

WILTSHIRE POLICE FORCE PROCEDURE



Retention of Biometric Data

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PROCEDURE

PROCEDURE OVERVIEW

This procedure relates to the retention of biometric data obtained from arrested subjects who are subsequently not charged but who have been investigated for a qualifying offence.

Under the Protection of Freedoms Act 2012 those investigated for a qualifying offence, but not charged, will only have their biometric data retained by police on application by a Chief Officer to the Biometrics Commissioner. If this application is not made and permission granted the biometric data collected will be destroyed.

Where an application is granted relevant data will then be available for comparisons in future offences for a maximum of three years.

This procedure is intended to ensure that applications are made to the Biometrics Commissioner in all appropriate cases in order that biometric data records are not deleted where there are legitimate grounds to keep them. This in turn will ensure that appropriate data is held for comparison against evidence in potential further offences.

Consideration has been given to the compatibility of this procedure with the Human Rights Act (HRA), with particular reference to the legal basis of it precepts, the legitimacy of its aims, the justification and proportionality of the actions intended by it, that it is the least intrusive and damaging option necessary to achieve the aims and that it defines the requirement to document the relevant decision making processes and outcomes of action.

GLOSSARY OF TERMS

Term	Meaning
PACE	Police and Criminal Evidence Act 1984
PNC	Police National Computer
ECHR	European Convention of Human Rights
Chief Officer	An officer of substantive ACPO rank

RELATED POLICIES, PROCEDURES and OTHER DOCUMENTS

[Records Retention Schedule](#)

AUTHORISED PROFESSIONAL PRACTICE

[Information Management](#)

DATA PROTECTION

Any information relating to an identified or identifiable living individual recorded as a consequence of this procedure will be processed in accordance with the Data Protection Act 2018, General Data Protection Regulations and the [Force Data Protection Policy](#).

FREEDOM OF INFORMATION ACT 2000

This procedure has been assessed as suitable for public release.

MONITORING and REVIEW

This procedure will be reviewed every three years in the light of any national policy or procedural change or due to changes to law or at such other times as may become necessary.

WHO TO CONTACT ABOUT THIS PROCEDURE

The Head of Crime and the PNC Bureau Supervisor are responsible for this procedure. All queries relating to this procedure should be directed to the PNC Bureau Supervisor.

1. INTRODUCTION

This procedure outlines the action to be taken under section [63G Police & Criminal Evidence Act 1984](#)¹ for consideration of the retention of the biometric samples in relation to subjects who have been arrested for a Qualifying Offence but are not charged or reported. The meaning of 'qualifying Offence' is defined in [Section 65A](#).

If a person who has been arrested is not charged with an offence and has no previous convictions, their fingerprints and DNA profile will, in most cases, be automatically deleted from the national databases. If the case is marked NFA then the DNA & fingerprints will be deleted after 14 days.

For qualifying offences the police may apply to the Biometrics Commissioner to retain fingerprints and/or DNA. It is only in exceptional circumstances that retention will be justifiable in cases where the subject is not charged.

The [Force Retention Schedule](#) details the Biometric retention periods as defined under the Protection of Freedoms Act 2012.

For the purpose of this procedure a Chief Officer is defined as anyone of substantive ACPO rank (ACC/CC).

2. MAKING AN APPLICATION TO THE BIOMETRICS COMMISSIONER

An application to retain fingerprints and/or a DNA profile of a person, without previous convictions, who has been arrested for, but not charged with, a qualifying offence can be made to the Biometrics Commissioner if:

- the victim of that alleged offence was under 18, vulnerable or associated with the person arrested; and/or
- the police consider that it is necessary to keep the material to assist in the prevention or detection of crime.

All applications should be made by Chief Officer(s) as soon as possible and in any case within 28 days of a subject being recorded as No Further Action on PNC.

A holding report has to be placed on PNC within 14 days of the offence being marked NFA, otherwise the biometrics may be destroyed before the application has been made.

2.1 PNC Bureau

The PNC Bureau receives notifications from Hendon on subjects whose biometric data is due to be destroyed. If there is a possibility that retention may be required the PNC Bureau will then contact the relevant OIC / CID Inspector for a decision.

2.2 OIC / CID inspector

In deciding whether an application should be made the OIC/CID inspector should:

- Review the circumstances of the offence
- Research intelligence surrounding the suspect
- OIC and CID Inspector to discuss future **Threat, Harm, Risk**
- OIC and CID Inspector to take note of the criteria and guidance from the Biometrics Commissioner prior to making decision to retain

¹ Section 63G of the Police and Criminal Evidence Act 1984 provides for the retention of section 63D material by virtue of section 63F(5) with the consent of the Commissioner for the Retention and Use of Biometric Material.

By virtue of it being a qualifying offence, the offence is of sufficient seriousness that it should be considered whether to apply to the [Office of the Biometrics Commissioner](#) to retain DNA and fingerprints. This decision should be based on the future risk this subject poses and the ability to prevent and detect crime by Police having continued access to their DNA and fingerprints.

Decision made to apply:

If the offence meets the criteria for an Application for Biometric Retention and, having assessed the threat, harm, risk, the OIC / CID Inspector decides an application should be made:

- The OIC / CID Inspector **MUST** contact the PNC Supervisor (Ext. 37456) & email the PNC Bureau within 14 days from the point of NFA so that PNC can be updated before the deletion date.
- CID Inspector to task the OIC to complete application Form BC1.
The BC1 must contain a full rationale detailing why the application is necessary and compelling. The completed form will be sent to the commissioner after sign off by a Chief Officer
Explanatory notes on completing the BC1 Form can be found in the Application to the Biometrics Commissioner under s.63G PACE Explanatory Notes for Completion (BC2).
- CID Inspector QA's the completed form and submits to the Chief Officer for a final decision on whether to apply. *NB: The application must be submitted to the biometrics commissioner within 28 days of the point of NFA.*
- The subject of the application should also be notified, in writing, at the time an application is made. The notification letter should include the following documents which explain the statutory basis for applications of this type:
 - Applications for Biometric Retention: [What You Should Know](#)
 - [Biometrics Commissioner's Principles for Assessing Applications for Biometric Retention](#)
 - [BC3 Representations Form](#)
- The OIC / CID Inspector must inform the PNC Supervisor of the progress of the application in order that the PNC report can be removed (if approval is not granted) or amended and extended (if approval is granted).

Decision not to apply:

If having assessed the threat, harm, risk, the OIC / CID Inspector decides an application is not required:

- Rationale to be recorded by the OIC on the Niche OEL

No other action is necessary - Biometrics samples will be destroyed automatically on destruction date.

2.2 Chief Officer

The Chief Officer can consider making an application to the Biometrics Commissioner for extended retention of biometric material where there are compelling reasons to justify it, and only in cases where:

- the subject has no previous convictions and
- the subject was arrested for a qualifying offence and
- the subject has not been charged or convicted

The Chief Officer should only make such an application if they believe that extended retention of that material is both necessary for the prevention or detection of crime and proportionate in all the circumstances of the case.

It is for the Chief Officer to form a judgement on the information that should be disclosed to the Subject in the notification letter. It should be noted, however; that the Biometrics Commissioner will only attach weight to reasons or information relied on by a Chief Officer if satisfied that the subject has been notified of them in at least general terms.

Chief Officers may submit a completed application form to the Office of the Biometrics Commissioner in advance of notifying a Subject if there are concerns regarding the disclosure of information to the subject. This is called a **Preliminary Application**.

If making a **Preliminary Application**, a fully completed application form, accompanied by the proposed notification letter, should be submitted to the Office of the Biometrics Commissioner for consideration within the 28 day application period. The Office of the Biometrics Commissioner will consider the level of disclosure required and advise the Chief Officer accordingly.

Following receipt of the Biometrics Commissioner response the Chief Officer will have 14 days in which to decide if to proceed with a full application and to send the notification letter to the subject.

3. REASONS FOR APPLICATION

Chief Officers must choose whether to apply under s.63G(2) or s.63G(3) grounds. An application should not be made on both s.63G(2) and s.63G(3) grounds. Detailed reasons should be given to support the application for retention of DNA / Fingerprint records.

If applying under s.63G(2) of the Police and Criminal Evidence Act 1984, Chief Officers should refer to the victim criteria set out under that section. Please note that satisfaction of the victim criteria will not alone be sufficient to warrant an approval of the retention of DNA / fingerprint records.

An application can be made under s63G(3) if the material is not material to which subsection (2) relates, but the retention of the material is necessary to assist in the prevention or detection of crime.

The reasons given in the application should show that in the case in question there are compelling reasons to believe:

- ➔ that such retention would be proportionate, and
- ➔ that the reasons for so believing are more compelling than those which could be put forward in respect of most individuals arrested for, but not charged with, a qualifying offence.

In all applications, Chief Officers should have particular regard to the following factors:

- (i) the nature, circumstances and seriousness of the alleged offence in connection with which the Subject was arrested;
- (ii) the grounds for suspicion in respect of the Subject (including any previous complaints and/or arrests);
- (iii) the reasons why the Subject has not been charged;
- (iv) the strength of any reasons for believing that retention may assist in the prevention or detection of crime;
- (v) the nature and seriousness of the crime or crimes which that retention may assist in preventing or detecting;

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- (vi) the age and other characteristics of the Subject; and
 - (vii) any representations previously made by the Subject as regards those or any other matters.

These factors are not exhaustive and Chief Officers should include any and all factors they deem relevant to the application. The reasons provided should be supported by references to any documentary evidence or supporting material.

The declaration should be “wet” signed and dated by the applying Chief Officer.

4. OTHER RELEVANT INFORMATION

- Court convictions are not eligible for removal under this process.
- Applications for removal of biometric data made by members of the public can only be made after the investigation process has been completed. For example, if a member of the public has been arrested and released on police bail to return to the police station at a later date they will not be able to apply until the investigation process has been completed.
- Chief Officers will aim to deal with an application within 40 days. In some cases this will be sooner; however, there may be occasions where the completion will exceed this deadline.
- The decision on whether to delete/retain in circumstances where deletion is not covered by the legislation i.e. automated deletion of biometric information in certain circumstances, rests with the chief officer of the police force which owns the biometric information.

5. SUBMITTING AN APPLICATION

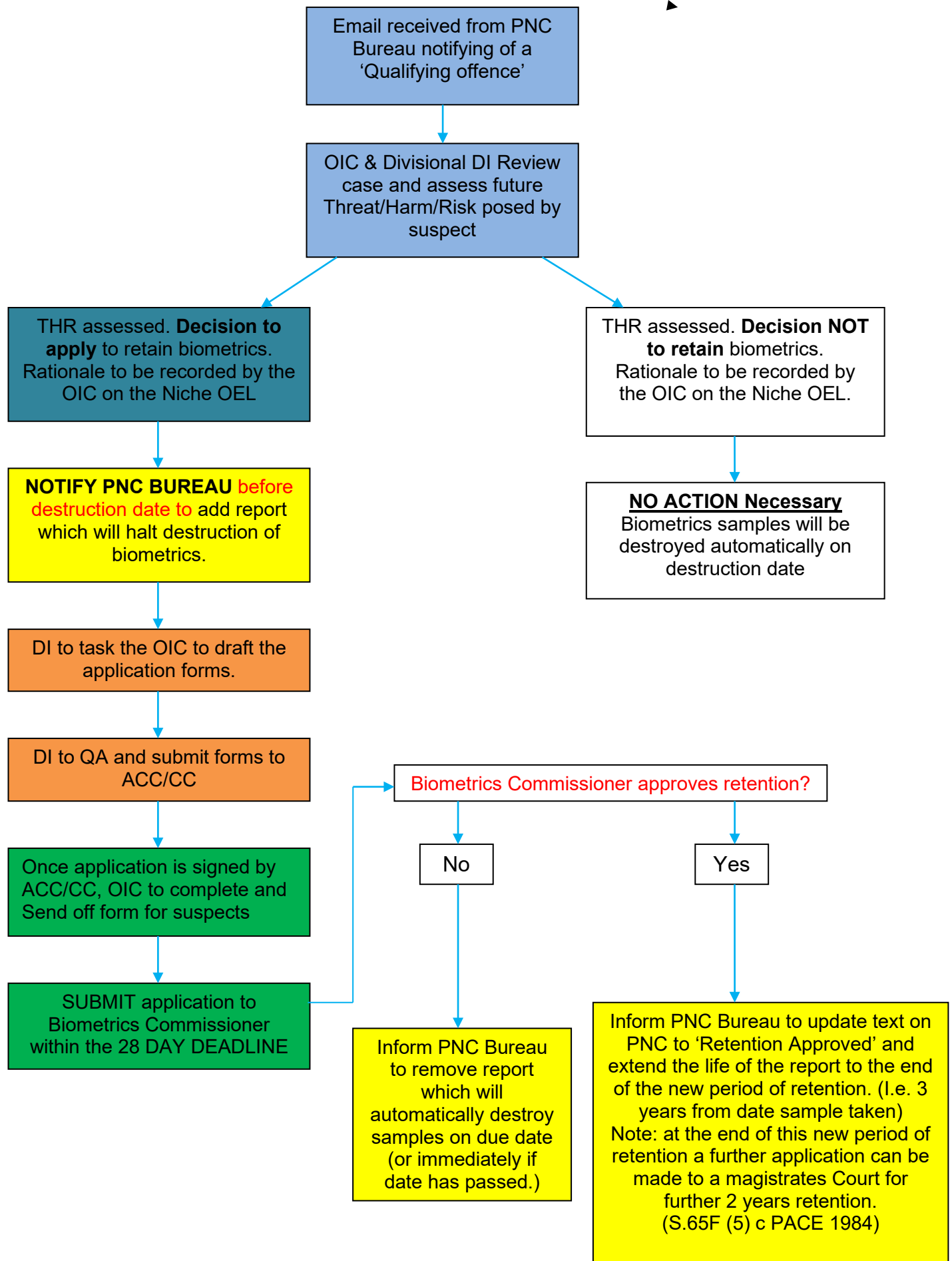
Applications to the Biometrics Commissioner can be submitted by post or by email to:

Office of the Biometrics Commissioner
PO Box 72256
London
SW1P 9DU

<mailto:Casework@BiometricsCommissioner.gsi.gov.uk>

The Chief Officers should appoint a Single Point of Contact for applications to the Biometrics Commissioner. The details of this person should be shown on the application and should not be general departmental contact details.

Biometrics Retention-Flowchart



DOCUMENT ADMINISTRATION

Ownership:

Department Responsible: Head of County Crime
Procedure Owner/Author: D/Supt Sarah ROBBINS / Andrew IRVING
Technical Author: PNC Bureau
Senior Officer/Manager Sponsor: ACC Crime and Justice

Revision History:

Revision Date	Version	Summary of Changes
01.11.2017	1.0	Draft v0.5 published as substantive version 1.0

Approvals:

This document requires the following approvals:

Name & Title	Date of Approval	Version
Continuous Improvement Team	01.11.2017	1.0
ACC Crime and Justice	30.10.2017	0.5
JNCC (Not required for all procedures)	N/A	

Distribution:

This document has been distributed via:

Name & Title	Date of Issue	Version
E-Brief		
Email to relevant affected Staff/Officers		
Other: <i>(state method here)</i>		

Diversity Impact Assessment:

Has a DIA been completed? If no, please indicate the date by which it will be completed. If yes, please send a copy of the DIA with the procedure.	☐ Yes ☐ No Date:
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Consultation:

List below who you have consulted with on this procedure (incl. committees, groups, etc):

Name & Title	Date Consulted	Version
Colin DAVIES (PNC Bureau Researcher)	10.05.2017 / 09.10.2017	0.1 – 0.4
Tom EVANS (PNC Bureau Supervisor)	10.05.2017 / 09.10.2017	0.1 – 0.4

Implications of the Procedure:

Training Requirements

No additional training requirements needed.

IT Infrastructure

No additional training IT infrastructure required.