



STATUTORY INSTRUMENTS.

S.I. No. 738 of 2022

CRIMINAL JUSTICE (FORENSIC EVIDENCE AND DNA DATABASE
SYSTEM) ACT 2014 (ELIMINATION) (PRESCRIBED PERSONS)
REGULATIONS 2022

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S.I. No. 738 of 2022

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014
 (Elimination) (Prescribed Persons) Regulations 2022

I, SIMON HARRIS, Minister for Justice, in exercise of the powers conferred on me by sections 5, 44, 68(7) and 90 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (No. 11 of 2014) (as adapted by the Justice and Equality (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 452 of 2020)), hereby make the following regulations:

Part 1

Preliminary and General

Citation

1. These Regulations may be cited as the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022.

Definitions

2. In these Regulations –

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

“authorised member of the staff of FSI” has the meaning assigned to it by Regulation 4(1);

“contamination”, in relation to a crime scene sample, has the meaning it has in Part 5 of the Act;

“crime scene sample” has the meaning it has in section 2(1) of the Act;

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

“DNA” means deoxyribonucleic acid;

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

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

“elimination (prescribed persons) index”, in relation to the DNA Database System, shall be construed in accordance with section 65 of the Act;

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

“FSI elimination (prescribed persons) file” means a record kept by the Director of FSI in accordance with these Regulations of samples taken from, and DNA profiles generated in respect of, certain prescribed persons for elimination purposes under Part 5 of the Act;

“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 3(5) of the Act, 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;

“laboratory space”, in relation to FSI, means the areas of the premises occupied and used by FSI for the performance of its functions that are for the time being designated by the Director of FSI as being areas in which there is a risk of contamination of crime scene samples by persons entering them;

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

“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;

“prescribed person” means a person falling within the class of persons prescribed by Regulation 3 for the purposes of section 44 of the Act;

“sample” means –

- (a) a sample of hair other than pubic hair of a person, or
- (b) a swab from the mouth of a person,

taken, or to be taken, from the person for elimination purposes under these Regulations pursuant to section 44 of the Act;

“visitor to FSI” means a person, other than a member of the staff of FSI, who enters the laboratory space of FSI and may thereby contaminate crime scene samples.

Part 2

Prescribed persons for elimination purposes

Prescribed persons for purposes of section 44 of Act

3. Visitors to FSI are prescribed for the purposes of section 44 of the Act.

Part 3

Taking of samples from prescribed persons

Authorised members of staff of FSI

4. (1) The Director of FSI may appoint in writing a member of the staff of FSI to be an authorised member of the staff of FSI for the purposes of these Regulations (in these Regulations referred to as an “authorised member of the staff of FSI”).

(2) An authorised member of the staff of FSI may perform the functions conferred on an authorised member of the staff of FSI by these Regulations.

(3) An appointment to be an authorised member of the staff of FSI may be revoked in writing by the Director of FSI.

Taking of samples from prescribed persons

5. (1) A sample taken under this Regulation from a prescribed person shall be used to generate a DNA profile in respect of the person to be entered in the elimination (prescribed persons) index of the DNA Database System for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample.

(2) A sample may be taken under this Regulation from a prescribed person only if he or she consents in writing to having such a sample taken from him or her.

(3) An authorised member of the staff of FSI shall inform a prescribed person of the following before taking, or causing to be taken, a sample from him or her:

- (a) that the sample is to be taken from him or her under this Regulation;
- (b) in a case in which a sample already taken under this Regulation from the person has proved to be insufficient or was inadequately labelled and a second or further sample under this Regulation is required to be taken from him or her –
 - (i) that the first-mentioned sample has proved to be insufficient or was inadequately labelled, as may be appropriate, and
 - (ii) that a second or further sample under this Regulation is, in accordance with Regulation 7, 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 (prescribed persons) index of the DNA 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 (prescribed

persons) index of the DNA Database System may be removed from that System, in accordance with section 90 of the Act and Regulation 9.

(4) Subject to these Regulations, an authorised member of the staff of FSI may take, or cause to be taken, a sample under this Regulation from a prescribed person.

(5) A sample that was taken from a prescribed person before the commencement of these Regulations for the purpose, in relation to the investigation of offences, of ascertaining whether the person has contaminated a crime scene sample, and any DNA profile that was generated from the sample in respect of the person, shall be regarded as a sample taken from him or her under this Regulation and a DNA profile generated from the sample to be entered in the elimination (prescribed persons) index of the DNA Database System in respect of him or her only if –

- (a) the person consents in writing to the sample and the DNA profile concerned being so regarded, and
- (b) before the consent referred to in subparagraph (a) is obtained, paragraph (3) shall, with any necessary modifications, be applied in relation to that person.

Records relating to samples taken from prescribed persons for elimination purposes

6. (1) Where an authorised member of the staff of FSI informs a prescribed person from whom a sample is to be taken under Regulation 5, or a second or further sample is to be taken under Regulation 7, of the matters referred to in paragraph (3) or (5) of Regulation 5, as the case may be, the authorised member of the staff of FSI shall as soon as practicable make, or cause to be made, an entry in the FSI elimination (prescribed persons) file recording –

- (a) the giving of that information,
- (b) the name of the authorised member of the staff of FSI who gave it,
- (c) the date on which it was given, and
- (d) the name of the person making the entry.

(2) Where a prescribed person from whom a sample is to be taken under Regulation 5, or a second or further sample is to be taken under Regulation 7, consents in writing to the taking of the sample, the authorised member of the staff of FSI who is to take, or cause to be taken, the sample shall as soon as practicable make, or cause to be made, an entry in the FSI elimination (prescribed persons) file recording –

- (a) the giving of that consent,
- (b) the date on which it was given, and
- (c) the name of the person making the entry.

(3) Where a prescribed person consents in writing to a sample that was taken from him or her before the commencement of these Regulations, and any DNA profile that was generated from the sample in respect of the person, being regarded as a sample taken under Regulation 5 and a DNA profile generated from the sample to be entered in the elimination (prescribed persons) index of the DNA Database System in respect of him or her, the authorised member of the staff of FSI who sought that consent shall as soon as practicable make, or cause to be made, an entry in the FSI elimination (prescribed persons) file recording –

- (a) the giving of that consent,
- (b) the date on which it was given, and
- (c) the name of the person making the entry.

(4) The authorised member of the staff of FSI concerned shall as soon as practicable after the taking of a sample from a prescribed person under Regulation 5, or the taking of a second or further sample from a prescribed person under Regulation 7, make, or cause to be made, an entry in the FSI elimination (prescribed persons) file recording –

- (a) the name of the prescribed person from whom the sample was taken,
- (b) the name of the authorised member of the staff of FSI who took the sample,
- (c) the date on which the sample was taken, and
- (d) the name of the person making the entry.

Part 4

Miscellaneous and general provisions

Re-taking of samples from prescribed persons for elimination purposes

7. Where a sample taken from a person under Regulation 5 proves to be insufficient or was inadequately labelled, a second or further sample may be taken from him or her in accordance with that Regulation.

Permitted searching of elimination (prescribed persons) index of DNA Database System

8. For the purposes of section 68(7) of the Act, a DNA profile in respect of a prescribed person that is entered in the elimination (prescribed persons) index of the DNA Database System 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 index of that System where the Director of FSI is satisfied that –

- (a) such comparison is necessary in relation to the investigation of an offence in order to ascertain whether the person has contaminated that crime scene sample, and
- (b) it could be reasonably considered that the person concerned may have contaminated that crime scene sample.

Part 5

Application of Part 10 of Act to prescribed persons from whom samples were taken under these Regulations

Request under, and records relating to, section 90 of Act

9. (1) A request under section 90(3) of the Act, for the destruction of a sample taken from a prescribed person under these Regulations if not already destroyed and the removal of the person's DNA profile from the DNA Database System, shall be by notice in writing sent or given to the Director of FSI.

(2) Whenever a request is received by the Director of FSI under paragraph (1), the Director of FSI shall, as soon as practicable after the receipt of the request, make, or cause to be made, an entry relating to the request in FSI elimination (prescribed persons) file recording –

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

(3) Whenever the Director of FSI informs by notice in writing a prescribed person from whom a sample was taken under these Regulations –

- (a) if a direction was given by the Director under section 90(5) of the Act in relation to the DNA profile in respect of the person generated from the sample, and
- (b) if appropriate, of a determination under section 90(6) of the Act in relation to the DNA profile in respect of the person generated from the sample,

the Director of FSI shall as soon as practicable after the sending or giving of the notice to the person make, or cause to be made, an entry in the FSI elimination (prescribed persons) file recording –

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



GIVEN under my Official Seal,
22 December, 2022.

SIMON HARRIS,
Minister for Justice.

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