

Defence Forces (Forensic Evidence) Bill 2015

General Scheme

February 2015

Part 1: Preliminary and General

- Head 1: Short title and commencement
- Head 2: Definitions
- Head 3: Application of Act to persons subject to Military Law
- Head 4: Regulations
- Head 5: Expenses

Part 2: Taking of samples from persons in custody of Military Police

- Head 6: Power to take samples from persons in custody of Military Police
- Head 7: Taking of samples from persons in custody of Military Police for purposes of DNA Database system
- Head 8: Taking of intimate samples from persons in custody of Military Police
- Head 9: Taking of non-intimate samples from persons in custody of Military Police
- Head 10: Appropriate consent to taking of intimate samples
- Head 11: Other powers of members of the Military Police in relation to arrested person
- Head 12: Persons authorised to take intimate samples
- Head 13: Inferences from refusal to consent, or withdrawal of consent, to taking of intimate sample
- Head 14: When sample taken for purposes of DNA database system may also be used for evidential purposes
- Head 15: Use of reasonable force to take sample under section 7 or non-intimate sample
- Head 16: Re-taking of certain samples under Part 2 in certain circumstances
- Head 17: Samples not to be taken from persons in custody of Military Police other than in accordance with this Part

Part 3: Taking of samples for elimination purposes

- Head 18: Definition (Part 3)
- Head 19: Taking of samples from Defence Forces personnel for elimination (Military Police) Index
- Head 20: Taking of samples from volunteers for elimination purposes
- Head 21: Taking of samples from other persons for elimination purposes
- Head 22: Direction from Provost Marshal for sample to be taken for elimination purposes
- Head 23: Re-taking of samples under Part 3

Part 4: Destruction of samples and destruction, or removal from DNA database system, of DNA profiles

- Head 24: Destruction of intimate samples and non-intimate samples in certain circumstances
- Head 25: Extension of retention period under section 24 for intimate samples and non-intimate samples in certain circumstances
- Head 26: Destruction of intimate samples and non-intimate samples in exceptional circumstances
- Head 27: Destruction of certain samples taken for purpose of DNA database system
- Head 28: Extension of retention period under section 24 for certain DNA profiles in reference index of DNA database system in certain circumstances.
- Head 29: Removal in exceptional circumstances of certain DNA profiles in reference index of DNA database system from that system
- Head 30: Date on which sample under section 7, 8 or 9 may be deemed to have been taken in certain circumstances

- Head 31: Destruction of samples taken from persons under section 19 and removal of their DNA profiles from DNA database system
- Head 32: Dismissal of charges, quashing of convictions and determination of proceedings
- Head 33: Request to FSI or other person to destroy sample or destroy, or remove from DNA database system, DNA profile
- Head 34: Circumstances in which person to be informed of destruction of sample or destruction, or removal from DNA database system, of DNA profile

Part 5: Miscellaneous

- Head 35: Sample may be taken from person even if sample taken previously
- Head 36: Delegation of functions of Provost Marshal under this Act
- Head 37: Further provision regarding the taking of samples under this Act
- Head 38: Regulations regarding taking of samples
- Head 39: Protocols
- Head 40: Disclosure of Information
- Head 41: Authorisations under this Act
- Head 42: Non-compliance by a member of the Military Police with this Act or regulations thereunder
- Head 43: Non-application of Act
- Head 44: Procedures that may be used for the transmission of certain samples for forensic testing
- Head 45: Provisions relating to evidence in court martial proceedings regarding certain samples

Part 1

PRELIMINARY AND GENERAL

Head 1

Short title and commencement

Provides that:

- (1) This Act may be cited as the Defence Forces (Forensic Evidence) Act 2015;
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Notes:

This Head provides for the short title of the Bill and to allow the Minister to set a commencement date for the various provisions contained within the Bill. These are standard provisions.

Head 2

Definitions

Provides that:

(1) In this Act -

“Act of 1954” means the Defence Act, 1954, as amended;

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

“civilian employee”, means a person employed by the Minister for Defence under section 30(g) of the Defence Act 1954;

“crime scene sample”, shall be construed in accordance with the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;

“detention barrack” shall be construed in accordance with the definition in the Defence Act 1954;

“DNA” means deoxyribonucleic acid;

“DNA Database System” shall be construed in accordance with section 59 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;

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

“elimination (crime scene investigators) index”, in relation to the DNA Database System, shall be construed in accordance with the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;

“elimination (Military Police) index”, in relation to the DNA Database System, shall be construed in accordance with Section 19;

“elimination (prescribed persons) index”, in relation to the DNA Database System, shall be construed in accordance with the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;

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

“forensic testing”, in relation to a sample (other than a crime scene 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;

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

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

“military judge” means a military judge appointed under Chapter IVC of Part V of the Act of 1954;

“military prison” shall be construed in accordance with the definition in the Defence Act 1954;

“Minister” means the Minister for Defence;

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

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

“relevant offence” means an offence in respect of which a person may be detained under any of the provisions referred to in section 7 (whether or not the person concerned was so detained);

“service custody” means open or closed service custody and includes confinement or detention in a military prison and a military detention barrack;

“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.

Notes:

This Head provides the definitions for the General Scheme. Further definitions may be added following consultation with the Parliamentary Counsel.

Head 3

Application of Act to persons subject to Military Law

Provides that:

- (1) The Act applies to persons subject to military law;
- (2) The application of this Act to a person subject to military law shall not be affected by reason of the fact that such person is for the time being outside the State or on board a ship or aircraft.

Notes:

This Head provides that this Act will apply to a person subject to military law, including when such persons are outside the State or on board a ship or aircraft.

Head 4 **Regulations**

Provides that:

- (1) 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.
- (2) A 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 regulation.

Notes:

This Head provides for the Minister to make such regulations prescribing anything which is referred to in the Bill as prescribed or to be prescribed or for the purpose of enabling any provision of the Bill to have full effect.

Head 5 **Expenses**

Provides that:

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.

Notes:

This Head provides that any expenses incurred by the Minister for Defence in the administration of this Act, shall to the extent sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas. This is a standard provision.

Part 2

TAKING OF SAMPLES FROM PERSONS IN CUSTODY OF MILITARY POLICE

Head 6 Power to take samples from persons in custody of Military Police

Provides that:

A sample under section 7, an intimate sample, a non-intimate sample or more than one sample may be taken from a person subject to military law who is placed in service custody under section 172 of the Act of 1954 in respect of an offence other than a scheduled offence under the provisions of section 176A of the Act of 1954, and where conviction of such an offence carries a sentence of imprisonment of 5 years.

Notes:

This Head is required to provide for samples to be taken from persons in Military Police custody and the appropriate offences under military law applicable.

Head 7

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

Provides that:

- (1) Subject to this Act, a member of the Military Police may take, or cause to be taken, from a person who is detained under section 6 for the investigation of a relevant offence a sample for the purpose of generating a DNA profile in respect of the person to be entered in the reference index of the DNA 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 sergeant 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:
 - (a) that an authorisation to take the sample from him or her has been given under subsection (2);
 - (b) 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;
 - (c) that the sample will be used to generate a DNA profile in respect of the person to be entered in the reference index of the DNA Database System and the effect of such an entry;
 - (d) 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 criminal offences or criminal proceedings (whether within or outside the State) as provided for in or permitted by the Act of 2014; and
 - (e) that the sample may be destroyed, and the DNA profile in respect of the person entered in the reference index of the DNA Database System may be removed from that System, in accordance with Part 10 of the Act of 2014.
- (4) The Minister shall, by regulation made under this section, specify a relevant offence or a category of relevant offences that are, for the purposes of subsection (1), excluded from the application of this section as evidence relating to DNA would not, in the opinion of the Minister, assist with the investigation or prosecution of the offence or those offences due to the nature of the offence or offences concerned.

Notes:

This Head allows a member of the Military Police to take a sample from a detained person for the purpose of generating a DNA profile for entry in the reference index of the DNA Database System – the sample is not taken for evidential purposes. A member not below the rank of sergeant must authorise the taking of the sample. Notwithstanding that the consent of the person to the taking of the sample is not required, the person is to be informed of various matters before it is taken, including (where applicable) that reasonable force may be used in the event that he or she fails or refuses to allow the sample to be taken. The Minister, by regulation, shall exclude certain offences from the scope of this section because their nature is such that evidence relating to DNA would not assist with their investigation or prosecution.

Head 8 **Taking of intimate samples from persons in custody of Military Police**

Provides that:

- (1) Subject to this Act, a member of the Military Police may take, or cause to be taken, an intimate sample under this section from a person who is detained under section 6 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 index of the DNA 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) the appropriate consent has been given in writing to the taking of the sample.
- (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 offence in respect of which he or she is detained, and
 - (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of the offence concerned.
- (4) The results of the forensic testing of an intimate sample may be given in evidence in any proceedings.
- (5) 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 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) that 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 or was inadequately labelled and
 - (ii) that either—
 - (I) another authorisation under subsection (2)(a) is not, by virtue of section 3(6) of the Act of 2014, 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 index of the DNA 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 criminal offences or criminal 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 index of the DNA Database System may be removed from that System, in accordance with Part 10 of the Act of 2014.
- (6) If a person expressly withdraws the appropriate 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 appropriate consent to the taking of the sample under this section, and
 - (b) the provisions of this Part shall apply accordingly.
- (7) A withdrawal under subsection (6) of the appropriate 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.
- (8) The appropriate 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.

Notes:

This Head concerns the taking of an intimate sample from a detained person for the purposes of the investigation of the offence in respect of which the person is detained and for evidential purposes in any proceedings. If the sample taken is one which may be used to generate a DNA profile in respect of the person then the sample may also be used for the purpose of the DNA Database System. A sample of this type may only be taken if a member of the Military Police not below the rank of Captain has authorised it and the appropriate written consent has been given by the detained person concerned. Before giving the necessary authorisation the member must be satisfied that there are reasonable grounds for suspecting the involvement of the person in the offence in respect of which the person concerned is detained and for believing that the sample will tend to confirm or disprove the involvement of the person in the offence. Before the detained person is requested to consent, he or she must be informed of various matters including the consequences of not consenting which are detailed in section 13. If the person gives the appropriate consent but then withdraws it (or withdrawal can reasonably be inferred from the conduct of the person) before or during the taking of the sample the withdrawal will be treated as a refusal and the provisions of section 13 will apply. The withdrawal must be recorded in writing. Once the sample has been taken it will not be possible for the detained person to withdraw consent.

Head 9 **Taking of non-intimate samples from persons in custody of Military Police**

Provides that:

- (1) Subject to this Act, a member of the Military Police may take, or cause to be taken, a non-intimate sample under this section from a person who is detained under section 6 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 index of the DNA 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 offence in respect of which he or she is detained, and
 - (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of the offence concerned.
- (4) The results of the forensic testing of a non-intimate sample may be given in evidence in any proceedings.
- (5) 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 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 3(6) of the Act of 2014, required, or
 - (II) an authorisation to take a second non-intimate sample from him or her has, in accordance with section 25(1) of the Act of 2014, 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 index of the DNA 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 criminal offences or criminal 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 index of the DNA Database System may be removed from that System, in accordance with Part 10 of the Act of 2014.

Notes:

This Head deals with the taking of a non-intimate sample from a detained person for the purposes of the investigation of the offence in respect of which the person is detained and for evidential purposes in any proceedings. If the sample taken is one which may be used to generate a DNA profile in respect of the person then the sample may also be used for the purpose of the DNA Database System. A sample of this type may only be taken if a member of the Military Police not below the rank of Captain has authorised it. Unlike in the case of intimate samples under section 8 the consent of the person concerned is not required. Before giving the necessary authorisation the member must be satisfied that there are reasonable grounds for suspecting the involvement of the person in the offence in respect of which the person concerned is detained and for believing that the sample will tend to confirm or disprove the involvement of that person in the offence. Notwithstanding that the person's consent is not required he or she is to be informed of various matters before the sample is taken including that reasonable force may be used in the event that he or she fails or refuses to allow the sample to be taken.

Head 10 **Appropriate consent to taking of intimate samples**

Provides that:

In this Part “appropriate consent” means, in the case of a person who has attained the age of 18 years, the consent of the person.

Notes:

This Head defines the meaning of the ‘appropriate consent’ which is required under section 8 before an intimate sample may be taken. In the case of an adult (i.e. a person aged 18 years or older) his or her consent is required.

Head 11 **Other powers of members of the Military Police in relation to arrested person.**

Provides that:

- (1) Where a person is arrested pursuant to section 171 of the Act of 1954, a member of the Military Police may—
 - (a) demand of him or her, his or her service number, rank, name and address;
 - (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 or any part of the person's body other than a part of the hand or mouth;
 - (f) make or cause to be made 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 1971) or with any explosive substance (within the meaning of the Explosive Substances Act, 1883) 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 medical officer of the Medical Corps or a designated registered medical practitioner to take from their person a specimen of blood for analysis as to the concentration of alcohol or other drug in the blood;
 - (h) on the authority of a member of the Military Police not below the rank of Captain and with the prior consent in writing of the detained person, cause to be taken by a dental officer of the Medical Corps or a registered dentist, a dental impression;
 - (i) seize and retain for testing anything that he or she has in his or her possession.
- (2) The powers conferred by subsection (1) (c), (1) (d) and 1(e) shall not be exercised except on the authority of a member of the Military Police not below the rank of Captain.
- (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 substance and a member of the Military Police not below the rank of

Captain so authorises.

- (4) Any person who obstructs or attempts to obstruct any member of the Military Police or any other person acting under the powers conferred by *subsection (1)* or who fails or refuses to give his or her service number, rank, name, unit when demanded, or gives a service number, rank, name, unit, which is false or misleading, shall be guilty of an offence under Section 147(a) of the Act of 1954.

Notes:

This Head provides that the Military Police, where a person is detained under Section 171 of the Act of 1954, may demand of him or her, his or her service number, rank, name and address; search him or her or cause him or her to be searched; photograph him or her or cause him or her to be photographed; take, or cause to be taken, his or her fingerprints and palm prints and take or cause to be taken, from the person a sample of hair other than pubic hair; a nail; any material found under a nail; a footprint or similar impression or any part of the person's body other than a part of the hand or mouth.

Head 12

Persons authorised to take intimate samples

Provides that:

- (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.

Notes:

This Head specifies who may take intimate samples (other than urine samples). Registered medical practitioners and nurses are authorised and, in the case of dental impressions, registered dentists are also specified. With the exception of blood samples and dental impressions, intimate samples are to be taken as far as practicable by a person who is the same sex as the person from whom the sample is being taken.

Head 13 **Inferences from refusal to consent, or withdrawal of consent, to taking of intimate sample**

Provides that:

(1) Where in any proceedings against a person for an offence evidence is given that the accused refused without reasonable cause to give an appropriate consent required under section 8(2)(b) or he or she without reasonable cause withdrew the appropriate consent given thereunder, then—

(a) the Director of Military Prosecutions, in determining.

(i) whether a charge against the accused should be dismissed, or

(ii) whether there is a case to answer, and

(b) the court-martial (or, subject to the military judge's directions, the court-martial board), in determining whether the accused is guilty of the offence charged (or of any other offence of which he or she could lawfully be convicted on that charge),

may draw such inferences from the refusal or withdrawal, as the case may be, as appear proper; and the refusal or withdrawal 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, but a person shall not be convicted of such an offence solely or mainly on an inference drawn from such refusal or withdrawal.

(2) Subsection (1) 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, either

directly or by telephone before such refusal or withdrawal occurred.

- (3) This section shall not apply to a refusal by a person to give the appropriate 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.

Notes:

This Head concerns the consequences that may follow a refusal to consent (or a withdrawal of consent) to the taking of an intimate sample. A refusal to consent or a withdrawal of consent without reasonable cause may give rise to an adverse inference being drawn in subsequent criminal proceedings. Such an adverse inference may be treated as corroborating any evidence to which it is relevant — it may not be the sole or main basis of a conviction. The adverse inference may not be drawn if certain steps have not been followed. The steps are that the person was told in ordinary language that a failure to consent or a withdrawal of consent could give rise to such an inference being drawn, that he or she was given an opportunity to consult a solicitor before refusing consent and that the request for consent was recorded by electronic means or the person consented in writing to it not being so recorded.

Head 14 **When sample taken for purposes of DNA database system may also be used for evidential purposes**

Provides that:

- (1) Where a person is detained for a period under any of the provisions referred to in Section 6 and—
 - (a) a sample is taken from the person under section 7 during the period, and
 - (b) a non-intimate sample is required from the person during the period, then, subject to subsection (5), the sample that has already been taken from the person under section 7 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 index of the DNA Database System, and
 - (ii) a member of the Military Police has informed the person of the following:
 - (I) the nature of the offence 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; and
 - (III) that the results of the forensic testing of that sample may be given in evidence in any proceedings.
- (2) An authorisation under subsection (1) (b) (i) to regard a sample taken from a person under section 7 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 offence in respect of which he or she is detained, and
 - (b) for believing that that sample will tend to confirm or disprove the involvement of that person in the commission of the offence concerned.

- (3) The results of the forensic testing of a sample taken under section 7 that is regarded as a non-intimate sample in accordance with this section may be given in evidence in any proceedings.
- (4) A sample taken from a person under section 7 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 9.
- (5) Where, during a period of detention of a person under any of the provisions referred to in section 6 a sample is taken from the person under section 7, 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 of detention.
- (6) Where, during a period of detention of a person 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 7 from the person during the period of detention.

Notes:

This Head concerns the circumstances in which a sample taken for the purposes of the DNA Database System under section 7 may be treated as a non-intimate sample taken under section 9 for evidential purposes. This may occur where during the same period of detention a sample has been taken under section 7 and a decision is subsequently made that a non-intimate sample under section 9 is required for the purposes of the investigation at hand i.e. to prove or disprove the person's involvement in the offence in connection with which he or she is detained. Before a section 7 sample may be treated as a section 9 sample similar procedures that apply to the taking of a section 9 sample must be followed — a member not below the rank of Captain must authorise the change of use of the sample and the person must be informed of certain matters including that the result of forensic tests on the sample may be used in evidence.

Head 15 **Use of reasonable force to take sample under section 7 or non-intimate sample**

Provides that:

- (1) Without prejudice to the generality of sections 7 and 9 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.

Notes:

This Head sets out the circumstances in which a section 7 or section 9 sample may be taken with the use of reasonable force. Force does not apply in the case of samples taken under section 8 i.e. intimate samples. Reasonable force must be authorised by a member of the Military Police not below the rank of Commandant. The detained person must be informed in advance of the intention to use reasonable force and that the necessary authorisation has been given. The use of reasonable force must be observed by a member not below the rank of Captain who is to determine the number of members necessary.

The taking of a sample with the use of reasonable force must be recorded by electronic means.

Head 16 **Re-taking of certain samples under Part 2 in certain circumstances**

Provides that:

(1) Where—

- (a) a person is detained for a period under any of the provisions referred to in section 6, and
- (b) a sample under section 7 taken from the person during the period of detention proves to be insufficient or an intimate sample or a non-intimate sample taken from the person during the period of detention proves to be insufficient or is inadequately labelled,

a second sample under section 7 or a second intimate sample or 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 detained only if, subject to subsection (2) and section 3(6) of the Act of 2014, an authorisation to take the second sample is given under section 7(2), 8(2)(a) or 9(2), as the case may be.

(2) An authorisation under section 7(2), 8(2)(a) or 9(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 of detention of the person under any of the provisions referred to in section 6.

(3) Where—

- (a) a non-intimate sample is taken from a person who is detained under any of the provisions referred to in section 6,
- (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 Military Police barrack 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)(i) 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 offence in respect of which he or she was detained 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 offence.
- (5) An authorisation under subsection (3)(i) 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)(i) 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 Police barrack for the purpose of having a second non-intimate sample taken from him or her.
- (7) The period referred to in subsection (6) for requiring the person concerned to attend at a specified Military Police barrack is one month from the date on which a member of the Military Police of the rank of Commandant in which the first non-intimate sample concerned was taken 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 Police barrack 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 9.
- (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 7, 8 or 9, as may be appropriate.
- (12) In this section references to the detention of a person for a period under any of the provisions referred to in section 6 shall, if appropriate, include references to the detention of the person for consecutive periods under the provision concerned.

Notes:

This Head sets out the circumstances in which a sample which proves to be insufficient (as defined in section 2(1)) may be re-taken. Different procedures apply depending on: whether the insufficiency comes to light while the person is still in detention or after he or she has been released, and on the type of sample, whether it is a sample taken under section 7, 8 or 9.

In the case of section 7, 8 or 9 samples, where the person is still in detention and the insufficiency of the sample becomes apparent after more than 1 hour has elapsed the sample may be retaken only if a fresh authorisation under the relevant section is given. A fresh authorisation may be given on one occasion only during a period of detention.

In the case of section 9 samples where the insufficiency becomes apparent after the person has been released from detention without charge the sample may only be retaken if a member not below the rank of Commandant authorises it and the person attends at Military Police barrack for the purpose of having it taken.

The necessary authorisation may only be given if the member giving it has reasonable grounds for suspecting the involvement of the person in the offence concerned and that the sample will tend to prove or disprove the person's involvement. Such an authorisation may be given on one occasion only and may not be given if more than 6 months have elapsed since the taking of the first sample. Where the necessary authorisation has been given the person is required by notice in writing to attend at the Military Police barrack for the purpose of having the sample taken.

Head 17 Samples not to be taken from persons in custody of Military Police other than in accordance with this Part

Provides that:

Subject to section 43, 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 detained under any of the provisions referred to in section 6 other than in accordance with this Part.

Notes:

This Head clarifies that a member of the Military Police shall not take a sample from a detained person other than in accordance with Part 2 following the commencement of this Part.

Part 3

TAKING OF SAMPLES FOR ELIMINATION PURPOSES

Head 18 **Definition (Part 3)**

Provides that:

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 or incident that may have involved the commission of an offence; or
- (c) the examination or analysis of that sample.

Notes:

This Head contains the necessary definition for this Part.

Head 19 **Taking of samples from Defence Forces personnel for elimination (Military Police) Index**

Provides that:

- (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 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 section from:
 - (a) a member of the Military Police, who is such a member upon the commencement of this section,
 - (b) a member of the Military Police, who is appointed as such a member after the commencement of this section.
- (3) 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 23 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 23 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 Database System and the effect of such an entry;
 - (d) that if the person is, at any time after the taking of the sample, assigned to duties relating to the investigation or technical examination of crime scenes

or anything found at or recovered from crime scenes, the DNA profile in respect of the person will be transferred from the elimination (Military Police) index to the elimination (crime scene investigators) index of the DNA Database System;

- (e) that, in the case of a person referred to in *subsection (2)(a) or (2)(b)*, if he or is at any time after the taking of the sample appointed as a member of the Military Police, the DNA profile generated from the sample in respect of the person and entered in the elimination (Military Police) index of the DNA Database System may be retained in that index of that System in accordance with *subsection (7)*; and
 - (f) that the sample may be destroyed, and the DNA profile in respect of the person entered in the elimination (Military Police) index or elimination (crime scene investigators) index, as the case may be, of the DNA Database System may be removed from that System, in accordance with *Part 4*.
- (4) Subject to this Act, a member of the Military Police or an authorised person may take, or cause to be taken, a sample under this section from a person to whom this section applies.
- (5) A sample that was taken before the commencement of this section from a person referred to in *subsection (2)(b)* for the purpose, in relation to the investigation of offences, of ascertaining whether that 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 section and a DNA profile generated from the sample to be entered in the elimination (Military Police) index of the DNA Database System in respect of him or her only if—
- (a) that person consents in writing to the sample and DNA profile concerned being so regarded, and
 - (b) before the consent referred to in *paragraph (a)* is obtained, *subsection (3)* shall, with any necessary modifications, be applied in relation to that person.
- (6) If a person from whom a sample is taken, or is regarded under *subsection (5)* as having been taken, under this section is, at any time after the sample is taken or so regarded as having been taken, assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes, the DNA profile that was generated from the sample in respect of the person shall be transferred from the elimination (Military Police) index to the elimination (crime scene investigators) index of the DNA Database System.
- (7) If a person referred to in *subsection (2)(a) or (2)(b)* is at any time after a sample is taken, or in the case of a person referred to in *subsection (2)(b)* is regarded under

subsection (5) as having been taken, from him or her under this section appointed as a member of the Military Police, the DNA profile generated from the sample in respect of the person and entered in the elimination (Military Police) index of the DNA Database System may be retained in that index of that System as if it were generated from a sample taken from the person under *subsection (2)(a)*.

Notes:

This Head provides for the taking of samples from members for the purposes of the elimination (Military Police) index. It provides for the taking of samples from members who are assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from a crime scene for the purpose of the elimination index.

The Head distinguishes between existing personnel on commencement and those appointed after commencement. The consent of personnel appointed to the Military Police after commencement of this legislation shall be required if it is proposed to use a pre-existing sample for the purposes of the elimination (Military Police) index. Before a sample is taken under this section, the person is to be informed of certain matters.

Head 20 **Taking of samples from volunteers for elimination purposes**

Provides that:

- (1) A member of the Military Police may request a person (in this section referred to as a 'volunteer') other than a person to whom Section 7, 8 or 9 applies to have a sample taken from him or her under this section for the purpose of elimination of the volunteer in relation to—
 - (a) the investigation of a particular offence, or
 - (b) the investigation of a particular incident that may have involved the commission of an offence.
- (2) A person who is a victim, or is reasonably considered to be a victim, of the offence or incident that may have involved the commission of an offence being investigated may be a volunteer.
- (3) A member of the Military Police or an authorised person 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 or authorised person 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 for elimination purposes in respect of the volunteer for the purposes of the investigation of the offence, or incident that may have involved the commission of an offence, in relation to which it is being taken; and
 - (d) that the sample and the DNA profile generated from the sample in respect of the volunteer may be destroyed in accordance with Part 4.

- (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 offence, or incident that may have involved the commission of an offence that is being investigated to which the consent relates.
- (5) Subject to this Act, a member of the Military Police or an authorised person 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 Military Police Barracks 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 or authorised person 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) A refusal to give consent under *subsection (4)* shall not of itself constitute reasonable cause for a member of the Military Police to suspect the person of having committed the offence concerned for the purpose of arresting and detaining him or her under any of the provisions referred to in *section 6* in connection with the investigation of that offence.

Notes:

This Head provides that a member of the Military Police or an authorised person may request a person i.e. a volunteer to have a sample taken for the purpose of the elimination of him or her in relation to the investigation of a particular offence or an incident that may involve the commission of an offence. Before seeking the consent of a volunteer to the taking of a sample the member or authorised person must inform the volunteer of certain matters including that he or she is not obliged to provide the sample. The volunteer's consent must be in writing. If a volunteer consents but then withdraws this consent (or its withdrawal can reasonably be inferred from the conduct of the volunteer) before or during the taking of the sample the withdrawal will be treated as a refusal. The withdrawal must be recorded in writing. The section states that a refusal to consent to the taking of a sample shall not of itself constitute reasonable cause for a member to suspect the person of having committed the offence concerned for the purpose of arresting and detaining him or her.

Head 21 **Taking of samples from other persons for elimination purposes**

Provides that:

- (1) A sample taken under regulations made under this section from a person prescribed under *subsection (2)* (in this section called a “prescribed person”) shall be used to generate a DNA profile in respect of the prescribed person for the purpose, in relation to the investigation of offences, of ascertaining whether that person has contaminated a crime scene sample.
- (2) Any person as may be prescribed for the purposes of this section as the Minister considers appropriate to prescribe who, by reason of the functions or tasks performed or carried out by them, may inadvertently contaminate crime scene samples.
- (3) The Minister may, in relation to prescribed persons, prescribe all or any of the following:
 - (a) the circumstances in which samples shall be, or may be, taken from such persons;
 - (b) the arrangements to be made for the taking of samples from such persons;
 - (c) the information to be given to such persons before samples is taken from them;
 - (d) the circumstances in which the consent of such persons is required before samples are taken from them;
 - (e) the circumstances in which samples may be re-taken from such persons;
 - (f) the circumstances in which DNA profiles in respect of such persons generated from the samples taken from them may be—
 - (i) entered in the elimination (crime scene investigators) index of the DNA Database System,
 - (ii) entered in the elimination (prescribed persons) index of that System,
 - (iii) transferred to the elimination (crime scene investigators) index from the elimination (prescribed persons) index of that System or from the former index to the latter index of that System, or

- (iv) used, without entering them in the DNA Database System, to ascertain whether such persons have contaminated particular crime scene samples;
 - (g) subject to *section 31*, the circumstances in which samples taken from such persons may be destroyed and the DNA profiles in respect of such persons generated from those samples may be removed from the DNA Database System or destroyed, as may be appropriate.
- (4) Regulations made by the Minister under this section may prescribe different circumstances and different arrangements for the taking or re-taking of samples or the destruction of samples or the destruction, or removal from the DNA Database System, of DNA profiles in accordance with this section in respect of different prescribed persons or different classes of such persons.

Notes:

This Head makes provision for other categories of persons who are considered to be at risk of contaminating crime scene samples in the execution of their duties. It permits the Minister to prescribe persons and any other persons or classes of persons as the Minister considers appropriate. The Minister may make regulations prescribing a range of matters in relation to the taking of samples from such persons and the entry of the related profiles in the elimination index of the DNA Database System.

Head 22 **Direction from Provost Marshal for sample to be taken for elimination purposes**

Provides that:

- (1) If the Provost Marshal has good reason to believe that, in relation to the investigation of an offence, a person specified in subsection (2) 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, of ascertaining whether that person has contaminated that crime scene sample.
- (2) A direction may be given under subsection (1) in respect of any of the following persons, other than a person to whom section 19(3) applies:
 - (a) a member of the Defence Forces;
 - (b) a civilian employee of the Minister;
 - (c) any other person who at the time is subject to Military Law in accordance with sections 118(d), 118(e), 119(c) and 119(d) of the Act of 1954.
- (3) A direction under *subsection (1)* 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.
- (4) A member of the Military Police or an authorised person 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 23* 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 second and further sample under this section 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 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 4*.
- (5) Subject to this Act, a member of the Military Police or an authorised person 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 (1)*.

Notes:

This Head provides that, where the Provost Marshal is of the opinion that a member of the Defence Forces, a civilian employee or any other person subject to military law has or may have contaminated a crime scene sample, the Provost Marshal may direct the person to provide a sample in relation to the particular investigation concerned for the purpose of ascertaining whether the person has contaminated the sample.

Head 23

Re-taking of samples under *Part 3*

Provides that:

Where a sample taken from a person under this Part 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.

Notes:

This Head provides for the re-taking of samples taken under this Part where they prove to be insufficient, are inadequately labelled or for any other good reason. In effect the procedure under which the original sample was taken must be repeated

Part 4

**DESTRUCTION OF SAMPLES AND DESTRUCTION OR
REMOVAL FROM DNA DATABASE SYSTEM OF DNA PROFILES**

Head 24 **Destruction of intimate samples and non-intimate samples in certain circumstances**

Provides that:

- (1) Subject to *section 25*, 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, 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.
- (2) For the purposes of this section the “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)*.

Notes:

This Head sets out the circumstances in which an intimate or non-intimate sample taken from a person is to be destroyed. Where the section applies, the sample concerned is to be

destroyed before the expiry of a period of 3 months from the date on which the applicable circumstance first applied. The circumstances are that the charge against the person was not proceeded with within 12 months for a relevant offence, or if proceeded with: (a) the person was acquitted; (b) the proceedings were dismissed or discontinued or (c) the person's conviction was quashed. In the case of a person where the charge was not proceeded with, the failure to institute proceedings must not be due to the fact that the person absconded or could not be located. The period between the taking of the sample and the expiry of the 3 month period is called the "retention period". This section is expressed as being subject to section 25 as that section permits an extension of the retention period in certain circumstances.

Head 25 **Extension of retention period under *section 24* for intimate samples and non-intimate samples in certain circumstances**

Provides that:

- (1) An intimate sample or a non-intimate sample taken from a person shall not be destroyed under *section 24* 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 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 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, a defendant 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 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 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 24*, 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 that is the subject of the authorisation, 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 (in this section called “the appellant”) 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 Martial, 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 Martial shall give effect to the decision of the Court.

- (9) Nothing in this section shall—
- (a) prevent or restrict the exercise of powers conferred by *section 8* or *9*, 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) a criminal investigation, or
 - (iii) other proceedings.

Notes:

This Head provides a procedure by which the retention period referred to under section 24 may be extended in certain circumstances. The procedure requires the Provost Marshal to determine whether any of the specified circumstances apply. Where he or she so determines he or she may authorise the retention of the sample for a period of 12 months from the expiry of the retention period. The 12 month period is renewable. The determination to extend the retention period must be made before the expiry of the period. The specified circumstances are that:

- the investigation concerned has not been concluded,
- a decision on whether to institute proceedings against the person has not been taken,
- the sample and any results of the forensic tests conducted on it are likely to be required for the prosecution of an offence, or
- the Military Police still have reasonable suspicions regarding the person's involvement in the offence concerned notwithstanding that no proceedings have been instituted or, if instituted, that they did not result in a conviction.

Certain matters to which the Provost Marshal is to have regard, when considering whether this last circumstance applies are set out. They include whether the person has any previous conviction for an offence similar in nature or gravity. Where the Provost Marshal authorises the extension of a retention period he or she is required to cause the person to be notified in writing. Such a person will have 3 months from the date of the notification to appeal to the Summary Court Martial. The appeal will be heard in private.

Head 26 **Destruction of intimate samples and non-intimate samples in exceptional circumstances**

Provides that:

- (1) Notwithstanding *sections 24* and *25*, if the Provost Marshal is satisfied that exceptional circumstances 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 following:
 - (a) it is established, at any time after the detention of the person concerned under any of the provisions referred to in *section 6* 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 detention of the person concerned under any of the provisions referred to in *section 6* 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 detention of the person concerned under any of the provisions referred to in *section 6* for the purposes of the investigation of a relevant offence during which the sample concerned was taken was unlawful.

Notes:

This Head provides that an intimate or non-intimate sample shall be destroyed (other than as permitted by section 24) where the Provost Marshal is satisfied that exceptional circumstances exist. Where this section applies it will not be possible to extend the retention period under section 25. Subsection (2) specifies what constitutes exceptional circumstances.

Head 27 **Destruction of certain samples taken for purposes of DNA database system**

Provides that:

- (1) Subject to *subsection (2)*, a sample taken from a person under *section 7* 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 taking of the sample, whichever occurs later.
- (2) If the Provost Marshal is satisfied that exceptional circumstances exist that justify the destruction of a sample taken from a person under *section 11*, 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 following:
 - (a) it is established, at any time after the detention of the person concerned under any of the provisions referred to in *section 6* 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 detention of the person concerned under any of the provisions referred to in *section 6* 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 detention of the person concerned under any of the provisions referred to in *section 6* for the purposes of the investigation of a relevant offence during which the sample concerned was taken was unlawful.

Notes:

This Head concerns samples taken under *section 7* for the purposes of generating a profile for entry in the reference index of the DNA Database System. Subsection (1) provides that such samples are (if not previously destroyed) to be destroyed as soon as the DNA profile has been generated from the sample or within 6 months of the taking of the sample, whichever is the later. Provision is made in subsection (2) for the destruction of such samples earlier where the Provost Marshal is satisfied that exceptional circumstances apply. Subsection (3) specifies what constitutes exceptional circumstances.

Head 28 **Extension of retention period under *section 24* for certain DNA profiles in reference index of DNA database system in certain circumstances**

Provides that:

- (1) A DNA profile of a person in the reference index of the DNA Database System shall not be removed from that System under *section 27* 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 offences.
- (2) The Provost Marshal may determine under *subsection (1)* that the DNA profile of a person shall be retained in the reference index of the DNA 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; or
 - (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 he or she 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 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, 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 authorization 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 in the case of any person, for a period of more than 6 years from—
- (i) the taking of the sample concerned from the person, or
 - (ii) if appropriate, the date on which that sample is deemed under *section 30* 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, give an authorisation to extend that period.
- (9) 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 that is the subject of the authorisation, 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 (10)*.

- (10) The person to whom the authorisation concerned relates (in this section called “the appellant”) 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.
- (11) An appeal under *subsection (10)* shall—
- (a) be on notice to the Provost Marshal, and
 - (b) be heard otherwise than in public.
- (12) If, on an appeal under *subsection (10)*, 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 Court-Martial.
- (13) The Court-Martial may make such order as to costs as it considers appropriate on an appeal under *subsection (10)*.
- (14) Nothing in this section shall—
- (a) prevent or restrict the exercise of powers conferred by *section 7, 8 and 9*,
 - (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) a criminal investigation, or
 - (iii) other proceedings.

Notes:

This Head provides that the retention period referred to under section 27 may be extended where the Provost Marshal determines that it is necessary to retain the DNA profile concerned in the reference index of the DNA Database System to assist in the investigation and prosecution of offences. The determination to extend the retention period must be made before the expiry of that period.

The matters to which the Provost Marshal is to have regard, when making this determination are specified. They are: whether the investigation concerned has not been concluded or a decision on whether to institute proceedings against the person has not

been taken; whether the Military Police still have reasonable suspicions regarding the person's involvement in the offence concerned notwithstanding that no proceedings have been instituted or if instituted that they did not result in a conviction; and any other matter the Provost Marshal considers appropriate.

Certain matters to which the Provost Marshal is to have regard, when considering whether the person is a person in relation to whom the Military Police still have reasonable suspicions are set out. They include whether the person has any previous conviction for an offence similar in nature or gravity.

Head 29 **Removal in exceptional circumstances of certain DNA profiles in reference index of DNA database system from that system**

Provides that:

- (1) Notwithstanding *sections 27 and 28*, if the Provost Marshal is satisfied that exceptional circumstances exist that justify the removal from the DNA Database System of a DNA profile that was generated from a sample taken from a person under *section 7, 8 or 9* and entered in the reference 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 following:
 - (a) it is established, at any time after the detention of the person concerned under any of the provisions referred to in *section 6* 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 detention of the person concerned under any of the provisions referred to in *section 6* 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; or
 - (c) it is determined by a court that the detention of the person concerned under any of the provisions referred to in *section 6* 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.

Notes:

This Head provides that a DNA profile generated from a sample taken under *section 7, 8 or 9* shall be removed from the reference index of the DNA Database System (other than as permitted by *section 28*) where the Provost Marshal is satisfied that exceptional circumstances exist. The exceptional circumstances are outlined in *section 29(2)*.

Head 30 **Date on which sample under *section 7, 8 or 9* may be deemed to have been taken in certain circumstances**

Provides that:

- (1) This section applies where a sample (in this section called “the first sample”) is taken from a person under *section 7, 8 or 9* while he or she is detained under any of the provisions referred to in *section 6* 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 index of the DNA 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 7* while the person is detained under any of the provisions referred to in any paragraph of *section 6* 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 index of the DNA 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 *section 28(7)* 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 7* may have been taken from the person concerned.

Notes:

This Head deals with the determination of the date on which an initial or subsequent sample is taken under various scenarios.

Head 31 **Destruction of samples taken from persons under sections 19 and removal of their DNA profiles from DNA database system**

Provides that:

- (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 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(3)* applies entered in the elimination (Military Police) index of the DNA Database System shall not be removed from that System until the expiration of the period of 10 years after in the case of a member of the Military Police to whom *section 19(2)* or, the person ceases to be a member of the Military Police, and the DNA profile shall be removed from that System as soon as practicable after that period.
- (3) A person to whom *section 19(2)* 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 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 Database System, not more than 3 months after the receipt by the Provost Marshal of the notice under that subsection.
- (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 why a DNA profile in respect of a person entered in the elimination (Military Police) index or the elimination (crime scene investigators) index of the DNA Database System should not be removed from that System under *subsection (2) or (4)*, the Director 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 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 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.

Notes:

This Head deals with the destruction of samples taken from Defence Forces personnel for the elimination (Military Police) Index and the subsequent removal from the DNA database of the DNA profile.

Head 32 **Dismissal of charges, quashing of convictions and determination of proceedings**

Provides that:

- (1) For the purposes of this Part, a charge against a person in respect of a relevant offence shall be regarded as dismissed when—
 - (a) The time for bringing an appeal against the dismissal has expired;
 - (b) Any such appeal has been withdrawn or abandoned; or
 - (c) On any such appeal, the dismissal is upheld.
- (2) In this Part—
 - (a) references to a conviction of a person for a relevant offence or a sexual offence shall be construed as including references to a conviction of the person for such an offence after a re-trial for that offence, and
 - (b) references to a conviction of a person for a relevant offence or a sexual offence being quashed shall, subject to *subsection (3)*, 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 or a sexual offence.
- (3) A conviction of a person for a relevant offence or a sexual offence shall not be regarded as quashed for the purposes of this Part if an appeal is contemplated, or taken, under section 23 of the Criminal Procedure Act 2010 or, on hearing the appeal, the Supreme Court quashes the acquittal of the person or reverses the decision of the Court of Appeal, as the case may be, and orders the person to be re-tried for the relevant offence or the sexual offence, as the case may be.
- (4) In this Part references to the proceedings in respect of an 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 retrial).

Notes:

This Head provides that a charge against a person shall be regarded as dismissed when the time for bringing an appeal has expired, the appeal has been withdrawn or on the appeal the dismissal is upheld.

Head 33 **Request to FSI or other person to destroy sample or destroy, or remove from DNA database system, DNA profile**

Provides that:

(1) 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 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.

Notes:

This Head provides that where a sample is to be destroyed or a profile is to be removed from the DNA database system the Provost Marshal shall request, or cause to be requested, the Director of FSI or other person having possession of the sample to carry out the necessary actions.

Head 34 **Circumstances in which person to be informed of destruction of sample or destruction, or removal from DNA database system, of DNA profile**

Provides that:

- (1) If, in relation to an intimate sample or a non-intimate sample taken from a person, the retention period under *section 24* is extended on one or more occasions under *section 25*, 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) 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, 20 or 21* or a person acting on their behalf as soon as may be after the sample has been destroyed under this Part of its destruction, or the removal of the DNA profile in respect of the person from the DNA Database System under this Part of its removal from that System, or both.

Notes:

This Head specifies the circumstances in which a person is to be notified of the destruction of a sample or the removal of a profile from the System.

Part 5

MISCELLANEOUS

Head 35 **Sample may be taken from person even if a sample taken previously**

Provides that:

For the avoidance of doubt it is hereby declared that, subject to *section 23*, a sample may be taken from a person under a provision of this Act even if a sample had been taken from the person under—

- (a) the Criminal Justice (Forensic Evidence) Act 1990 and the Act of 2014 or otherwise prior to the commencement of this section, or
- (b) the same or another provision of this Act previously.

Notes:

This Head, in order to avoid any doubt about the matter, declares that subject to particular restrictions specified in the Bill, a sample may be taken under any provision of the Bill even if a sample has been taken from the person previously under the Criminal Justice (Forensic Evidence) Act 1990 or otherwise prior to the commencement of the Bill or under the same or any provision of the Bill.

Head 36 **Delegation of functions of Provost Marshal under this Act**

Provides that:

- (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 the functions of the Provost Marshal under a provision of this Act are 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

Notes:

This Head provides that the Provost Marshal may delegate any of his or her functions under the Bill to members of the Military Police.

Head 37 **Further provision regarding the taking of samples under this Act**

Provides that:

- (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.
- (2) Nothing in this Act authorises the taking of a sample or such identification evidence 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 in custody under any of the provisions referred to in *section 6* while he or she is being questioned under that provision and, if questioning has not been completed before the sample is to be taken, it shall be suspended while the sample is being taken.

Notes:

This Head provides that the person from whom a sample is being taken shall be afforded reasonable privacy and the sample shall not be taken in view of person whose presence is not necessary at the time of the taking of the sample.

Head 38 **Regulations regarding taking of samples**

Provides that:

- (1) Subject to this Act, the Minister may make regulations relating to the taking of samples under this Act.
- (2) Without prejudice to the generality of *subsection (1)*, the regulations may prescribe 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 a Military Police barrack:
 - (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 or an authorised person 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 Database System, or both made under *Part 4*;
 - (vi) a notice sent or given by the Provost Marshal to a person under *section 34*;
 - (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.

Notes:

This Head provides that the Minister shall make regulations relating to the taking of samples.

Head 39 **Protocols**

Provides that:

- (1) As soon as practicable after the commencement of this section, the Director of FSI, shall, by written protocols, make arrangements concerning the following matters:
 - (a) the transmission of samples taken under this Act by the Military Police to FSI;
 - (b) the reporting by the Director of FSI of the results of searches of the DNA Database System to the Military Police;
 - (c) the operation of *Part 4*.

Notes:

This Head provides that the Provost Marshal and the Director of FSI shall by written protocols make arrangements concerning interaction between the Provost Marshal and the FSI.

Head 40 **Disclosure of information**

Provides that:

- (1) Without prejudice to the Official Secrets Act 1963, 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 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;
 - (b) the purpose of a decision whether to institute proceedings for an offence;
 - (c) the purposes of criminal proceedings;
 - (d) the purpose of determining whether it is necessary to take a sample under this Act;
 - (e) the purpose of making the information available to the person to whom the information relates;
 - (f) the disclosure of the information to any person if the person to whom the information relates consents to its disclosure to that person;
 - (g) any other purpose that is prescribed.
- (2) A person who intentionally or recklessly discloses information in contravention of this section shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both.

Notes:

This Head provides that persons who have access to information relating to samples taken under the Act or to information contained in the DNA Database System shall not disclose such information except for the purposes specified in the section or any other purpose that is prescribed. The section provides that a person who intentionally or recklessly discloses information in contravention of the section shall be guilty of an offence. The offence may be tried either summarily or on indictment. The maximum penalty on summary conviction is 12 months and/or a class A fine (€5,000).

Head 41 **Authorisations under this Act**

Provides that:

- (1) An authorisation given under *section 7(2), 8(2)(a), 9(2), 15(2), and 16(3)* may be given orally but, if it is given orally, it shall be confirmed in writing as soon as practicable.
- (2) The Minister may prescribe the form of any authorisation referred to in *subsection (1)*.

Notes:

This Head provides that specified authorisations given under the Bill may be given orally but if given in that manner are to be confirmed in writing as soon as practicable.

Head 42 **Non-compliance by a member of the Military Police with this Act or regulations thereunder**

Provides that:

A failure to observe any provision of this Act or 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 of itself affect the admissibility of any evidence thereby obtained.

Notes:

This Head provides that failure to observe the provision of this Act by a member of the Military Police shall not affect the admissibility of the evidence obtained in accordance with this Act.

Head 43 **Non application of Act**

Provides that:

- (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 the 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 the 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 Database, unless it is provided for in this Act.

Notes:

This Head provides that nothing in the Bill affects the operation of any other enactment that requires a person to provide samples or any powers exercisable by members of the Military Police or other persons under that enactment, or the performance by a person or body (including the Medical Bureau of Road Safety) of any function under that enactment.

Head 44 **Procedures that may be used for transmission of certain samples for forensic testing**

Provides that:

- (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 criminal 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 and section 45—

“crime scene sample” means any substance or material (or a sample thereof) found at, or recovered from, a crime scene with a view to having it forensically tested;

“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.

Notes:

This Head outlines the procedure to be followed for the transmission of samples for forensic testing and that a sealed tamper-evident container must be used in the process.

Head 45 **Provisions relating to evidence in court martial proceedings regarding certain samples**

Provides that:

- (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,
 - (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.
- (3) The Minister may prescribe the form of a certificate under this section.

Notes:

This Head provides in court martial proceeding a certificate signed by a member of the FSI in relation to the forensic sample and that a court martial may require that direct oral evidence on matters stated in the certificate be given. It also provides that the Minister for Defence may regulate the form of a certificate.