which a sample was taken under this Act;
  - (l) the disclosure of the information to any person if the person to whom the information relates consents to its disclosure to that person;
  - (m) the automated searching of certain DNA profiles in the DNA (Military Police) Database System in accordance with Chapter 2 of Part 12 of the Act of 2014;
  - (n) the automated comparison of certain DNA profiles in the DNA (Military Police) Database System with other DNA profiles in accordance with Chapter 2 of Part 12 of the Act of 2014;
  - (o) any other purpose that is prescribed.
- (2) A person subject to military law who intentionally or recklessly discloses information in contravention of this section commits an offence against military law and shall, where a charge under this section is disposed of summarily under section 177C or

178C of the Act of 1954, be liable to suffer any punishment awardable thereunder or, on conviction by court-martial, be liable to suffer imprisonment for—

- (a) any term not exceeding 2 years, or
  - (b) any less punishment awardable by a court-martial.
- (3) A person not subject to military law who intentionally or recklessly discloses information in contravention of this section commits an offence and shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 2 years, or both.

## PART 9

### REVIEW OF OPERATION OF PARTS 6 AND 7 BY MINISTER

#### **Review of operation of Parts 6 and 7 by Minister**

**66.** The Minister shall, not later than 6 years after the commencement of this section, review the operation of—

- (a) *Part 6*, insofar as it relates to the retention of forensic evidence or a photograph obtained under that Part, and
- (b) *Part 7*, insofar as it relates to the operation of the DNA (Military Police) Database System,

and, thereafter, the Minister may conduct similar reviews at such times as the Minister considers appropriate.

#### **Ministerial orders to change periods for destruction**

**67.** (1) The Minister may by order under this section, if he or she considers it proper to do so following a review under *section 66*, provide for all or any of the following:

- (a) that the period of 25 years specified in *section 44* shall be decreased to such period as is specified in the order;
- (b) that the period of 6 years specified in *section 52(7)* or *(9)* shall be decreased to such period as is specified in the order;
- (c) that the period of 10 years specified in *section 56(2)* shall be decreased to such period as is specified in the order;
- (d) that the period of 25 years specified in *section 59(1)* or *(2)* shall be decreased to such period as is specified in the order.

(2) When making an order under *subsection (1)*, the Minister shall have regard to—

- (a) any review by the Minister for Justice and Equality under section 95 of the Act of 2014, and
- (b) any order made by the Minister for Justice and Equality under section 96 of the Act of 2014.

## PART 10

### MISCELLANEOUS

#### **Sample may be taken from person even if sample taken previously**

- 68.** Subject to *sections 16, 21 and 23*, a sample may be taken from a person under a provision of this Act even if a bodily sample had been taken from the person under—
- (a) the Criminal Justice (Forensic Evidence) Act 1990, the Act of 2014 or otherwise prior to the commencement of this section, or
  - (b) the same or another provision of this Act previously.

#### **Delegation of functions of provost marshal under this Act**

- 69.** (1) The provost marshal may, in writing, delegate any of his or her functions under this Act to members of the Military Police specified by rank or name.
- (2) A delegation under this section may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
  - (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the provost marshal at any time.
- (3) The delegation of a function under this section does not preclude the provost marshal from performing the function.
- (4) Where a function of the provost marshal under a provision of this Act is delegated to a person, any references in that provision to the provost marshal shall be construed as references to that person.
- (5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the provost marshal.

#### **Delegation of functions of Director of FSI**

- 70.** (1) The Director of FSI may, in writing, delegate any of his or her functions under this Act to members of the staff of FSI specified by grade, name or otherwise.
- (2) A delegation under this section may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,

- (b) be made subject to conditions or restrictions, and
  - (c) be revoked or varied by the Director of FSI at any time.
- (3) The delegation of a function under this section does not preclude the Director of FSI from performing the function.
- (4) Where a function of the Director of FSI under a provision of this Act is delegated to a member of the staff of FSI, any reference in that provision to the Director of FSI shall be read as a reference to that member of staff.
- (5) An act or thing done by a member of the staff of FSI pursuant to a delegation under this section has the same force and effect as if done by the Director of FSI.

### Statistics

71. Nothing in this Act shall prevent a member of the staff of FSI from processing and using the information in the DNA (Military Police) Database System for statistical purposes and analysis provided the identity of the persons whose DNA profiles are entered in the System is not disclosed otherwise than in accordance with this Act.

### Further provision regarding the taking of samples under this Act

72. (1) A sample under this Act—
- (a) shall be taken from a person in circumstances affording reasonable privacy to the person, and
  - (b) shall not be taken from a person in the presence or view of a person whose presence is not necessary for the purpose of the taking of the sample or required or permitted by this Act.
- (2) Nothing in this Act authorises the taking of a sample from a person in a cruel, inhuman or degrading manner.
- (3) A sample shall not be taken under *Part 2* from a person who is placed in service custody in connection with a relevant offence while he or she is being questioned in relation to that offence and, if questioning has not been completed before the sample is to be taken, it shall be suspended while the sample is being taken.

### Regulations regarding taking of samples

73. (1) Subject to this Act, the Minister shall make regulations relating to the taking of samples under this Act.
- (2) Without prejudice to the generality of *subsection (1)*, the regulations may provide for all or any of the following:
- (a) the manner in which samples may be taken under this Act;
  - (b) the location and physical conditions in which samples may be taken under this Act;



- (c) the persons (including members of the Military Police), and the number of such persons, who may be present when samples are taken, or to be taken, under this Act;
- (d) the manner in which, and by whom, the following shall be recorded in the records of the Military Police Corps:
  - (i) an authorisation given by a member of the Military Police under this Act;
  - (ii) a consent given, a refusal to give consent or a withdrawal of consent by a person under this Act;
  - (iii) the giving of information to a person by a member of the Military Police under this Act;
  - (iv) a notice sent or given by a member of the Military Police, or sent or given to a member of the Military Police, under this Act;
  - (v) an application or a request relating to the destruction of a sample, or the removal of a DNA profile from the DNA (Military Police) Database System, or both, made under *Part 7*;
  - (vi) a notice sent or given by the provost marshal to a person under *section 62*;
  - (vii) particulars of the location, time and manner of the taking of a sample authorised to be taken by a member of the Military Police under this Act.

### Protocols

74. As soon as practicable after the commencement of this section, the Director of FSI and the provost marshal, shall, by written protocols, make arrangements concerning the following matters:
- (a) the transmission of samples taken under this Act by a member of the Military Police to FSI;
  - (b) the reporting by the Director of FSI of the results of searches of the DNA (Military Police) Database System to a member of the Military Police;
  - (c) the operation of *Part 7*.

### Evidence of certain authorisations under this Act

75. (1) In any court-martial proceedings, a certificate to which an authorisation given under *Part 2* (other than *section 9*) or *Part 6*, or a copy of such an authorisation, is annexed—
- (a) purporting to be signed by a member of the Military Police, and
  - (b) stating—
    - (i) that he or she gave the authorisation concerned, and
    - (ii) where appropriate, the grounds on which that authorisation was given,

shall be admissible as evidence of the matters stated in the certificate.

- (2) In any court-martial proceedings, the court-martial may—
- (a) if it considers that the interests of justice so require, direct that oral evidence be given of the matters stated in a certificate under this section, and
  - (b) adjourn the proceedings to a later date for the purpose of receiving the oral evidence.

#### **Authorisations under this Act**

**76.** An authorisation given under *section 9(2), 10(2)(a), 11(2), 14(1)(i), 15(2), 16(3)(i) or 34(2)* may be given orally but, if given orally, the authorisation shall be confirmed in writing as soon as practicable in the form prescribed under *section 5(4)(b)* for that purpose.

#### **Non-application of Act**

- 77.** (1) Except as provided for in this Act, nothing in this Act shall affect the operation of any provision of any other enactment relating to—
- (a) a requirement on a person to provide a sample under that enactment,
  - (b) any power exercisable by a member of the Military Police or other person under that enactment, or
  - (c) the performance by a person or body (including the Medical Bureau of Road Safety) or any functions of the person or body under that enactment.
- (2) If a DNA profile is generated from a sample taken from a person under any provision of another enactment, it shall not be entered in the DNA (Military Police) Database System, unless it is provided for in this Act.

#### **Procedures that may be used for transmission of certain samples for forensic testing**

- 78.** (1) A relevant sample may be placed in a tamper-evident container.
- (2) Whenever a relevant sample is placed in a tamper-evident container under *subsection (1)*, the tamper-evident container shall be sealed immediately.
- (3) The person who, under *subsection (2)*, seals a tamper-evident container containing a relevant sample shall—
- (a) ensure that a unique number for the purpose of facilitating the identification of the sample is marked on the tamper-evident container,
  - (b) ensure that particulars regarding the type of sample concerned are recorded on the tamper-evident container or on the relevant sample or anything attached to or enclosing it, and
  - (c) record his or her name, and the date of sealing the tamper-evident container, thereon.

- (4) Where the procedures referred to in *subsections (1) to (3)* have been completed, a member of the Military Police shall forward, or cause to be forwarded, the sealed tamper-evident container containing the relevant sample concerned for forensic testing.
- (5) In any court-martial proceedings, it shall be presumed until the contrary is shown, that *subsections (1) to (4)* have been complied with in relation to a relevant sample.
- (6) In this section, “crime scene sample” means any substance or material (or a sample thereof) found at, or recovered from, a crime scene with a view to it being subject to forensic testing.
- (7) In this section and in *section 79*—

“forensic testing”, in relation to a relevant sample, means the examination and analysis of the sample and the carrying out of biochemical or other scientific tests and techniques used in connection with the detection and investigation of crime or the identification of persons or bodies, as may be appropriate, on the sample and, if appropriate, includes the generation of a DNA profile from the sample in respect of a person;

“relevant sample” means—

- (a) an intimate sample,
- (b) a non-intimate sample, or
- (c) a crime scene sample;

“tamper-evident container”, in relation to a relevant sample, means a container, whether comprising a tube, envelope, bag or other receptacle, into which the sample is placed and which—

- (a) is marked with a unique number for the purpose of facilitating the identification of the sample,
- (b) is sealable after the sample is placed in it without interfering with the integrity of the sample, and
- (c) once sealed cannot be opened, whether by cutting, tearing or other means, without leaving visible evidence of having been opened or of an attempt having been made to do so.

#### **Provisions relating to evidence in court-martial proceedings regarding certain samples**

- 79.** (1) In any court-martial proceedings, a certificate purporting to be signed by a member of the staff of FSI and stating, in relation to a relevant sample—
- (a) that the sample was contained in a tamper-evident container marked with a unique number that is specified in the certificate,
  - (b) that he or she conducted a thorough examination of the tamper-evident container immediately before opening it and that the container displayed no sign of anyone having opened or attempted to open it,

(c) that he or she opened the tamper-evident container in which the sample was contained and removed the sample from it for forensic testing, and

(d) the date of opening the tamper-evident container and removing the sample from it,

shall, until the contrary is shown, be evidence of the matters stated in the certificate without proof of any signature thereon or that any such signature is that of such member of staff of FSI.

(2) In any court-martial proceedings, the court may—

(a) if it considers that the interests of justice so require, direct that oral evidence be given of the matters stated in a certificate under this section, and

(b) adjourn the proceedings to a later date for the purpose of receiving the oral evidence.

### Service of notices

**80.** A notice that is required to be sent or given to a person under this Act may be sent or given to the person in one of the following ways:

(a) by delivering it to the person or his or her solicitor;

(b) by addressing it to the person and leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address or by addressing it to his or her solicitor and leaving it at the solicitor's office;

(c) by sending it to the person by post in a prepaid registered letter to the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, to that address or to his or her solicitor at the solicitor's office.

### Code of practice

**81.** (1) The provost marshal shall, as soon as practicable after the commencement of this section and following consultation with the Director of FSI, prepare for submission to the Minister a draft code of practice for the purposes of providing practical guidance as to the procedures regarding the taking of samples by members of the Military Police from persons under this Act or causing such samples to be taken.

(2) A code of practice prepared under this section shall be submitted to the Minister for approval.

(3) The Minister may approve, or approve subject to modifications, a code of practice submitted to the Minister under *subsection (2)* and, when a code of practice has been so approved, it shall apply and have effect in accordance with its terms.

(4) A code of practice approved under this section may be amended or revoked.

(5) Amendments to such a code of practice, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.

- (6) If it is proposed to revoke a code of practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.
- (7) The Minister may approve, or approve subject to modifications, an amended code of practice submitted to the Minister under *subsection (5)* and, when such a code of practice has been so approved, it shall apply and have effect in accordance with its terms.
- (8) The Minister may approve the revocation of a code of practice.
- (9) A code of practice, or an amended code of practice, approved by the Minister under this section shall be made publicly available by the provost marshal.

## PART 11

### AMENDMENT OF ACT OF 2014

#### **Amendment of section 2 of Act of 2014 (interpretation)**

- 82.** Section 2 of the Act of 2014 is amended, in subsection (1), by the insertion of the following definitions:

“ ‘*Act of 2022*’ means the *Defence Forces (Evidence) Act 2022*;

‘DNA (Military Police) Database System’ has the meaning it has in the *Act of 2022*;”.

#### **Amendment of section 68 of Act of 2014 (permitted searching)**

- 83.** Section 68 of the Act of 2014 is amended by the insertion of the following subsection:

“(10) A DNA profile entered in the DNA Database System may be compared with a DNA profile entered in the DNA (Military Police) Database System, established under *section 25* of the *Act of 2022*, in accordance with *section 32* of that Act.”.

#### **Amendment of section 72 of Act of 2014 (functions of committee)**

- 84.** Section 72 of the Act of 2014 is amended—

(a) in subsection (1), by—

(i) the substitution of “the DNA Database System and the DNA (Military Police) Database System” for “the DNA Database System”,

(ii) the substitution of “those Systems” for “the System” in each place where it occurs, and

(iii) the substitution of “this Act and the *Act of 2022*” for “this Act”,

(b) in subsection (2)—

(i) in paragraph (a), by—

- (I) the substitution of “this Act and the *Act of 2022*” for “this Act”, and
  - (II) the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be,” for “the DNA Database System,”,
- (ii) in paragraph (b), by the substitution of “this Act and the *Act of 2022*” for “this Act”,
- (iii) in paragraph (c), by—
- (I) the substitution of “the DNA Database System and the DNA (Military Police) Database System are” for “the DNA Database System is”,
  - (II) the substitution of “those Systems” for “the System”, and
  - (III) the substitution of “this Act or the *Act of 2022*, as the case may be,” for “this Act”,
- (iv) in paragraph (d), by—
- (I) the substitution of “the DNA Database System and the DNA (Military Police) Database System” for “the DNA Database System”, and
  - (II) the substitution of “the Ombudsman Commission, the Military Police Corps” for “the Ombudsman Commission”,
- and
- (v) by the substitution of the following paragraph for paragraph (e):
- “(e) the practices and procedures employed by the Director of FSI to ensure that samples taken under this Act or the *Act of 2022* for the purpose of generating DNA profiles for entry in the DNA Database System or the DNA (Military Police) Database System, as the case may be, are destroyed, and the DNA profiles generated from those samples are removed from the system concerned, in accordance with Part 10 or the *Act of 2022*, as the case may be,”,
- (c) in subsection (3) by—
- (i) the substitution of “the DNA Database System and the DNA (Military Police) Database System” for “the DNA Database System”, and
  - (ii) the substitution of “the Minister, the Minister for Defence and the Director of FSI” for “the Minister and the Director of FSI”,
- (d) by the substitution of the following subsection for subsection (4):
- “(4) The Committee may, and if so requested by the Minister (in respect of the DNA Database System) or the Minister for Defence (in respect of the DNA (Military Police) Database System) shall, review any matter relating to the management and operation of the DNA Database System or the DNA (Military Police) Database System and shall submit a report in writing of any such review to the Minister (where

the report relates to the DNA Database System) or the Minister for Defence (where the report relates to the DNA (Military Police) Database System).”,

(e) by the substitution of the following subsection for subsection (5):

“(5) Subject to subsections (6) and (7), a Minister of the Government to whom a report was submitted under subsection (4) shall, as soon as practicable after receiving the report, cause a copy of it to be laid before each House of the Oireachtas and to be published in such manner as the Minister of the Government concerned considers appropriate.”,

(f) by the substitution of the following subsection for subsection (6):

“(6) A Minister of the Government to whom a report was submitted under subsection (4) may, when laying a copy of the report before each House of the Oireachtas or publishing the report, omit any matter from the copy of the report that is so laid or published if he or she is of the opinion that the disclosure of the matter—

- (a) would be prejudicial to the security of the DNA Database System, the security of the DNA (Military Police) Database System, the security of the State or the investigation of criminal offences, or
- (b) may infringe the constitutional rights of any person.”,

and

(g) in subsection (7), by the substitution of “a Minister of the Government” for “the Minister”.

#### **Amendment of section 73 of Act of 2014 (cooperation with committee)**

**85.** Section 73 of the Act of 2014 is amended—

- (a) in subsection (3), by the substitution of “the Garda Síochána, the Military Police Corps” for “the Garda Síochána”, and
- (b) in subsection (4), by the substitution of “The Garda Síochána, the Military Police Corps” for “The Garda Síochána”.

#### **Amendment of section 109 of Act of 2014 (interpretation (Part 12))**

**86.** Section 109 of the Act of 2014 is amended in subsection (1) by—

(a) the insertion of the following definitions:

“ ‘crime scene (Military Police) index’ has the meaning it has in the *Act of 2022*;

‘reference (Military Police) index’ has the meaning it has in the *Act of 2022*.”,

and

- (b) in the definition of “note”, the substitution of “the DNA Database System or the DNA (Military Police) Database System” for “the DNA Database System”.

**Amendment of section 113 of Act of 2014 (automated searching of certain DNA data in DNA Database System)**

87. Section 113 of the Act of 2014 is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) For the purposes of the investigation of criminal offences in a designated state, the national contact point shall allow the national contact point of that designated state access to—

- (a) the reference data in the DNA Database System in respect of DNA profiles entered in that System in—
  - (i) the crime scene index, and
  - (ii) the reference index, other than DNA profiles entered in that index under section 28,

and

- (b) the reference data in the DNA (Military Police) Database System in respect of DNA profiles entered in that System in—
  - (i) the crime scene (Military Police) index, and
  - (ii) the reference (Military Police) index, other than DNA profiles entered in that index under *section 24* of the *Act of 2022*,

for the purpose of conducting an automated search of those reference data by comparing a DNA profile (whether identified or unidentified) in an individual case supplied by the national contact point of that designated state with the DNA profiles referred to in paragraphs (a) and (b) to ascertain whether there is a match between them.”,

- (b) in subsection (2), by the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be,” for “the DNA Database System” in each place where it occurs, and

- (c) by the substitution of the following subsection for subsection (3):

“(3) If, in relation to a DNA profile supplied by the national contact point of a designated state pursuant to subsection (1), a match of DNA profiles is found, a note to that effect may be entered in the appropriate system in relation to the DNA profile for which a match is found in the DNA Database System or the DNA (Military Police) Database System, as the case may be.”.



**Amendment of section 114 of Act of 2014 (automated comparison of unidentified DNA profiles supplied by designated state with certain DNA profiles in DNA Database System)**

**88.** Section 114 of the Act of 2014 is amended—

- (a) in subsection (1), by the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be,” for “the DNA Database System”,
- (b) by the substitution of the following subsection for subsection (2):
  - “(2) If a request under subsection (1) is acceded to, the national contact point shall allow the national contact point of the designated state concerned access to—
    - (a) the reference data in the DNA Database System in respect of the DNA profiles entered in that System in—
      - (i) the crime scene index, and
      - (ii) the reference index, other than DNA profiles entered in that index under section 28,
    - and
    - (b) the reference data in the DNA (Military Police) Database System in respect of the DNA profiles entered in that System in—
      - (i) the crime scene (Military Police) index, and
      - (ii) the reference (Military Police) index, other than DNA profiles entered in that index under *section 24* of the *Act of 2022*,
- for the purposes of conducting an automated comparison of unidentified DNA profiles supplied in an automated way by the national contact point of that designated state with the DNA profiles referred to in paragraphs (a) and (b) to ascertain whether there is a match between any of them.”,
- (c) in subsection (3), by the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be,” for “the DNA Database System” in each place where it occurs, and
- (d) by the substitution of the following subsection for subsection (4):
  - “(4) If, following a comparison of DNA profiles pursuant to subsection (2), a match of DNA profiles is found, a note to that effect may be entered in the appropriate system in relation to the DNA profile for which a match is found in the DNA Database System or the DNA (Military Police) Database System, as the case may be.”.

**Amendment of section 115 of Act of 2014 (automated searching for certain DNA profiles in DNA analysis files of designated state)**

**89.** Section 115 of the Act of 2014 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) For the purposes of the investigation of criminal offences in the State, an authorised officer for DNA data may, in connection with an individual case—

(a) supply through the DNA Database System a DNA profile entered in—

(i) the crime scene index, or

(ii) the reference index, other than DNA profiles entered in that index under section 28,

or

(b) supply through the DNA (Military Police) Database System a DNA profile entered in—

(i) the crime scene (Military Police) index, or

(ii) the reference (Military Police) index, other than DNA profiles entered in that index under *section 24* of the *Act of 2022*,

to the national contact point of a designated state for the purpose of conducting an automated search of the reference data in the DNA analysis files of that designated state by comparing the DNA profile concerned with the DNA profiles in those files to ascertain whether there is a match between them.”,

and

(b) in subsection (3), by the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be,” for “the DNA Database System”.

**Amendment of section 116 of Act of 2014 (automated comparison of DNA profiles in crime scene index with DNA profiles in DNA analysis files of designated state)**

**90.** Section 116 of the Act of 2014 is amended—

(a) in subsection (2), by the substitution of “the DNA Database System, or the crime scene (Military Police) index of the DNA (Military Police) Database System,” for “the DNA Database System”, and

(b) by the substitution of the following subsection for subsection (4):

“(4) If, following a comparison of DNA profiles under subsection (2), a match of DNA profiles is found in the DNA analysis files of the designated state concerned, a note to that effect may be entered in the DNA Database System or the DNA (Military Police) Database System, as the case may be, in relation to the DNA profile, in respect of which the match was found, in—

(a) the crime scene index of the DNA Database System, or

- (b) the crime scene (Military Police) index of the DNA (Military Police) Database System.”.

**Amendment of section 118 of Act of 2014 (dactyloscopic data to which this Chapter applies)**

91. Section 118 of the Act of 2014 is amended in paragraph (a) by the substitution of “a member of the Garda Síochána or a member of the Military Police Corps,” for “a member of the Garda Síochána,”.

**Amendment of section 124 of Act of 2014 (purposes for which data may be processed)**

92. Section 124 of the Act of 2014 is amended—
- (a) in subsection (1)(c), by the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be” for “the DNA Database System”, and
  - (b) in subsection (3)(b), by the substitution of “the DNA Database System or the DNA (Military Police) Database System, as the case may be” for “the DNA Database System”.

PART 12

MISCELLANEOUS AMENDMENTS

**Amendment of section 187A of Act of 1954 (summary court-martial)**

93. Section 187A of the Act of 1954 is amended—
- (a) in subsection (3)—
    - (i) by the substitution in paragraph (b) of “or 178C,” for “or 178C, and”,
    - (ii) by the substitution in paragraph (c) of “for legal aid, and” for “for legal aid.”, and
    - (iii) by the insertion of the following paragraphs after paragraph (c):
      - “(d) applications under *section 35(1)* of the *Act of 2022*,
      - (e) appeals under *section 37(6)* of the *Act of 2022*,
      - (f) applications under *section 45(1)* of the *Act of 2022*,
      - (g) appeals under *section 48(6)* of the *Act of 2022*,
      - (h) appeals under *section 52(11)* of the *Act of 2022*, and
      - (i) applications under *section 60* of the *Act of 2022*.”,
- and
- (b) by the insertion of the following subsection after subsection (3):

“(4) In this section, “*Act of 2022*” means the *Defence Forces (Evidence) Act 2022*.”.

### **Amendment of Courts-Martial Appeals Act 1983**

**94.** The Courts-Martial Appeals Act 1983 is amended—

(a) in section 25—

(i) by the insertion of the following definition:

“ ‘*Act of 2022*’ means the *Defence Forces (Evidence) Act 2022*;”,

and

(ii) by the substitution of the following definition for the definition of “legal aid certificate”:

“ ‘legal aid certificate’ means a legal aid (preliminary proceedings) certificate, a legal aid (court-martial) certificate, a legal aid (case stated) certificate, a legal aid (application concerning forensic evidence retention period) certificate, a legal aid (court-martial appeal) certificate or a legal aid (Supreme Court) certificate;”,

(b) in section 26(b), by the substitution of “any of the provisions of the Act of 1954 or the *Act of 2022* or any instrument made under either of those Acts” for “any of the provisions of the Act of 1954 or any instrument made under that Act”, and

(c) by the insertion of the following section after section 27A:

#### **“Legal aid (application concerning forensic evidence retention period) certificate**

**27B.** (1) Where—

(a) a person appeals to the summary court-martial under *section 37(6), 48(6) or 52(11)* of the *Act of 2022* or makes an application to the summary court-martial under *section 45(1) or 60(6)* of the *Act of 2022*, and

(b) a certificate for free legal aid (in this Part referred to as a ‘legal aid (application concerning forensic evidence retention period) certificate’) is granted in respect of the person concerned by the prescribed authority,

the person shall be entitled to free legal aid in the preparation and conduct of his or her appeal or the application, as the case may be, and to have a solicitor and counsel assigned to him or her for that purpose in such manner as may be prescribed by regulations under section 33 of this Act.

(2) A legal aid (application concerning forensic evidence retention period) certificate shall be granted in respect of a person concerned if (but only if)—

- (a) application is made therefor, and
- (b) it appears to the prescribed authority that the means of the person concerned are insufficient to enable him or her to obtain legal aid.”.