

**Garda Síochána Ombudsman
Commission
Code of Practice in accordance with
section 157 of the Criminal Justice
(Forensic Evidence and DNA Database
System) Act, 2014**



Garda Síochána Ombudsman Commission Code of Practice

Pursuant to section 157 of the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014 this Code of Practice provides a practical guide as to the procedures regarding the taking by designated officers of the Ombudsman Commission within the meaning of Part 4 of the Act of 2005 of samples from persons under this Act or causing such samples to be taken.

The Code of Practice document covers the taking of both non-intimate samples (i.e. Saliva (buccal swabs), hair other than pubic hair...) and intimate samples (i.e. blood, pubic hair...) and elimination samples.

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Definitions and Interpretations

In this Code of Practice:-

‘THE ACT OF 2014’ - the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014 shall be referred to as ‘the Act’.

‘THE ACT OF 2005’ means the Garda Síochána Act 2005.

‘CHILD’ - means a person who has not attained the age of 18 years and, for the purposes of sections 32 and 38 of the Act, includes a person who has attained the age of 18 years who is detained in a children detention school in accordance with section 155 of the Children Act, 2001.

‘CODE OF PRACTICE’ means a code of practice that is approved by the Minister under section 157 of the Act.

‘CRIME SCENE’ - a crime scene, in relation to an offence or suspected offence, means all or any of the following (whether within or outside the State):

(a) A place

- (i) where the offence or suspected offence was, or is reasonably suspected of having been, committed, or
- ii) where there is, or may be, evidence of, or relating to, the commission of the offence or suspected offence that was, or is reasonably suspected of having been, committed elsewhere and includes a place that is designated as a crime scene by a direction given under section 5 of the Criminal Justice Act 2006 that is in force;

(b) the body of the victim, whether living or deceased, of the offence or suspected offence;

(c) anything worn or carried by or in contact with the victim, or a person reasonably considered to be a victim, at the time the offence or suspected offence was, or is reasonably suspected of having been, committed;

- (d) the body of any other person who was, or is reasonably suspected of having been, connected with the commission of the offence or suspected offence;
- (e) anything (including a mode of transport) that was, or is reasonably suspected of having been, connected with the commission of the offence or suspected offence.

‘CRIME SCENE SAMPLE’ - means a sample of biological material found at, or recovered from, a crime scene from which a DNA profile in respect of a person may be generated.

‘DNA’ means deoxyribonucleic acid.

‘DNA DATABASE SYSTEM’ shall be construed in accordance with section 59 of the Act of 2014.

‘DNA PROFILE’ has the meaning it has in section 2 (1) of the Act of 2014. 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.

‘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, a 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 a sample taken, or to be taken, from a person under Section 12 of the Act which includes a sample of blood, pubic hair or urine; a swab from a genital region or body orifice other than the mouth; or a dental impression.

‘NON INTIMATE SAMPLE’ - means a sample taken, or to be taken, from a person under Section 13 of the Act which includes a sample of saliva, hair (other than pubic hair), a nail, or any material found under a nail; a swab from any part of the body including the mouth but not from any other body orifice or genital region; or a skin impression.

A skin impression, in relation to a person, means in this case any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his or her foot or of any other part of his / her body.

‘NOTICE’, SERVICE OF - when a notice is required to be served upon a person under the Act and consequently, under this Code of Practice, it shall be served by service in person, hand delivery or registered post to the person concerned or his / her solicitor. This shall be carried out according to Section 163 of the Act which directs that a notice shall be delivered:

- i. by delivering the notice to the person or his / her solicitor;
- ii. by addressing the notice to the person and leaving it at the address at which he / she normally resides or, in a case in which an address for service has been provided, at that address or, by addressing it to his / her solicitor and leaving it at the solicitor’s office;
- iii. by sending the notice to the person by registered post to the address at which he / she normally resides or, in a case in which an address for service has been provided, to that address or to his / her solicitor’s office.

‘PROTECTED PERSON’ – a person (including a child) who by reason of a mental or physical disability:

- (a) lacks the capacity to understand the general nature and effect of the taking of a sample from him / her or

(b) lacks the capacity to indicate (by speech, sign language or any other means of communication) whether or not he / she consents to a sample being taken from him / her.

A mental or physical disability in relation to a person (including a child) shall be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances i.e. intoxication resultant from alcohol, drugs, solvents, any other substance / combination of substances shall, not, for the purposes of this Act, cause a person to be considered a protected person.

'REGULATIONS' means in accordance with regulations regarding taking of samples as per section 156 of the Act of 2014

Background

The Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014 was enacted 22nd June 2014 and will commence on 20th November 2015.

It will create a DNA Database System that shall be used for the investigation and prosecution of criminal offences. It will also be utilised in finding or identifying missing persons, the identification of seriously ill or severely injured persons who are unable by reason of the illness or injury to indicate their identity and in the identification of the bodies of unknown deceased.

Section 98 of the Garda Síochána Act, 2005, provides that a designated officer of the Garda Síochána Ombudsman Commission has, for the purposes of the investigation, all the powers, immunities and privileges conferred and all the duties imposed on any member of the Garda Síochána by or under any enactment or the common law, including:

The taking of bodily samples or other things from a person for the purpose of forensic testing.

Samples taken under the Act of 2014 require that they are taken in accordance with section 156 of the Act of 2014 and the Regulations regarding the taking of samples.

Forensic Science Ireland (FSI) are the custodians of the DNA Database System and responsible for the establishment and operation of the DNA Database System. The responsibility for the taking of samples, safe custody and transmission to FSI for processing and the instruction to destroy profiles rests with the Ombudsman Commission. A protocol exists between GSOC and FSI in accordance with section 158 of the Criminal Justice (Forensic Evidence and DNA Database System) Act, 2014.

In the protocols as per section 108 (a) of the Act of 2005 and agreement on operational matters between GSOC and the Garda Síochána, dated 23rd September 2013, there

exists arrangements whereby the Garda Síochána will on request, provide assistance to GSOC. These include:

Part One – Chapter 2

Protocol on the application of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 and 2006

Where GSOC is required to take (bodily) samples from a person detained, an Garda Síochána will, on request, provide assistance to facilitate the taking of these samples.

This assistance will be supervised by a member of an Garda Síochána not below the rank of Inspector.

Part One – Chapter 4 of the protocols concerning the handling of investigations that coincide, shared incidents and scenes, evidence and exhibits required in common between GSOC and an Garda Síochána and the handling and submission of exhibits of potential mutual interest by GSOC and an Garda Síochána.

DNA Database System

The database system is comprised of two divisions –

The Investigative Division which shall contain:

- a. the crime scene index
- b. the Reference Index
- c. the Elimination (Garda Síochána) Index
- d. the Elimination (Crime Scene Investigators) Index
- e. the Elimination (Prescribed Persons) Index

The Identification Division which shall contain the missing and unknown persons index of DNA profiles and information that may be used to identify or describe the person from whose biological material each DNA profile was generated. In the case of the DNA profile of a blood relative of a missing person that is entered in that index, it may be used to associate that DNA profile with the missing person.

The Investigative Division shall contain the following five indexes:

- ***The Crime Scene Index*** shall comprise of the DNA profiles of persons generated from samples of biological material found at or recovered from a crime scene.
- ***The Reference Index*** shall comprise of the DNA profiles of persons generated from samples taken under *Sections 11, 12, 13, 31, 32, 34 & 35* of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014. Samples taken under *Section 27* may, subject to the consent of the volunteer, also be entered into the Reference Index.
- ***The Elimination (Garda Síochána) Index*** shall comprise of the DNA profiles of persons generated from samples of members of An Garda Síochána in relation to the investigation of offences, for the purpose of ascertaining if the member has contaminated a crime scene sample. Profiles generated from these samples will be entered into the Elimination (Garda Síochána) Index of the DNA Database System. *Section 41* of the Act provides for the taking of samples from members,

reserve members, and trainee members / reserve members. Persons who are appointed as members of An Garda Síochána or who are admitted to training for membership of An Garda Síochána after the commencement of *Section 41* of the Act will be obliged to provide a sample in order to generate a DNA profile on the Reference Index of the DNA Database System.

For more information on the Elimination (Garda Síochána) Index see *Section 41* of the Act

- ***The Elimination (Crime Scene Investigators) Index*** shall comprise of the DNA profiles generated from samples of persons who are assigned to duties relating to the investigation or technical examination of crime scenes (or anything found or recovered from crime scenes) in relation to the investigation of offences, for the purpose of ascertaining if the member has contaminated a crime scene sample. Profiles generated from these samples will only be entered into the Elimination (Crime Scene Investigators) Index of the DNA Database System.

For further information on this Index see *Section 42* of the Act.

- ***The Elimination (Prescribed Persons) Index*** shall comprise of the DNA profiles generated from samples taken from the following persons whom the Minister for Justice considers appropriate:

- (a) officers who are assigned to perform duties in the State Pathologists Office;
- (b) members of the staff of the Garda Síochána Ombudsman Commission;
- (c) other persons or class of persons who, by reason of the functions or tasks performed or carried out by them, may inadvertently contaminate crime scene samples.

Such samples will only be taken for the purpose of generating a DNA profile in respect of the prescribed person, in relation to the investigation of offences, in order to ascertain if that person has contaminated a crime scene sample.

The Identification Division explained:

The Identification Division of the DNA Database System will comprise of the missing and unknown persons index of DNA profiles and information that may be used to:

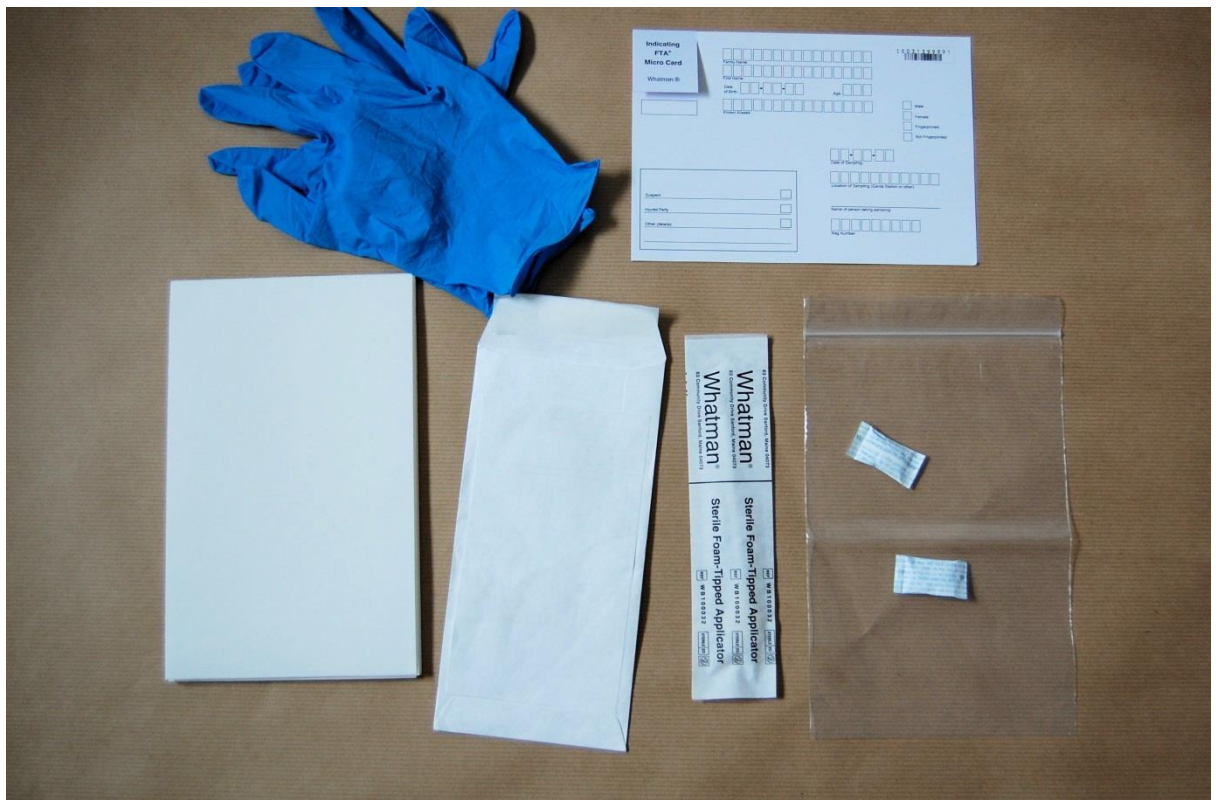
- (a) identify / describe a person from whose biological material a DNA profile was generated (pursuant to *Sections 48, 49 & 50* of the Act) and;
- (b) associate that DNA profile with a missing person where the DNA profile of a blood relative of that missing person is entered in the index.

Section 26 - Samples not to be taken from persons in custody of An Garda Síochána other than in accordance with Part 2 of the Act (Taking of samples from persons in custody of An Garda Síochána)

Designated Officers shall not take a bodily sample from a detained person other than in accordance with Part 2 of the Act following the commencement of this Part, thus abolishing the common law power to take samples from a suspect in custody with his / her consent.

Procedure for taking of DNA sample

1. This is the procedure which the Designated Officer should undertake in order to obtain a DNA sample. The DNA sample can only be taken if authorised in accordance with the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 and the appropriate forms have been completed.
2. Obtain an FTA kit which contains:
 - Protective sheet
 - Gloves
 - Sample card and form
 - Swab
 - Envelope for used swab
 - Self-seal envelope for sample card and form
 - Desiccant sachets for item 6

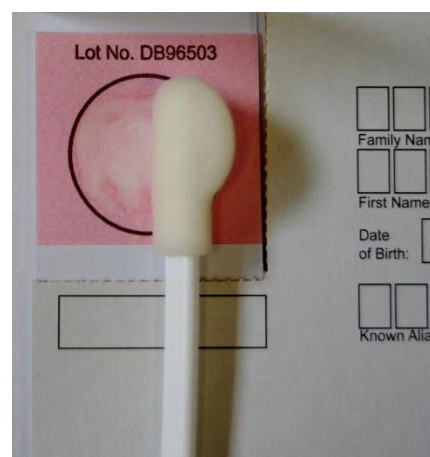
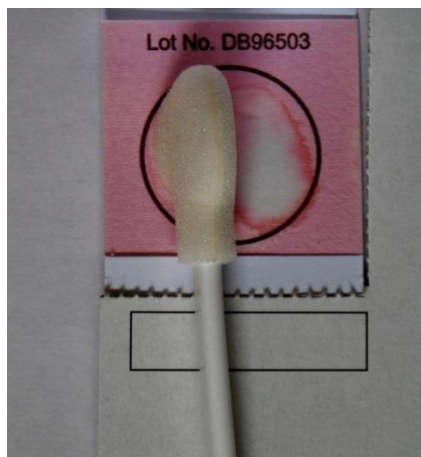


3. Ensure no food or drink consumed 20 minutes prior to sample taken.

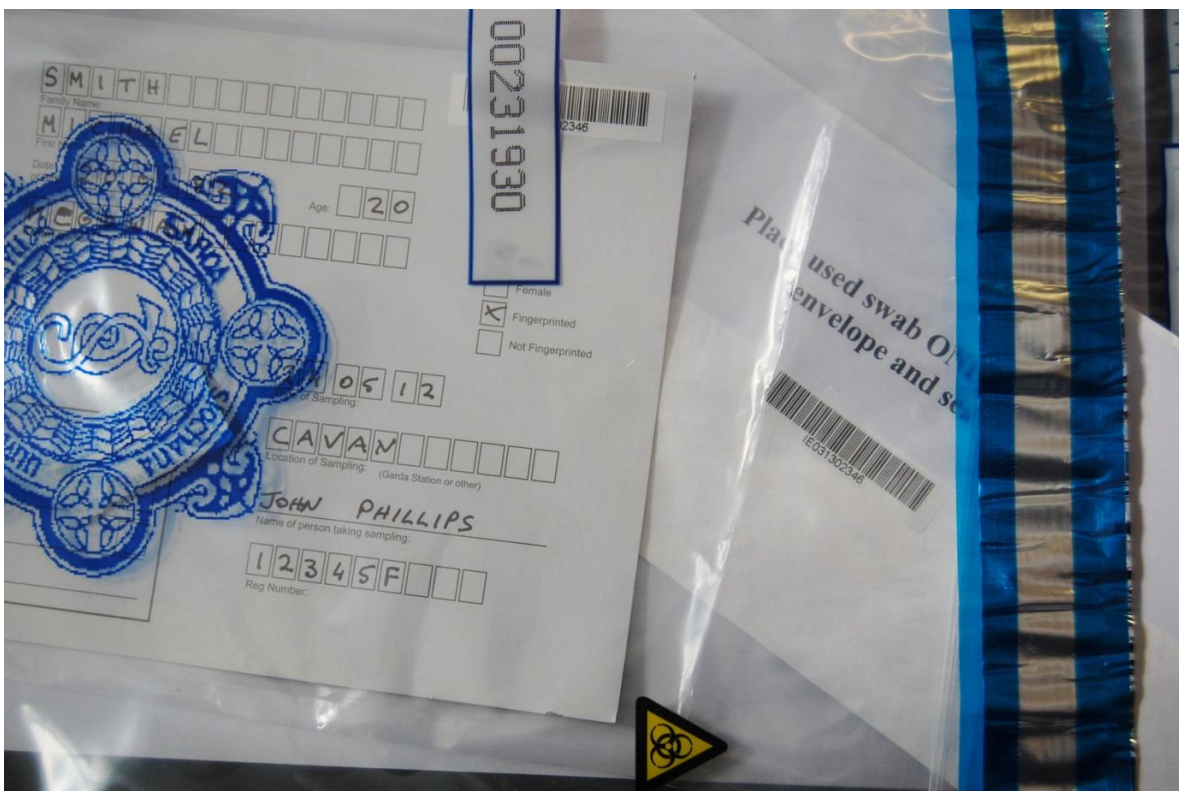
4. Show sterile FTA kit as provided to GSOC by Forensic Science Ireland (FSI) to the person who is providing the DNA sample.
5. Explain procedure clearly and ensure the person understands.
6. Gloves worn. Do not talk during process to reduce risk of cross contamination.
7. Buccal cells (saliva) taken from inside of each cheek using a foam applicator. Up to 30 seconds per cheek.
 - Foam applicator rolled onto FTA card



Press swab firmly on pink sample card. **Roll** from side to side. **DO NOT RUB** as it tears the paper! Apply both sides of the swab. Paper changes colour on transfer.



8. Foam applicator then placed into envelope and sealed.
9. FTA card details filled in and sealed in self seal envelope with desiccant sachets.
10. Seal envelope with swab and self-seal envelope with sample card and form in Tamper Evident Plastic Bag for transport to the FSI.
11. Register the DNA sample on the CMS and record the exhibit on the drop down menu as DNA.
12. The sample may be stored at room temperature.



Powers to take samples from persons in custody of Garda Síochána

Section 9 of the 2014 Act states (1) where a person is detained under any of the following provisions, a sample under *section 11*, an intimate sample or a non-intimate sample or more than one sample may be taken from the person:

- (a) section 30 of the Offences Against the State Act, 1939;
- (b) section 4 of the Criminal Justice Act, 1984; *this section applies to any offence for which a person of full age and capacity and not previously convicted may, under or by virtue of any enactment, be punished by imprisonment for a term of five years or by a more severe penalty and to an attempt to commit any such offence.*
- (c) section 2 of the Criminal Justice (Drug Trafficking) Act of 1996;
- (d) section 42 of the Criminal Justice Act 1999;
- (e) section 50 of the Criminal Justice Act of 2007;
- (f) section 16 or 17 of the Criminal Procedure Act 2010.

(2) For the avoidance of doubt it is hereby declared that a reference to any statutory provision specified in a paragraph of *subsection (1)* under which a person may be detained shall include a reference to any other statutory provision pursuant to which a person may be arrested again and detained and which applies the first-mentioned statutory provision or another of the statutory provisions specified in *subsection (1)* with or without modification in relation to such detention.

Section 12 – Taking of intimate samples from persons in custody of An Garda Síochána

Legislation:

A sample may be taken under Section 12 of the Act for the purpose of forensic testing and, if appropriate, the generation of a DNA profile to be entered in the Reference Index of the DNA Database System if the person is detained under one of the following detention provisions:

- (a) Section 30 of the Offences Against the State Act, 1939;
- (b) Section 4 of the Criminal Justice Act, 1984
- (c) Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996;
- (d) Section 42 of the Criminal Justice Act, 1999;
- (e) Section 50 of the Criminal Justice Act, 2007;
- (f) Section 16 or 17 of the Criminal Procedure Act, 2010.

The sample is taken for forensic testing purposes and for evidential purposes in any proceedings.

An intimate sample may be any of the following:

- (a) blood,
- (b) pubic hair,
- (c) urine,
- (d) a swab from a genital region or a body orifice other than the mouth,
- (e) a dental impression.

Persons authorised to take intimate samples

Under Section 18 the following provisions shall apply in relation to the taking of intimate samples:

- A sample of blood, pubic hair or a swab from a genital region or a bodily orifice other than the mouth shall only be taken by a registered medical practitioner or a registered nurse.
- A dental impression shall only be taken by a registered dentist or registered medical practitioner.
- An intimate sample other than a sample of blood or a dental impression shall, insofar as is practicable, be taken by a person who is of the same sex as the person from whom the sample is being taken.

Code of Practice:

- Person must be detained under specified detention provisions as outlined in *Section 9(1)*.
- Authorisation to take an intimate sample to be given by a GSOC Commissioner provided he / she has reasonable grounds

>> DNA Form 12(2)(a) refers <<

- (a) for suspecting the involvement of the person from whom the sample is to be taken in the commission of an offence for which he / 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.

- The person from whom the sample is sought must provide appropriate written consent to same.

>> DNA Form 12(2)(b) refers <<

Before consent is sought the member seeking the consent must inform the person from whom the sample is sought of the following:

>> DNA Form 12(5) refers <<

- (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 an intimate sample has been granted by a GSOC Commissioner and the grounds on which it has been given;
- (c) if an intimate sample has already been taken under *Section 12* and is insufficient¹, a new authorisation to take a second sample will not be

¹ An **insufficient sample** may result from:

- (a) the loss, destruction or contamination of the whole or any part of the sample;
- (b) any damage to the whole or a part of the sample;

required if the insufficiency is apparent within 1 hour of taking the first sample. After 1 hour a new authorisation may be given under Section 25;

- (d) that the results of the forensic testing of the sample may be given in evidence in any proceedings;
- (e) if appropriate, the sample will be used to generate a DNA profile to be entered in the Reference Index of the DNA Database System the effect of such an entry²;
- (f) that the sample, or the DNA profile generated from 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;
- (g) that the sample may be compared (under Section 145 of the Act) with evidence taken from a crime scene, including crime scene samples, received from a law enforcement agency³;
- (h) that the sample may be destroyed, and (if appropriate) the DNA profile entered in the Reference Index of the DNA Database System may be removed from that System in accordance with Part 10 of the Act.

Withdrawal / Refusal of consent in taking an intimate sample under Section 12:

Express withdrawal of consent, either before or during the taking of an intimate sample, shall be treated as a refusal to give consent. Withdrawal of consent may be deduced from the behaviour of the person before or during the taking of a sample. Once a sample has been taken it is not possible for the person to withdraw consent. Withdrawal of consent shall be recorded in writing by a Designated Officer as soon as is practicable.

(c) the use of the whole/part of the sample for analysis which produced results some or all of which have to be regarded, in the circumstances as unreliable.

² **Effect of the entry of a DNA profile onto the Reference Index of the DNA Database System** – once a DNA profile is generated from a sample it shall be entered onto the Reference Index where it may be compared with the other DNA profiles entered in that index; the DNA profiles entered in the crime scene index, and; the DNA profiles entered in the missing and unknown persons.

³ Law enforcement agency means a police force or other authority in a place other than the State which is responsible for the prevention, detection, or investigation of criminal offences in relation to that place or the International Criminal Police Organisation (Interpol).

Section 19 - Inferences from refusal to consent / withdrawal of consent to taking an intimate sample:

Section 19 concerns the consequences that may follow a refusal to consent / withdrawal of consent to the taking of an intimate sample. Refusal / withdrawal of consent without reasonable cause may give rise to an adverse inference being drawn in subsequent criminal proceedings. Such inference may be treated as corroborating any evidence to which it is relevant however it may not be the main basis for a conviction.

>> DNA Form 19(2) refers <<

Such inferences may only be drawn if

- (a) the accused has been told in ordinary language by the Designated Officer of when seeking his / her consent that
 - the sample was required for the purpose of forensic testing
 - his / her consent was necessary, and
 - if his / her consent was not given, what the effect of a refusal of withdrawal by him or her of such consent might be, and
- (b) he / she was informed before such refusal / withdrawal of consent occurred that he / she had the right to consult a solicitor and that where he / she waived that right, he / she was afforded an opportunity to consult with a solicitor before each refusal / withdrawal occurred.

Inferences may not be drawn from a refusal to give appropriate consent or a withdrawal of such consent by a person from whom an intimate sample is sought, unless the seeking of such consent by a Designated Officer is recorded by electronic or similar means or, the person consents in writing to it not being recorded.

The provisions contained in Article 19 regarding the withdrawal / refusal of consent shall not apply to

- protected persons
- persons who have not attained the age of 14, or
- in the case when consent has been refused / withdrawn, by a parent / guardian of a child unless a District Court judge makes an order under *Section 17(6)* and the child refuses to comply with it.

Section 13 – Taking of non-intimate samples from persons in custody of the Garda Síochána

Legislation:

Section 13 allows a Designated Officer to take a non-intimate sample from a person for purposes of forensic testing and, if appropriate, the generation of a DNA profile to be entered in the Reference Index of the DNA Database System if the person is detained under one of the following detention provisions:

- (a) Section 30 of the Offences Against the State Act, 1939;*
- (b) Section 4 of the Criminal Justice Act, 1984*
- (c) Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996;*
- (d) Section 42 of the Criminal Justice Act, 1999;*
- (e) Section 50 of the Criminal Justice Act, 2007;*
- (f) Section 16 or 17 of the Criminal Procedure Act, 2010.*

A sample is taken under this Section for purpose of forensic testing in the investigation of a crime and for evidential purposes in respect of any proceedings. If a sample taken is one which may be used to generate a DNA profile then the sample can also entered onto the Reference Index of the DNA Database System.

A non-intimate sample may be any of the following:

- (a) saliva;
- (b) hair, other than pubic hair;
- (c) a nail;
- (d) any material found under a nail;
- (e) a swab from any part of the body including the mouth but not from any other body orifice or genital region;
- (f) a skin impression.

Code of Practice:

- Person detained for a relevant offence under one of the specified detention provisions.
- Authorisation to take a non-intimate sample under Section 13 of the Act shall only be given by a GSOC Commissioner, provided he / she has reasonable grounds –

>> DNA Form 13(2) refers <<

- (a) for suspecting the involvement of the person in the commission of an 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
- Before a Designated Officer takes a non-intimate sample from a person the Designated Officer shall inform the person of the following:

>> DNA Form 13(5) refers <<

- 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 take a sample has been granted by a GSOC Commissioner and the grounds on which it has been given;
- iii. if a non-intimate sample has already been taken under *Section 13* and is found to be insufficient or inadequately labelled⁴, a new authorisation to take a second sample will not be required if the insufficiency is apparent within 1 hour of taking the first sample. After 1 hour a new authorisation may be given under *Section 25*
- iv. that the results of the forensic testing of the sample may be given in evidence in any proceedings;
- v. if appropriate 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 that entry⁵;

⁴ An **insufficient sample** may result from:

- (a) the loss, destruction or contamination of the whole or any part of the sample;
- (b) any damage to the whole or a part of the sample;
- (c) the use of the whole/part of the sample for analysis which produced results some or all of which have to be regarded, in the circumstances as unreliable.

Inadequately labelled means incorrectly labelled or labelled in such a manner that it is not possible identify with certainty the person from whom the sample was taken.

⁵ **Effect of the entry of a DNA profile onto the Reference Index of the DNA Database System** – once a DNA profile is generated from a sample it shall be entered onto the Reference Index where it may be compared with

- vi. that the sample, or 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 of the State) as provided for in or permitted by this Act;
- vii. that the sample may be compared (pursuant to Section 145 of the Act) with evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency⁶;
- viii. that the sample may be destroyed, and (if appropriate) the DNA profile generated entered in the Reference Index of the DNA Database System may be removed from that System in accordance with Part 10 of the Act;
- ix. if appropriate, if the person fails or refuses to allow the sample to be taken from him / her, reasonable force may be used in accordance with Section 24 of the Act to take the sample.

Reasonable force:

Reasonable force pursuant to Section 24 is permitted in certain circumstances when taking a sample under Section 13.

- Should reasonable force be considered necessary to take a sample under Section 13 or to prevent the loss, destruction or contamination of a sample, authorisation must be obtained from a GSOC Commissioner before this power is exercised.

>> DNA Form 24(3) refers <<

- Where it is intended to exercise reasonable force in this circumstance the Designated Officer concerned must inform the person of the intention and that an authorisation to do so has been granted.

>> DNA Form 24(4) refers <<

- A sample taken using reasonable force must be conducted in the presence of a GSOC Commissioner. Assistance will be provided by the Garda Síochána to GSOC in accordance with the protocols as Designated Officers will not use

the other DNA profiles entered in that index; the DNA profiles entered in the crime scene index, and; the DNA profiles entered in the missing and unknown persons.

⁶ Law enforcement agency means a police force or other authority in a place other than the State which is responsible for the prevention, detection, or investigation of criminal offences in relation to that place or the International Criminal Police Organisation (Interpol).

force in such circumstances. A member of the Garda Síochána not below the rank of Inspector shall determine the number of members of the Garda Síochána that is reasonably necessary to take a sample using reasonable force as is considered necessary.

Section 25 – Re-taking of certain samples in certain circumstances

Legislation:

Section 25 sets out the circumstances where a sample which has proved to be insufficient or inadequately labelled⁷ may be retaken.

In certain circumstances a sample may prove to be insufficient and the need to retake the sample arises. Insufficient in relation to a sample means that the sample is insufficient in quantity or quality for the purpose of enabling information to be produced from it by means of analysis or for it to be used for forensic testing. Different procedures apply depending on

- (a) whether the insufficiency becomes apparent while the person is still in detention or after he / she has been released and
- (b) the type of sample

In the case of Section 11, 12 & 13 samples if an insufficiency becomes apparent within 1 hour of the sample being taken, reauthorisation to retake the sample shall not be necessary provided the person concerned is still in custody (see Section 3).

Reauthorisation under Section 25 can only be given once during a period of detention.

Code of Practice:

- Person detained for a period under the prescribed provisions pursuant to Section 9
- Section 11 sample – if sample taken during period of detention proves to be insufficient or is inadequately labelled, a second sample under Section 11 or a second intimate or non-intimate sample may be taken while the person is still

⁷ An **insufficient sample** may result from:

- (a) the loss, destruction or contamination of the whole or any part of the sample;
- (b) any damage to the whole or a part of the sample;
- (c) the use of the whole/part of the sample for analysis which produced results some or all of which have to be regarded, in the circumstances as unreliable.

Inadequately labelled means incorrectly labelled or labelled in such a manner that it is not possible identify with certainty the person from whom the sample was taken.

detained only an authorisation to give a second sample is given by the relevant rank pursuant to Section 11(2), 12(2) (a) or 13(2).

- Authorisation by a GSOC Commissioner to retake sample may be given on one occasion only during a period of detention under the relevant provisions
- An authorisation by a GSOC Commissioner to retake a sample shall not be necessary if it is apparent within one hour of the first sample being taken that that sample was insufficient / inadequately labelled. If a period of 1 hour has passed a new authorisation will be necessary.
- If a non-intimate sample is taken which proves to be insufficient / inadequately labelled and the person from whom the sample was taken has been released without charge, a second non intimate sample may be taken from the person only if
 - (a) a GSOC Commissioner authorises it and
 - (b) the person attends at a Garda Station or a place specified by a Designated Officer for the purpose of having the second non intimate sample taken from him / her

>> DNA Form 25(3)(i) refers <<

- An authorisation shall not be given to take a second sample unless the GSOC Commissioner authorising it has reasonable grounds
 - i. for suspecting the involvement of the person in the offence for which he / she was detained when the first sample was taken, and
 - ii. for believing that a second non intimate sample will tend to confirm or disprove the involvement of that person in that offence
- Having given authorisation to take a second sample, the GSOC Commissioner may require the person by notice in writing to attend at a specified Garda Station or a place specified by a Designated Officer within one month from the date that the GSOC Designated Officer was informed of the fact that the first non-intimate sample concerned was insufficient / inadequately labelled.
- The written notice to attend at a specified Garda Station or a place specified by a Designated Officer shall give the person concerned a period of not less than 10 days within which he / she shall attend and may direct that the person attend on a specified day, at a specified time / between specified times.

>> DNA Form 25(6) refers <<

- Failing / refusing to comply (without reasonable cause) with a notice to attend allows a GSOC Commissioner to apply to a judge of the District Court for a warrant to arrest the person concerned and detain him / her in a Garda Station for the purposes of taking a second non intimate sample. The detention period under this warrant shall not exceed four hours from the time of arrest and the person must be released from custody once the sample has been taken unless further detention is authorised beyond the provision of the Act.
- The second non intimate sample is not required to be of the same biological material as the first sample.

Section 24 – Use of reasonable force

GSOC personnel are not trained or equipped to apply force or restraint. In the event of a request from GSOC to the Garda Síochána for support, then it will be provided as appropriate.

Section 27 – Taking of samples from volunteers to generate DNA profiles

Legislation:

Under Section 27 of the Act, Designated Officers may request a volunteer (a person other than a person to whom Sections 11, 12, 13, 29, 31, or 32 applies) to have a sample taken from him / her for the purpose of generating a DNA profile in respect 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.

A victim of the offence (or incident that may have involved the commission of the offence) being investigated may be considered a volunteer. Consultation should be made by a Designated Officer with their Senior Investigations Officer if there is any concern as to the status of a person who may be suspected of an offence.

This section does not apply to persons in custody of An Garda Síochána or those to whom Sections 31 & 32 apply (offenders and child offenders).

Code of practice:

- Establish that the person concerned is a volunteer for the purposes of the Section i.e. that the person is not a person to whom Sections 11, 12, 13, 29, 31 or 32 apply.
- Before seeking the consent of the volunteer to take a sample a Designated Officer shall inform the volunteer –
 - (a) that he / she is not obliged to have a sample taken from him / her;
 - (b) in a case in which a sample already taken under Section 27 has proven to be insufficient / inadequately labelled or that other reason (mentioned in Section 30) a second or further sample is required to be taken from him that -

- i. the first sample has proved to be insufficient, was inadequately labelled or that other reason for requiring a second / further sample under this section to be taken as may be appropriate, and
 - ii. that a second or further sample is, in accordance with Section, to be taken from him / her;
- (c) that the sample will be used to generate a DNA profile in respect of the volunteer for the purposes of the investigation of the offence / incident that may have involved the commission of an offence in relation to which it is being taken; and
- (d) that the sample and DNA profile generated from the sample may be destroyed in accordance with *Part 10* of the Act.

In the case of a volunteer who is a protected person or child he / she must be informed of the above, insofar as it is practicable to do so, in a manner and language that is appropriate to the level of understanding of the person (in respect of protected persons) or appropriate to the age and level of understanding in respect of a child (see *Section 53*).

- A volunteer shall, before a sample is taken from him / her, consent in writing to the taking of the sample. The consent shall specify the particular offence / incident which may have involved the commission of an offence that is being investigated to which the consent relates.

>> DNA Form 27(4) refers <<

- Refusal to give consent shall not of itself constitute reasonable cause for a Designated Officer to suspect the person of having committed the offence concerned for the purpose of arresting and detaining him / her under the provisions contained in *Section 9(1)* in connection with the investigation of that offence.
- If applicable, the provisions of *Section 28* should be adhered to when taking a sample from a volunteer.

Consent from Protected Persons / Children

- In relation to the consent of children and protected persons in *Section 27* and *Section 29*, the following shall apply under *Section 54* of the Act:

- (a) Consent in the case of a child who has attained the age of 16 years shall be construed as the written consent of that child
- (b) Consent in the case of a protected person or a child who has not attained the age of 16 years shall be construed as
 - i. in the case of a protected person the written consent of a parent / guardian;
 - ii. in the case of a child who has attained the age 14 years, the written consent of the child and a parent / guardian; and
 - iii. in the case of a child who has not attained the age of 14 years, the written consent of the parent / guardian.
- If consent of a parent / guardian of a protected person or a child (under 16 year) cannot be obtained⁸, a grandparent of adult sibling of the protected person or child may give consent under this Section.
- A GSOC Commissioner may apply to a judge of the District Court for an order (under *Section 56*) to authorise the taking of a sample from a protected person or child if -
 - (a) written consent of a parent / guardian / grandparent / adult sibling of a protected person or child (under 16 years) cannot be obtained, and
 - (b) in the case of a child who is 14 or 15 years old, the child has consented to a sample being taken.
- Certain parents / guardians may be excluded from providing consent, namely that -
 - (a) the parent / guardian has been arrested in respect of the offence;
 - (b) A GSOC Commissioner has reasonable grounds for suspecting the parent / guardian to be complicit in the offence;
 - (c) A GSOC Commissioner has reasonable grounds for believing that the parent / guardian is likely to obstruct the course of justice.

In such cases, and when another parent / guardian is unavailable / inappropriate an application may be made pursuant to *Section 56* of the Act.

⁸ 'Cannot be obtained' means

- (a) that, despite reasonable efforts, a member or Designated Officer is unable to contact a parent/guardian or other relative of the protected person or child to ascertain if he/she consents to the taking of a sample
- (b) that the protected person/child does not have, or a Designated Officer cannot reasonably ascertain (despite reasonable efforts) whether or not the protected person/child has a living parent/guardian or other relative from who consent may be sought.

- A sample may be taken from a volunteer in a place nominated by a Designated Officer or, subject to the agreement of the Designated Officer taking the sample, at a place designated by the volunteer.
- If a volunteer expressly withdraws consent or if the withdrawal of that consent can be inferred from the persons conduct before or during the taking of the sample then that withdrawal will be treated as a refusal to give consent. In this case, such withdrawal shall be confirmed in writing as soon as is practicable.
- In the case of a child who has attained the age of 16 years, withdrawal of consent shall be treated as such. In the case of a protected person or a child who has not attained the age of 16 years, withdrawal of consent shall be construed as:
 - (a) the withdrawal of consent by a parent / guardian / other applicable relative of the person in relation to a protected person, and
 - (b) the withdrawal of consent by both the child and parent / guardian / other applicable relative in relation to a child who has attained the age of 14 years, and
 - (c) the withdrawal of consent of by the parent / guardian / other applicable relative in relation to a child who has not attained the age of 14 years.

Section 28 – Entry of DNA profiles of volunteers into the Reference Index of the DNA Database System

Legislation:

The circumstances in which a DNA profile generated from a sample taken from a volunteer under *Section 27* can be entered in to the Reference Index of the DNA Database System are prescribed in the *Section 28* of the Act. Such profiles shall not be entered into the DNA Database System routinely. Consent in writing must be obtained from the volunteer before a profile generated from a sample taken under *Section 27* is entered into the DNA Database System – consent which is separate to and independent of that consent given under *Section 27*. Please note that a protected person, a child or a person who is reasonably considered to be a victim may not consent to the entry of their DNA profile, generated from a sample taken under *Section 27*, onto the Reference Index of the DNA Database System.

Code of Practice:

- Sample taken from volunteer pursuant to *Section 27*
- A Designated Officer may, at the time a sample is being taken under *Section 27*, inform a volunteer, other than a
 - (a) Protected person,
 - (b) Child,
 - (c) Victim / person reasonably considered to be a victim of the offence / incident being investigated,

that he / she may consent to the entry of his / her DNA profile generated from the sample in the Reference Index of the DNA Database System.

- A Designated Officer shall inform a volunteer of the following before his / her DNA profile is entered on the Reference Index of the DNA Database System:

- (a) That the volunteer concerned is not obliged to consent to his / her DNA profile being entered in the Reference Index of the DNA Database System;
 - (b) The effect of the entry of the DNA profile in that index of the that System⁹; and
 - (c) That the sample taken under *Section 27* from the volunteer concerned may be destroyed if not previously destroyed, and his / her DNA profile entered in the Reference Index of the DNA Database System may be removed from that System, in accordance with *Part 10* of the Act.
- Consent given by a volunteer referred to in this Section shall be in writing.
- >> DNA Form 28(3) refers <<**

⁹ **Effect of the entry of a DNA profile onto the Reference Index of the DNA Database System** – once a DNA profile is generated from a sample it shall be entered onto the Reference Index where it may be compared with the other DNA profiles entered in that index; the DNA profiles entered in the crime scene index, and; the DNA profiles entered in the missing and unknown persons.

Section 30 - Re-taking of samples under Part 3 (Taking of Samples from Volunteers to Generate DNA Profiles)

Legislation:

This Section relates to where a sample is taken from a person under *Section 27* (taking of samples from volunteers to generate DNA profiles) or *Section 29* (taking of samples for mass screening) and that sample proves to be insufficient or inadequately labelled or it is deemed necessary for a second or further sample to be taken, that another sample can be taken.

Code of Practice:

Where a sample taken from a person under *Section 27* or *29* proves to be insufficient or was inadequately labelled or, for any other good reason, a Designated Officer 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 the section concerned.

Taking of samples from members of GSOC for elimination purposes

Legislation:

Section 44 provides for the taking of samples from Prescribed Persons including members of the Ombudsman Commission for the purposes of the Elimination (Prescribed Persons) Index of the DNA Database System. The profiles generated from these samples will only be used in relation to the investigation of offences in order to ascertain if the member has contaminated a crime scene.

Designated Officers who are appointed / admitted as such after the commencement of this section shall be required to provide a sample in order to generate a DNA profile on the elimination (Prescribed Persons) index of the DNA Database System. Before a sample is taken from existing personnel i.e. those already appointed / admitted upon the commencement of this Section, written consent is required.

Code of Practice:

- Designated Officer concerned is identified as existing personnel (upon commencement of this Section) - or as personnel appointed / admitted as such upon commencement of this Section.
- If applicable, obtain written consent from member.

>> DNA Form 44(2) refers <<

- The authorised person taking the sample shall inform the person concerned of the following before the sample is taken as per *Section 44(2)* –
 - i. that the sample is to be taken from him / her under *Section 44*;

- ii. that the sample will be used to generate a DNA profile that will be entered onto the Elimination (Prescribed Persons) Index of the DNA Database System and the effect of that entry¹⁰;
- iii. that the sample may be destroyed and that the DNA profile that has been entered in to the Elimination (Prescribed Persons) Index may be destroyed in accordance with *Part 10* of the Act.

¹⁰ **Effect of the entry of a DNA profile onto the Elimination (Prescribed Persons) Index of the DNA Database System** – once a DNA profile is generated from a sample it shall be entered onto the Elimination (Crime Scene Investigators) Index where it may be compared with the other DNA profiles entered in that index and the DNA profiles entered in the crime scene index.

DNA Forms

DNA Form 12(2)(a)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of Authorisation for taking of intimate samples from persons in custody of Garda Síochána

Section 12(2)(a): Authorisation to take an intimate sample from a person who is detained under the provisions of *section 9(1)*.

I, _____, being a GSOC Commissioner, authorise the taking of an intimate sample from (detainee) _____, who is detained pursuant to *Section 9(1)*, for the purpose 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.

I am satisfied that there are 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.

Signed: _____

Date: _____

DNA Form 12(2)(b)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of Consent for taking of intimate samples from persons in custody of Garda Síochána (person 18 years)

Section 12(2)(b): Consent to the taking of an intimate sample from a person who is detained under the provisions of *section 9(1)*.

I, _____, (donor), _____(DOB) of _____(Address), on the _____(date), do hereby freely consent to permit a Designated Officer to take, or cause to be taken, from me an intimate sample for the purpose of forensic testing, and if appropriate, the generation of a DNA profile in respect of me to be entered in the reference index of the DNA Database System.

I have been informed by _____, (Designated Officer):

- (a) of the nature of the offence in the commission of which it is suspected that I have been involved;
- (b) that an authorisation to take the sample 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 me has proved to be insufficient—
 - (i) that the sample has proved to be insufficient, and
 - (ii) that either:
 - another authorisation under *subsection (2)(a)* is not, by virtue of *section 3(6)*, required, or
 - an authorisation to take a second intimate sample has, in accordance with *section 25(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) that if appropriate, the matters referred to in subsections (2) and (3) of section 19 if that section is to have effect in relation to me;

- (f) that if appropriate, the sample will be used to generate a DNA profile 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, 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 compared under *section 145* with evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency within the meaning of Chapter 7 of *Part 12*; and
- (i) that the sample may be destroyed, and (if appropriate) the DNA profile entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*

Signed: _____

Date: _____

DNA Form 12(5)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Information regarding the taking of intimate samples from persons in custody of Garda Síochána

Section 12(5): Following authorisation to take an intimate sample from a person who is detained under the provisions of *section 9(1)* a Designated Officer will 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, and
 - (ii) that either—
 - (I) another authorisation under *subsection (2)(a)* is not, by virtue of *section 3(6)*, required, or
 - (II) an authorisation to take a second intimate sample from him or her has, in accordance with *section 25(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, the matters referred to in subsections (2) & (3) of *section 19* if that section is to have effect in relation to the person;
- (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 compared under *section 145* with evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency within the meaning of Chapter 7 of *Part 12*; and
- (i) 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*.

I, _____(Designated Officer) have advised (detainee) _____, of the above prior to seeking consent for the taking of intimate samples, for the purpose 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.

Signed: _____

Date: _____

DNA Form 13(2)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of Authorisation for taking of non- intimate samples from persons in custody of Garda Síochána

Section 13(2): Authorisation to take a non-intimate sample from a person who is detained under the provisions of *section 9(1)*.

I, _____, being a GSOC Commissioner, authorise the taking of a non-intimate sample from (detainee) _____, who is detained pursuant to *Section 9(1)*, for the purpose 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.

I am satisfied that there are 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.

Signed: _____

Date: _____

DNA Form 13(5)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Information regarding the taking of non- intimate samples from persons in custody of Garda Síochána

Section 13(5): Following authorisation to take a non-intimate sample from a person who is detained under the provisions of *section 9(1)* a Designated Officer will 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/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 the 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)*, required, or
 - (II) an authorisation to take a second non-intimate sample from him or her has, in accordance with *section 25(1)*, been given under *subsection (2)* and the grounds on which it has been given;
- (d) if appropriate, that if the person fails or refuses to allow the sample to be taken from him or her, reasonable force may be used in accordance with *section 24* to take the sample;
- (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 compared under *section 145* with evidence taken from a crime scene (including crime scene samples) received from a law enforcement agency within the meaning of Chapter 7 of *Part 12*; and
- (i) 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*.

I, _____(Designated Officer), have advised (detainee) _____, of the above prior to seeking consent for the taking of non-intimate samples, for the purpose 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.

Signed: _____

Date: _____

DNA Form 19(2)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Information regarding inferences from refusal to consent, or withdraw of consent, to taking of intimate sample

Section 19(2): Information regarding inferences from refusal to consent, or withdraw of consent, to taking of intimate sample

I, _____, (donor), _____(DOB) of _____(Address), on the _____(date), have been informed by _____, (Designated Officer) that:

- (a) a sample is required for the purpose of forensic testing,
- (b) my consent was necessary, and
- (c) if consent is not given, what the effect of a refusal or withdrawal of such consent might be,

I have been informed before such refusal or withdrawal of consent occurred that I have the right to consult a solicitor and, other than where that right was waived, have been afforded an opportunity to so consult before such refusal or withdrawal occurred.

I have been advised that the seeking of such consent by a member of An Garda Síochána must be recorded by electronic or similar means or that I must consent in writing to it not being so recorded.

I have been cautioned as follows:

“You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence. As you are aware this request for consent to take an intimate sample pursuant to *Section 12(2)* is being recorded and that such recording may be used in evidence. Do you consent to the taking of an intimate sample as previously outlined to you?”

Response: Yes*/No*

Signed: _____

Date: _____

DNA Form 24(3)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of Authorisation to use reasonable force to take a sample under *section 11* or non-intimate sample

Section 24(3): Authorisation to use reasonable force to take a sample under *section 11* or non-intimate sample

I, _____, being a GSOC Commissioner, authorise the use of reasonable force in the taking of a DNA sample from (detainee) _____, pursuant to *Section 11* or *Section 13* where he*/she* has failed*/refused* to allow a sample to be taken. I deem it necessary to use such force as is reasonably required to take the sample and/or to prevent the loss, destruction or contamination of the sample.

Signed: _____

Date: _____

DNA Form 24(4)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Information regarding the authorisation to use reasonable force to take a sample under *section 11* or non-intimate sample

Section 24(4): Information regarding the authorisation to use reasonable force to take a sample under *section 11* or non-intimate sample

I, _____ (Designated Officer), have advised (detainee) _____, with regard to the taking of the sample pursuant to *Section 11* or *Section 13* by means of reasonable force where he*/she* has failed*/refused* to allow a sample to be taken, of following:

- (a) the intention to use such force as is reasonably required to take the sample and/or to prevent the loss, destruction or contamination of the sample, and
- (b) that an authorisation to do so has been given under *subsection (3)*.

Signed: _____

Date: _____

DNA Form 24(10)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Information regarding the use reasonable force to take a sample under section 11 or section 13

Section 24(10): Information regarding the use reasonable force to take a sample under *section 11 or 13*

I, _____, (donor), _____(DOB) of _____(Address), on the _____(date), have been informed by _____, (Designated Officer) that:

- (a) it is intended to use reasonable force to take a sample
- (b) a member of An Garda Síochána not below the rank of Superintendent has authorised the use of reasonable force in the taking of a DNA sample from me pursuant to *Section 11 or Section 13*

I have been advised that the seeking of the sample must be recorded by electronic or similar means.

Signed: _____

Date: _____

DNA Form 25(3)(i)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of Authorisation for re-taking of samples under Part 2 in certain circumstances

Section 25(3)(i): Authorisation for re-taking of samples under *Part 2*

I, _____, being a GSOC Commissioner, authorise the re-taking of a non-intimate sample from (detainee) _____, who was detained pursuant to *Section 9(1)* and in custody*/released without charge within the past 6 months*. I am satisfied that the initial sample taken was proven to be insufficient*/inadequately labelled*.

I am satisfied that there are 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.

Signed: _____

Date: _____

DNA Form 25(6)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Notice to attend a Garda Station for re-taking of samples under Part 2 in certain circumstances

Section 25(6): Notice for re-taking of samples under *Part 2* in certain circumstances

You _____ (detainee),

a person previously detained on _____(date) pursuant to Section (9) of the Act and having had a sample taken under *Section 11(2)*/ 12(2)(a)*/ 13(2)**

are advised that the sample taken was proven to be insufficient*/inadequately labelled* and you are now required to attend _____ Garda Station:

*within 10 working days

*on/between (date/dates)

*at/between (time/time)

for the purpose of having a second non-intimate sample taken from you.

Signed: _____

Date: _____

DNA Form 27(4)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of consent for taking of samples from volunteers to generate DNA profiles

I, _____, (volunteer), _____(DOB) of
_____(Address), on the
_____ (date), do hereby freely consent to permit a Designated
Officer to take, or cause to be taken, from me a non-intimate sample for the purposes
of generating a DNA profile in relation to:

(a) the investigation of a particular offence, namely (details of offence
including date/time/location)_____

or

(b) the investigation of a particular incident that may have involved
the commission of an offence, namely (details of incident
including date/time/location)_____

I have been informed that:

- (a) a 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 a volunteer
has proved to be insufficient or was inadequately labelled or for any other
reason mentioned in *section 30* 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 or further sample is, in accordance with *section 30*,
to be taken from him or her;

- (c) the sample will be used to generate a DNA profile 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) the sample and the DNA profile generated from the sample may be destroyed in accordance with *Part 10*.

Signed: _____

Date: _____

DNA Form 28(3)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form for entry of volunteers in reference index of the DNA Database System

Section 28(3):

I, _____, (volunteer), _____(DOB) of
_____(Address), on the
_____(date), do hereby freely consent to the entry of my DNA profile
generated from the sample taken, under *Section 27*, in the reference index of the DNA
Database System.

I have been informed by _____, (Designated Officer) that:

- (a) I am not obliged to consent to my DNA profile being entered in the reference index of the DNA Database System;
- (b) the effect of the entry of the DNA profile in that index of that System; and
- (c) the sample taken under *section 27* may be destroyed if not previously destroyed, and the DNA profile entered in the reference index of the DNA Database System may be removed from that System, in accordance with *Part 10*

Signed: _____

Date: _____

DNA Form 44(2)

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Form of Consent for taking of samples from GSOC Personnel for Elimination

Index

Section 44 (2): Consent to the taking of a sample from GSOC Personnel for Elimination Index

I, _____, (Designated Officer), on the _____(date), do hereby freely consent to permit a Designated Officer to take, or cause to be taken, from me a sample for the purpose of the generation of a DNA profile in respect of me to be entered in the Elimination Index of the DNA Database System. The purpose of providing this sample is to assist, relating to the investigation of offences, in ascertaining whether or not I have contaminated a crime scene sample.

I have been informed that:

- (a) the sample is to be taken under this section;
- (b) the sample will be used to generate a DNA profile to be entered in the elimination index of the DNA Database System and the effect of such an entry;
- (c) if at any time after the taking of the sample is assigned to duties relating to the investigation or technical examination of crime scenes or anything found at or recovered from crime scenes, the DNA will be transferred from the elimination index to the elimination (crime scene investigators) index of the DNA Database System;
- (d) the sample may be destroyed, and the DNA profile entered in the elimination (Garda Síochána) 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 10.
- (e)

Signed: _____ **Date:** _____

*** Consent only applies to GSOC designated officers appointed prior to commencement of this section**