

FROM THE OFFICE OF THE JUSTICE MINISTER

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

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17 April 2025

Dear Kathy,

Justice Bill – Biometrics

Thank you for your letter dated 4 April 2025, which sought information on the precise factors used to determine the length of each retention period contained in Part 1 of the Justice Bill.

Factors informing retention periods

The Department's aim is to put in place a legislative framework on the retention of fingerprints and DNA that addresses the issues identified by the European Court of Human Rights (ECtHR). The Department developed the proposed model of statutory maximum retention periods, with a review mechanism, after taking account of the following factors:

- The need to move away from blanket indefinite retention.
- The key findings of the Gaughran judgment and legal advice as to how the Department should address its findings.
- The Sunita Mason review of criminal records in Northern Ireland.
- The limited information available on retention regimes in place in other jurisdictions.

- The value of retaining DNA and fingerprints for use in investigating offences (particularly the most serious offences), preventing offending and protecting the public.
- The benefit in putting in place a framework that is not overly complex for the public to understand or the police to administer.

75/50/25 model

Further to the information provided in the Department's response dated 21 March, the Department arrived at the proposed maximum retention periods after considering examples of retention periods used elsewhere in Europe, as detailed in the letter of 21 March. The Department settled on numbers that could be integrated into a model based on severity of offence and age and provide for a graduated approach that was not overly complex to administer. This was a judgement call taken by the Department that resulted in the proposed 75/50/25 model. This was based on the conclusion that the 75/50/25 model, together with a review mechanism, reflected the guidance provided by European Court of Human Rights judgments and the good practice from the various frameworks across Europe.

The Department also took account of the responses to the consultation. The consultation responses mostly fit into one of two groups. The first was that material should be retained for as long as possible (most in favour of indefinite retention) for public safety and crime prevention. The second was that material should only be retained for as long as absolutely necessary. The Department considers that 75/50/25 retention model strikes a fair balance between the two groups.

The retention periods represent the upper legal limit material can be held for, and it is important to note that the legislative framework also provides for a review of the need for ongoing retention of long-term retained material after an initial period of time has elapsed. The Department believes that the proposals strike an appropriate balance between the Article 2 and Article 8 rights engaged in the question of biometric retention.

The Department is confident that the introduction of a robust review mechanism will go some way to alleviate a number of the concerns surrounding the longer retention periods and will ensure the ongoing retention of an individual's DNA and fingerprints is still considered necessary and proportionate. Work is continuing on the review proposals and the details, including the initial period after which a review is to be carried out, will be subject to public consultation in due course.

Other retention periods

A number of the retention periods were included in the uncommenced Criminal Justice Act (NI) 2013 (CJA), which was previously approved by the NI Assembly. The CJA provisions follow equivalent provisions included in Part 1 of the Protection of Freedoms Act 2012, which have been operating in England and Wales since 31 October 2013 without challenge. Given that these retention periods were already in place, the Department decided to re-enact the following retention periods previously contained in CJA:

- 3-year retention period – charged but not convicted
- 3-year retention period – arrested not charged (if prescribed circumstances apply and approved by the Biometrics Commissioner)
- 2-year retention period – penalty notice
- 2-year retention period – prosecutorial fines
- 5-year retention period and 5-years plus length of custodial sentence – under 18s

In relation to the retention period for those with a recordable offence count left on the books, following consultation feedback and legal advice, the Department made a decision to amend initial proposals for a 12-month retention period for all offences to a graduated approach of 3 years for qualifying offences (serious offences) and 12 months for minor offences.

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The Department also included in the Justice Bill a requirement to review the need to review material held for an ongoing investigation after five years. The Department wanted to ensure that material could be retained while an investigation was ongoing but considered that a requirement to review was an important safeguard to ensure that retention was still considered necessary. The Department took account of data on long running investigations and arrived at the five-year period as a proportionate period to reflect the longest investigations and minimise any administrative requirements on PSNI.

I trust you will find this helpful.



**DAVID GRAHAM
DALO**



**Northern Ireland Assembly
Committee for Justice**

David Graham
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

4 April 2025

Justice Bill – Biometric Retention Periods

Dear David

At its meeting on 27 March 2025, the Committee for Justice considered your response of 21 March 2025 in relation to the rationale used for retention periods for biometric data provided for in the Justice Bill.

Members want to understand how the particular timescales were determined and felt that, while the response outlined the information examined when considering retention periods, the response did not specifically show how each retention period was subsequently decided.

The Committee therefore agreed to ask the Department to outline the precise factors used to determine the length of each retention period.

I would appreciate a response by 30 April 2025.

Yours sincerely,

Kathy O'Hanlon

**Kathy O'Hanlon
Clerk to the Committee for Justice**