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POLICE (SAMPLES TAKEN FROM PERSONS) REGULATIONS 2011

The Administrator makes the following Regulations in exercise of the powers under section 19 of the Police Ordinance 2007(a).

Citation and commencement

1. These Regulations may be cited as the Police (Samples Taken From Persons) Regulations 2011 and come into force on 1 April 2011.

Interpretation

2. (1) In these Regulations—
- “convicted” has the same meaning as in the Rehabilitation of Offenders Ordinance 2009(b);
 - “crime scene DNA profile” means the DNA profile derived from analysing a DNA sample originating from a crime scene;
 - “crime scene DNA profile database” means the database of crime scene DNA profiles;
 - “crime scene print database” means the database of prints taken from scenes of crime;

“DNA profile” means the digital representation of genetic information derived from the molecular genetic analysis of a DNA sample originating directly from individuals or from the cells of individuals deposited at a crime scene;

“DNA sample” means the genetic material deoxyribonucleic acid or DNA that can be extracted from cells originating in a human body or in human biological substances;

“material” means a sample, a DNA profile or a print;

“Ordinance” means the Police Ordinance 2007;

“print” means a record in any form and produced by any method of the skin pattern and other physical characteristics or features of—

- (a) a person’s fingers or palms;
- (b) a person’s feet or the soles of a person’s feet;

“speculative search” in relation to samples taken from a person means such a check against other samples or against information derived from other samples which are held by the Service, the Republic, or a third party law enforcement agency in connection with or as a result of an investigation of an offence;

“suspect print database” means the database of prints taken from suspects and convicted persons; and

“suspect DNA profile database” means the database of DNA profiles taken from suspects and convicted persons.

(2) In these Regulations—

- (a) a reference to a database is a reference to a database operated by the Republic of Cyprus Police;
- (b) a reference to using material includes a reference to allowing any check to be made against it and to disclosing the material and the results of any check to any person;
- (c) a reference to crime or to an offence includes a reference to any conduct which—
 - (i) constitutes one or more offences (whether under the laws of the Areas or of a country or territory outside the Areas); or
 - (ii) is, or corresponds to, any conduct which, if it took place exclusively in the Areas, would constitute one or more offences;
- (d) a reference to an investigation includes a reference to an investigation outside the Areas of any offence or suspected offence in a country or territory outside the Areas;
- (e) a reference to a prosecution include a reference to a prosecution brought in respect of any offence in a country or territory outside the Areas;
- (f) a reference to a crime scene includes objects or persons (including victims) connected with a crime, notwithstanding that the object or person has moved from the location where the offence was committed; and
- (g) a reference to a third party law enforcement agency means a body whose functions in any country or territory outside the island of Cyprus—
 - (i) correspond to those of the Service; or
 - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct.

Consent to the taking of samples

3. Consent to the taking of a sample must be in writing.

Information provided to person from whom sample is taken

4. (1) If a sample is taken from a person (other than a person identified as the victim of an offence or for the purposes of elimination) that person is to be—

- (a) told of the reason why the sample is to be taken; and

- (b) warned that the sample may be the subject of a speculative search.
- (2) A record is to be made of—
 - (a) the reason why a sample is to be taken; and
 - (b) the fact that the person has been told that the sample may be the subject of a speculative search.

Multiple non-intimate samples

5. A police officer of the rank of inspector or above may authorise a non-intimate sample of a particular type or from a particular part of the body to be taken only once during the course of an investigation unless—

- (a) the person from whom the sample is to be taken consents to the taking of the sample;
- (b) a previous sample was not suitable for the means of analysis to be undertaken;
- (c) the previous sample was insufficient in quality or in quantity; or
- (d) the previous sample has been destroyed (whether under regulation 13 or otherwise).

Taking of non-intimate samples from persons released on bail

6. (1) A police officer of the rank of inspector or above may require a person who has been released on bail to attend at a police station or other place so that a non-intimate sample may be taken from that person.

(2) A person who is required to attend at a police station or other place in accordance with paragraph (1)—

- (a) is to be served with a notice informing that person that he or she is to attend at a police station or other place in order for a non-intimate sample to be taken;
- (b) is to be informed in the notice of the time and the police station or other place where the sample is to be taken; and
- (c) must attend at that police station or other place at the time so that the sample may be taken.

(3) A person who, without a reasonable excuse, contravenes paragraph (2)(c) commits an offence and is liable to imprisonment for 6 months or a fine of €1,500 or both.

Court order to take an intimate sample

7. (1) A Court may make an order that an intimate sample is to be taken from—

- (a) a person who is under lawful arrest (whether or not that person has been released on bail);
- (b) a person in respect of whom an arrest warrant has been issued; or
- (c) a person who has been charged before a court with an offence.

(2) A Court may make an order under paragraph (1) if it considers that the analysis, comparison and matching of such a sample is necessary for the investigation of an offence.

(3) A Court may make an order under paragraph (1) only once during the course of an investigation unless—

- (a) the order relates to a different type of sample or a sample from a different part of the body;
- (b) a previous sample was not suitable for the means of analysis to be undertaken;
- (c) the previous sample was insufficient in quality or in quantity; or
- (d) the previous sample has been destroyed (whether under regulation 13 or otherwise).

(4) A person in respect of whom an order is made under paragraph (1) must be given a copy of that order before the sample is taken and a record made of the fact that the person was given a copy of the order.

(5) A person who, without a reasonable excuse, refuses to comply with an order made under paragraph (1) commits an offence and is liable to imprisonment for 6 months or a fine of €1,500 or both.

(6) A police officer must, on requiring any person to provide a sample under an order made under paragraph (1), warn that person that a failure to provide the sample may render that person liable to prosecution.

Person in respect of whom Court order has been made to attend police station or other place

8. (1) If a person in respect of whom a Court has made an order under regulation 7(1) is not in custody, that person—

- (a) is to be served with a notice informing him or her that an order has been made under regulation 7(1);
- (b) is to be informed in the notice of the time and the police station or other place where the sample is to be taken; and
- (c) must attend at that police station or other place at the time so that the sample may be taken.

(2) A person who, without a reasonable excuse, contravenes paragraph (1)(c) commits an offence and is liable to imprisonment for 6 months or a fine of €1500 or both.

Taking of intimate samples

9. (1) Subject to paragraphs (2) and (3), an intimate sample may be taken from a person only by a medical practitioner.

(2) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(3) An intimate sample which is a urine sample need not be taken by a medical practitioner.

Arrangements for processing, storage and comparison of samples

10. The Chief Constable may make or continue with arrangements with any person for—

- (a) processing samples;
- (b) storing samples;
- (c) comparing samples with other samples;
- (d) arranging for samples to be compared with samples held by any other law enforcement agency;
- (e) indefinite retention of material in accordance with the Ordinance and these Regulations; and
- (f) destruction of samples and removal of DNA profiles and prints from databases.

Processing and storage of samples

11. (1) A sample taken from a person in accordance with the Ordinance or these Regulations may be processed so as to derive any information from that sample which will assist in the investigation of an offence and in particular—

- (a) a DNA profile may be obtained from a DNA sample;
- (b) a digital or other electronic representation may be obtained from any other type of sample.

(2) The Chief Constable is to ensure that material is protected by appropriate technical and organisational measures from—

- (a) unauthorised or unlawful access or use;
- (b) contamination; or
- (c) accidental loss, damage or destruction.

Use of material

12. (1) Material taken from or relating to a person may be used for purposes related to the identification of any deceased person.

(2) Material taken from or relating to a person identified as the victim of an offence or for the purposes of elimination of that person as a suspect—

- (a) may be compared only with material taken from crime scenes relevant to the investigation in question for the purpose of investigation; and
- (b) may not be entered into the suspect DNA profile database or the suspect print database.

(3) Paragraph (2) does not prevent a person identified as the victim of an offence or a person from whom material is taken for the purposes of elimination in relation to an offence from being treated as a suspect in relation to any offence.

(4) Material taken from or relating to a suspect may be used for purposes related to—

- (a) identifying that person;
- (b) the prevention or detection of crime;
- (c) the investigation of an offence; or
- (d) the conduct of a prosecution.

(5) Without prejudice to the generality of paragraph (4)—

- (a) a DNA profile may—
 - (i) be compared with other DNA profiles in the crime scene DNA profile database and the suspect DNA profile database;
 - (ii) be compared with information held by a third party law enforcement agency; and
 - (iii) form part of the suspect DNA profile database until the Chief Constable is required to delete or destroy that profile;
- (b) a print may—
 - (i) be compared with other prints on the crime scene print database and the suspect print database;
 - (ii) be compared with information held by a third party law enforcement agency; and
 - (iii) form part of the suspect print database until the Chief Constable is required to delete or destroy that print.

(6) Material which is required to be destroyed must not at any time after it is required to be destroyed be used—

- (a) in evidence against the person to whom the material relates; or
- (b) for the purposes of the investigation of any offence.

Destruction of material and deletion of information

13. (1) Subject to paragraph (3), material taken from or relating to a person who has been suspected of committing an offence is to be destroyed or deleted (as the case may be) as soon as it has fulfilled the purpose for which it was taken or derived if—

- (a) that person is acquitted of the offence (other than on grounds of insanity);
- (b) criminal proceedings against that person are discontinued;
- (c) that person is not charged with an offence; or
- (d) no offence was committed.

(2) Material to be destroyed or deleted under paragraph (1) must be destroyed or deleted within the following time limits—

- (a) if paragraph (1)(a) applies, within 1 month of the acquittal; and
- (b) if paragraph (1)(b), (c) or (d) applies, within a reasonable time period, but in any case within 1 year of the sample being taken.

(3) Material need not be destroyed or deleted under paragraph (1) if—

- (a) the person to whom the material relates has previously been convicted of an offence (either before or after these Regulations have been made);

- (b) criminal proceedings against the person to whom the material relates are ongoing; or
- (c) the person to whom the material relates is suspected of committing another offence and analysis, comparison and matching of that material is necessary for the investigation of that offence.

(4) Material taken from or relating to a person identified as the victim of an offence or for the purposes of elimination is to be destroyed or deleted (as the case may be) as soon as it has fulfilled the purpose for which it was taken or derived unless—

- (a) that person is also suspected of committing an offence; and
- (b) the material in question was obtained for the purpose of investigating that offence.

(5) Material taken from or relating to a person is to be destroyed or deleted immediately if it appears to the Chief Constable that—

- (a) the arrest was unlawful;
- (b) the taking of the samples concerned was unlawful;
- (c) the arrest was based on mistaken identity; or
- (d) other circumstances relating to the arrest or the alleged offence mean that it is appropriate to destroy the material.

(6) If a person in respect of whom material has been destroyed or deleted makes a request to the Chief Constable, the Chief Constable must, within 3 months of the request, issue the person with a certificate recording destruction or deletion under this regulation.

(7) If this regulation requires material to be destroyed or deleted, any copies of that material must also be destroyed.

Dated this 14th day of January 2011.

By the Administrator's Command,
J. S. Wright,
Chief Officer,
Sovereign Base Areas.

(SBA/AG/2/CR/187/9)

(a) Ordinance 6/07.
(b) Ordinance 11/09.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. This explanatory note relates to the Police (Samples Taken From Persons) Regulations 2011 (the “Regulations”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Regulations. It does not form part of the Regulations.
2. The Regulations make provision for taking, use, analysis, storage retention and destruction of samples taken from persons.
3. The Regulations are made under section 19 of the Police Ordinance 2007 (the “Ordinance”).
4. Regulation 3 requires that consent to the taking of samples must be obtained in writing. If consent to taking a non-intimate sample is refused, a police officer of the rank of inspector or above can authorise the taking of the sample and, if necessary, may authorise the use of reasonable force to obtain it (see section 19 of the Ordinance).
5. In the case of a person under the age of 18 years of age, consent to taking a sample must be obtained both from the person from whom the sample is taken and a parent or guardian of that person or if the guardian does not give the necessary consent or is unable to do so (for example if the parent or guardian cannot be contacted) then a police officer of the rank of inspector or above may authorise a non-intimate sample to be taken. In the case of an intimate sample the police may apply to the court under section 19 of the Ordinance for an order to take a sample.
6. Regulation 4 requires the police to warn any person from whom a sample is taken that the sample may be used for searching speculatively against existing samples (or profiles). This warning must be given to persons whether or not the sample is provided in compliance with a court order. Regulation 4 also requires to police to explain to a suspect why a sample is being taken.
7. Regulation 5 prevents the unnecessary taking of multiple samples from a suspect.
8. Regulations 6 and 8 make provision for requiring a person on bail to report to a police station so that a sample may be taken. In such cases, the person from whom the sample is to be taken must be notified of the requirement to attend for the taking of the sample and must be told of the time and place where the sample is to be provided.
9. Regulation 7 specifies the persons from whom the Court may order an intimate sample to be taken. Regulation 7(3) restricts the number of repeat samples which may be taken. If a person refuses to provide an intimate sample, when ordered to do so by the Court that person commits an offence.
10. Regulation 9 specifies that an intimate sample (other than a dental impression or urine) must be taken by a medical practitioner. A dental impression must be taken by a dentist. A urine sample may be taken by a police officer.
11. Regulation 10 permits the Chief Constable to make arrangements or continue existing arrangements with any person for the processing and use of samples. This provision permits the police to make use of resources beyond those available within the SBAs. So for example, it permits the police to compare DNA profiles taken from suspects in the SBAs with the DNA profile database held by the Republic.
12. Regulations 11 and 12 deal with the processing, storage and use of samples. Generally speaking, samples may only be used in relation to prosecution of offences. However, samples may be used for the purposes of identifying deceased persons even though they were originally collected for use in relation to prosecution of offences. Samples taken from victims for “elimination” purposes must not be entered on databases of suspects.
13. Regulation 13 deals with destruction of samples and information derived from samples of persons suspected of having committed an offence. Generally speaking, if a person is not convicted of an offence then that person’s samples, and information derived from those samples, must be destroyed. Samples taken for elimination purposes and information derived from those samples is to be destroyed as soon as its purpose is fulfilled.