Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Retention and Destruction of Fingerprints and DNA in Northern Ireland

10 March 2011

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Members present for all or part of the proceedings:
Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Lord Empey
Mr David McNarry
Mr Alban Maginness
Mr John O'Dowd

Witnesses:
Mr Gary Dodds) Department of Justice
Mr David Hughes)

The Chairperson (Lord Morrow):

We welcome Mr David Hughes, who is head of the policing policy and strategy division at the Department of Justice, and Mr Gary Dodds, from the police powers and custody branch. I invite you to make your presentation.

Mr David Hughes (Department of Justice):

The Committee for Justice will be aware that the Department of Justice has been working towards the introduction of a new legislative framework for the retention and destruction of DNA and

fingerprints. Under the current law, the police may retain indefinitely the DNA sample, DNA profile and fingerprints obtained from a person arrested for a recordable offence, irrespective of whether that person is subsequently convicted. The further use of such material is restricted to prevention and detection of crime, investigation of an offence or the identification of a deceased person or body part.

The police currently hold offender and crime scene profiles on a local DNA database. The information on that database is owned by the police, and the database is operated and maintained on their behalf by Forensic Science Northern Ireland. Northern Ireland offender and crime scene profiles are also shared and retained on the UK's national DNA database, which presently holds more than five million profiles. A separate database is maintained by the PSNI for the retention of fingerprints.

In December 2008, the European Court of Human Rights found that the policy in England, Wales and Northern Ireland of retaining indefinitely the fingerprints and DNA of all people who have been arrested but not convicted was in breach of the right to private life under article 8 of the European Convention on Human Rights. That is clearly a highly significant ruling with a profound effect on policing.

Since the court's judgement, significant efforts have been made to put in place corrective measures to address that violation, and new retention provisions for England, Wales and Northern Ireland were contained in the Crime and Security Act 2010, which was passed before the Westminster election. However, those provisions were not commenced here, and they are expected to be repealed in England and Wales. What is now being proposed is a new regime broadly aligned to the current retention policy in Scotland.

The Scottish model is of particular significance because the European Court pointed to that as an exemplar in how its system discriminates between the convicted and the non-convicted and between different types of cases. Scottish law allows only the DNA and fingerprints of non-convicted persons to be retained if a suspect is charged with a serious violent or sexual offence. Even in those cases, samples and profiles must be destroyed after three years, unless the Chief Constable applies through a sheriff to extend that period for further periods of two years.

The legislative proposals that we now intend to consult on in Northern Ireland involve a new regime and material taken under the Police and Criminal Evidence (Northern Ireland) Order 1989 whereby retention periods depend on a number of factors. Those factors include the age of the individual concerned, so that there is a differentiation between juveniles and adults; the seriousness of the offence or alleged offence; whether there has been a conviction; and, for those under 18 years of age, whether it is a first conviction. In all cases, it is proposed that the DNA profile and fingerprints of any person arrested for a recordable offence will be subjected to a speculative search against the databases before being destroyed. That will ensure that those who may have committed crimes in the past and have left their DNA and fingerprints at a scene do not escape justice. For those not convicted of minor offences, it is proposed that there will be immediate destruction of material. Persons arrested but not charged with more serious offences will also have material destroyed immediately unless strict circumstances apply, such as when a victim has been vulnerable or not able or willing to give evidence.

In cases in which a person has been charged but not convicted of a serious offence, it is proposed that his or her fingerprints and DNA will be retained for three years, with the option of a single extension for two years on application to a court. We are proposing that adults convicted of a recordable offence will continue to have their fingerprints and DNA retained indefinitely. Different arrangements will apply for under-18s who are convicted of a first minor offence. In cases in which a juvenile is convicted of a minor offence but does not receive a custodial sentence, his or her fingerprints and DNA will be held for five years. If a conviction involves a custodial sentence of less than five years, the biometric material will be retained for five years plus the length of the sentence.

Juveniles convicted of a serious offence or who receive a custodial sentence of more than five years will have their material held indefinitely, as will be the case if a juvenile is convicted for a second offence. It is proposed that DNA samples of both those convicted and not convicted will be destroyed as soon as a satisfactory DNA profile is derived from the sample and no later than six months from the date on which it was taken. Although the proposals will mean that the fingerprints and DNA of the majority of non-convicted persons will be destroyed, we believe that the police should be able to apply for material to be retained if there is sufficient justification to

retain on the grounds of public protection or national security, subject to strict oversight arrangements.

We believe that those proposals are a balanced and proportionate response to the judgement by the European Court. They will maintain public safety while respecting individual civil liberties. They will also put in place a statutory framework that, in the words of the judgement:

"discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases".

The 12-week public consultation on the proposals is intended to be commenced next week.

Mr McCartney:

I have a number of questions. You said that a person arrested but not charged for a serious offence will have his or her material destroyed immediately unless prescribed circumstances apply. For clarity, what are those circumstances?

Mr Gary Dodds (Department of Justice):

The circumstances that we have in mind are, in particular, when a victim is a vulnerable person, is under 18 years of age or perhaps is not able or willing to give evidence against the suspect.

Mr Hughes:

The specifics of what the prescribed circumstances are have not been settled, but it is clear that they would need to be closely bound and accepted as typical circumstances, as it were.

Mr McCartney:

The briefing states:

"Retention of fingerprints … from persons charged, but not convicted".

If a person was charged and then released before committal or trial, is the DNA retained, or does it have to be a person not convicted or found not guilty?

Mr Dodds:

It would be a person who was arrested and charged, and if the case was not proceeded with and it was a serious offence, the DNA would be retained under the three-year-plus-two arrangement.

Mr McCartney:

If there any conflict there? That might lead to someone being charged and the charges being dropped in a month's time to allow the fingerprints and DNA to be hung on to.

Mr Dodds:

The police would have to have sufficient evidence in the first instance to charge someone. If there was not sufficient evidence, obviously a person would not be charged, and in that instance, there would be immediate destruction.

Mr Hughes:

If somebody were charged and the case was not proceeded with, he or she would be in the same position as someone who was charged, the case had proceeded, and he or she was acquitted — stop me if I am getting that wrong. They are in an equivalent position. The test for a charge, but not for a conviction, would have been met.

Mr McCartney:

The grounds for early deletion include unlawful arrest and mistaken identity. I take it that a conviction overturned in the Court of Appeal would also apply?

Mr Hughes:

Yes.

The Chairperson:

I take it that we would not be discussing this issue at all if it was not one of those hare-brained schemes from the European Court of Human Rights. Or would we?

Mr Hughes:

That would lead me into speculation about where we would be if there was not that judgement. The judgement has clearly triggered the consideration of the retention policy, and we have to act on it.

The Chairperson:

The briefing paper states:

"On 4 December 2008, the European Court of Human Rights found in the case of *S & Marper v UK* that the relevant legislation in England, Wales and Northern Ireland breached the right to private life under Article 8 of the European Convention on Human Rights."

So this is one of those directives. It is not so much home-made legislation but a directive with a strong European ingredient in it. Is that right?

Mr Hughes:

Yes; it is a European Court judgement that is binding.

The Chairperson:

So what you may be saying is that we do not have a big choice.

Mr Hughes:

We have no choice.

The Chairperson:

No choice?

Mr Hughes:

We have to address the violation that the current policy constitutes.

The Chairperson:

Sometimes we may be better doing those things and not discussing them at all, because we do not have a choice. Is that right? This is democracy at work. Does anyone else have any questions? There are no more questions, folks, as I suspected might be the case. Thank you for coming, and have a nice day.