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Republic of Ireland: Biometric Data and Policing

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This Briefing Paper provides further information for the Justice Committee in relation to the approach taken to the retention and destruction of biometric data in the Republic of Ireland held by the Garda Síochána.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Overview

The information below provides an overview of the approach taken in the Republic of Ireland to the retention of biometric data held by the Garda Síochána. This supplementary detail should be read in conjunction with the Research and Information Service Bill Paper on the Justice Bill (NIAR 089-2024).¹

1 Legislative Framework

The retention and destruction of DNA samples and profiles for the DNA Database System in the Republic of Ireland is governed by Part 10 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.

This legislation replaced the statutory arrangements primarily contained in the Criminal Justice (Forensic Evidence) Act 1990 governing the taking of samples for forensic testing for use as evidence in criminal investigations and proceedings. It also provided for the establishment of a DNA database for use by the Garda Síochána as an intelligence source for criminal investigations.² It also amended provisions for the destruction of fingerprints, palm prints and photographs held by the Garda Síochána. Prior to this, the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 was published in January 2010 which attempted to address the issues raised in the European Court of Human Rights case of *S and Marper v United Kingdom* (2008). However, the Bill lapsed following the change of Government in the Republic of Ireland in 2011.

2 Retention and Destruction of Samples

Section 76 provides that an intimate or non-intimate sample will be destroyed within three months if proceedings for a relevant offence are not instigated within 12 months

¹ Northern Ireland Assembly Research and Information Service, [Justice Bill Paper](#) (16 September 2024)

² C O'Briain B.L., [Criminal Justice \(Forensic Evidence and DNA Database System\) Act 2014: An Overview from a Criminal Practitioner's Perspective](#), 15th Annual Prosecutors' Conference (23 October 2014)

of taking the sample or proceedings have been instigated and the person is acquitted, the charge has been dismissed or the proceedings have been discontinued.³ In addition, this applies where a person is subject to an order under section 1 of the Probation of Offenders Act 1907 and has not been convicted of a relevant offence during a period of 3 years from the making of the order or the person's conviction was quashed or declared to be a miscarriage of justice.

Section 77 provides a procedure by which the retention period contained in section 76 can be extended if the Commissioner decides that any of the specified circumstances apply. These are: a decision has not been taken whether to instigate proceedings against the person, the investigation of the offence has not been concluded, the sample or results from it is likely to be needed for the prosecution of an offence connected with the event or all the circumstances of the case and the reasons that no proceedings have been instituted (or if instituted did not result in a conviction) make it necessary to retain the sample.⁴

The Commissioner is to have regard to certain matters when considering whether this last circumstance applies. They include convictions for similar offences, the nature and seriousness of the relevant offence, whether any alleged victim was: a child, a vulnerable person, or associated with the person at the time of the offence, or other matter that the Commissioner considers appropriate. The Commissioner can authorise an extension of the retention period by 12 months which is renewable by a further 12 months if necessary. However, the Commissioner must notify the person in writing and they have a right to appeal within 3 months to a District Court Judge.

Section 79 addresses samples taken from suspects, offenders and former offenders for the purpose of generating a profile for entry into the DNA Database System. Section 79(1) provides that such samples shall, if not previously destroyed, be destroyed as soon as a DNA profile is generated from the sample, or within six months of the taking of the sample, whichever is the later. The legislation also sets out destruction and removal arrangements in relation to samples of Garda personnel,

³ Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013, [Explanatory Memorandum](#)

⁴ Ibid

Forensic Science Ireland staff, prescribed persons and those used for identification purposes. The retention periods for samples are outlined in table 1 below.⁵

Table 1: Sample Retention Periods in Republic of Ireland

Category	Retention Period
Suspects arrested but not convicted	As soon as profile generated from sample or within 6 months of the taking of the sample – whichever is the later
Offenders and Former Offenders	As soon as profile generated from sample or within 6 months of the taking of the sample – whichever is the later
Child Offenders	As soon as profile generated from sample or within 6 months of the taking of the sample – whichever is the later
Volunteers	On request to Commissioner, within 3 months, or within 3 months of end of investigation or proceedings
Identification	On request by blood relative (in the case of a child or protected person the person who gave consent) within 3 months of request, or within 3 months of identifying/ locating unknown/ missing person

⁵ Reproduced from an unpublished Oireachtas Library & Research Service Paper, L&RS Bill Digest: Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013, Bill No. 93 of 2013 (October 2013), page 22. Prepared based on an analysis of the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010. Copies can be requested from library.and.research@oireachtas.ie

Category	Retention Period
Gardaí/FSI staff Prescribed persons	As soon as profile generated or within 6 months of taking of sample, whichever is the later. Where consent required and following request, no later than 3 months after receipt of request

For comparison, Article 63W of the Justice Bill requires DNA samples to be destroyed as soon as a DNA profile has been satisfactorily derived from the sample (including the carrying out of the necessary quality and integrity checks) and no later than 6 months from the date on which it was taken. However, under the Bill samples may be retained for a longer period than six months in certain limited circumstances.

The Explanatory and Financial Memorandum highlights that this could be where it appears to the Chief Constable that, in relation to a qualifying offence, retention is necessary to ensure that key evidence (in the form of DNA samples) remains available for disclosure to the defendant or to respond to an evidential challenge by the defendant.⁶

In addition, the decision to extend the permissible retention period would fall to a District Judge (Magistrates' Court) following an *ex-parte* application made by the Chief Constable. If approved, the District Judge would authorise retention of the material for 12 months, extendable (on one or more occasions) following a further (*inter partes*) application by the Chief Constable. Any material retained in this way would only be available for use in that case and the police would be under a duty to notify the person whose sample was to be retained, including any application for a subsequent order to retain and the outcome.⁷

⁶ Justice Bill (as introduced), [Explanatory and Financial Memorandum](#)

⁷ Ibid

3 Retention and Destruction of Profiles

As highlighted in the previous RaISe Bill paper, a DNA sample contains genetic information and is derived from an individual, often from their cheek or it can be taken from hair or other bodily fluids such as blood, urine or semen. These subject samples can then be processed to produce a DNA profile; these profiles typically consist of 16 numbers plus a sex marker on the UK's National DNA Database.⁸

Section 80 of the Republic of Ireland's Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 should be considered in relation to the retention and destruction of DNA profiles. This section sets out the circumstances in which a DNA profile is to be removed from the DNA database system. This is where profiles have been generated through intimate and non-intimate samples obtained from persons in the custody of the Garda Síochána and samples taken from offenders and child offenders (under sections 11, 12, 13, 31 or 32). A profile must be removed before the expiry of 3 months from the date on which the specified circumstances first applied. These include that proceedings are not instituted against a person, that a person is acquitted or that a conviction is quashed or declared a miscarriage of justice.⁹

Section 81 of the legislation allows the retention period referred to under section 80 to be extended where the Commissioner determines that it is necessary to retain the DNA profile to assist in the investigation or prosecution of offences. The determination to extend the retention period must be made before the expiry of that period. This can be in circumstances where a decision on whether to institute proceedings against the person has not been taken or the investigation concerned has not been concluded. Alternatively, it can involve cases where the Commissioner believes that retention is necessary taking account of the reasons why no proceedings have been instituted or, if instituted, that they did not result in a conviction. The Commissioner shall have regard to a number of specified factors in relation to this, including whether the person has any previous conviction for an offence similar in nature or gravity, the nature and seriousness of the offence,

⁸ Home Office, [Forensic Information Databases Annual Report for 2023-2024](#) (11 October 2024)

⁹ Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013, [Explanatory Memorandum](#)

whether the victim or intended victim was a child or vulnerable person and the age of the person at the time the sample was taken.¹⁰

The maximum extension period permitted is 6 years in the case of an adult or 3 years in the case of a child or protected person. A person must be notified (parent or guardian in the case of a child) in writing in cases where the Commissioner authorises the extension of a retention period. The person may appeal to the District Court against the authorisation within 3 months from the date of the notice. Section 93 allows the Commissioner to apply to the District Court for an order authorising the retention of the profile beyond the retention period.¹¹

Section 31 makes provision for the taking of samples from offenders. Offenders include those serving a sentence before the commencement of section 31, those who are sentenced after commencement and those prisoners transferred to the State under relevant legislation in respect of an offence which corresponds to a relevant offence under the Bill. Offenders also include all those on the sex offenders register.¹² Section 32 relates to child offenders.

The regime also provides a definition of a 'former offender' under the legislation which is similar to that in place for offenders who are not in prison.¹³ This allows for a sample to be sought under Section 34 if a Garda of at least Superintendent rank is satisfied that it is in the interests of the protection of society and desirable for the purpose of assisting in the investigation of offences. Section 33 provides a range of factors which must be satisfied in considering whether an individual should be considered a former offender, including the number of relevant offences or sexual offences of which a person has been convicted and the seriousness of these. In terms of a sample being sought, a person would not be considered to be a former offender if over ten years has passed since the expiry of the sentence for the relevant

¹⁰ Ibid

¹¹ Reproduced from an unpublished Oireachtas Library & Research Service Paper, L&RS Bill Digest: Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013, Bill No. 93 of 2013 (October 2013), page 23. Prepared based on an analysis of the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010. Copies can be requested from library.and.research@oireachtas.ie

¹² Ibid, page 13

¹³ Criminal Justice (Forensic Evidence and DNA Database System) Act 2014, [Section 33](#)

offence of which the person was convicted. In the case of a sexual offence, then the end of the notification period will be relevant.

Section 83 concerns former offenders. This provides that where a sample is taken under Section 34 then a person can apply to the Commissioner to have the profile generated from that sample removed from the DNA Database System. This includes in the event that any conviction used in determining whether a person was a former offender under section 33 has been quashed or declared to be a miscarriage of justice.

Section 84 makes an exception to the indefinite retention arrangements applicable to the DNA profiles of convicted persons entered in the DNA Database System. The exception applies in the case of child offenders (other than those convicted of offences triable by the Central Criminal Court or prescribed by the Minister having regard to their nature and seriousness). A retention period of 4 years or 6 years applies depending on whether the sentence imposed was non-custodial or custodial. The Commissioner may make an application under section 93 to the District Court to retain a profile beyond the period applicable where there is good reason to do so.

It is worth noting that the Irish Human Rights and Equality Commission's observations on the legislation outlined concerns around the "*possible indefinite retention of DNA profiles generated from the samples of adult offenders in the DNA Database System*" in March 2014.¹⁴ However, it acknowledged that there are certain exceptions to this retention and welcomed the exceptions in place under section 84 for DNA profiles generated from the samples of child offenders.

The legislation also provides for the taking of samples from the bodies of deceased persons suspected of having committed a relevant offence under Section 35. Part 5 covers the taking of samples from persons who are considered to potentially be at risk of inadvertently contaminating crime scene samples with their own DNA, such as the Garda Síochána, Forensic Science Ireland, the State Pathologists Office and the Garda Síochána Ombudsman Commission. Part 6 relates to the taking of samples

¹⁴ Irish Human Rights and Equality Commission, [Observations on the Criminal Justice \(Forensic Evidence DNA Database System\) Bill 2013](#) (March 2014)

for identification purposes in relation to missing, seriously ill and unknown deceased persons.

In summary, table 2 below outlines the retention periods for adult profiles, while table 3 sets out retention periods of child or protected person (a person, including a child, who lacks capacity by reason of physical or mental disability) profiles.¹⁵

Table 2: Retention of Adult Profiles in Republic of Ireland

Category	Retention Period
Suspects arrested but not convicted	Permitted retention period from 3 months up to a maximum of 6 years depending on circumstances which apply
Offenders	Indefinite
Volunteers	On request to Commissioner, within 3 months, or within 3 months of end of investigation or proceedings
Identification	On request by blood relative, within 3 months of request, or within 3 months of identifying/ locating unknown/ missing person
Gardaí/ FSI Staff Prescribed Persons	10 years after person has ceased to be a member of staff/Gardaí. Where consent required and following request, no later than 3 months after receipt of request

¹⁵ Tables 2 and 3 reproduced from an unpublished Oireachtas Library & Research Service Paper, L&RS Bill Digest: Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013, Bill No. 93 of 2013 (October 2013), page 23. Prepared based on an analysis of the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010. Copies can be requested from library.and.research@oireachtas.ie

Table 3: Retention of Child or Protected Person Profiles in Republic of Ireland

Category	Retention Period
Suspects arrested but not convicted	Permitted retention period up to a maximum of 3 years
Offenders	4 or 6 years, depending on the type of sentence and subject to certain qualifications (not applicable in relation to an offence triable by the Central Criminal Court or prescribed by the Minister)
Volunteers	On request to Commissioner, within 3 months, or within 3 months of end of investigation or proceedings
Identification	On request by blood relative, within 3 months of request, or within 3 months of identifying/ locating unknown/ missing person

For comparison, the Justice Bill proposes to introduce a '75/50/25-year model' for retention of DNA profiles and fingerprints based on age, severity of the offence and the outcome of the case. Further details on this can be found in the Research and Information Service Bill Paper on the Justice Bill (NIAR 089-2024).¹⁶

¹⁶ Northern Ireland Assembly Research and Information Service, [Justice Bill Paper](#) (16 September 2024)

4 Retention and Destruction of Fingerprints, Palm Prints and Photographs

Section 103 of the legislation provides for the destruction of fingerprints, palm prints and photographs of a person in certain circumstances which have been taken by the Garda Síochána. These will be destroyed no later than three months after the date on which the following circumstances apply: where proceedings for an offence are not instituted against the person within the period of 12 months from the date of the taking of the fingerprint, palm print or photograph. Alternatively, proceedings have been instituted and the person is acquitted, the charge is dismissed or the proceedings are discontinued. A number of other circumstances are also detailed in the legislation.

However, the retention period can also be extended by the Commissioner. This includes where a decision has not been taken whether or not to institute proceedings against the person, the investigation of that offence has not been concluded or where the fingerprint, palm print or photograph is likely to be required for the prosecution of an offence connected with the event. Furthermore, it can also be extended where the Commissioner believes it is necessary to retain the fingerprint, palm print or photograph concerned in connection with the investigation of the offence concerned taking account of all the circumstances of the case and the reasons why no proceedings have been instituted (or if instituted did not result in a conviction).

The Commissioner is to have regard to certain matters when considering whether this last circumstance applies. They include convictions for similar offences, the nature and seriousness of the relevant offence, whether any alleged victim was: a child, a vulnerable person, or associated with the person at the time of the offence, or any other matter that the Commissioner considers appropriate. The Commissioner can authorise retention by a period of 12 months which can be extended again where required.

For comparison, the Justice Bill does not cover custody photos taken by the PSNI. Further details on this can be found in the Research and Information Service Bill Paper on the Justice Bill (NIAR 089-2024).¹⁷

5 Review Mechanism

Furthermore, Section 71 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 also provides for the establishment of the DNA Database System Oversight Committee which oversees the management and operation of the DNA Database System for the purposes of maintaining its integrity and security. The composition of the Committee is set out in Schedule One:

- 6 members, a chairperson and 5 ordinary members;
- The Director of FSI will be an ex officio member;
- The chairperson and ordinary members (other than the Director of FSI) will be appointed by the Minister;
- The chairperson will be an existing or former High Court or Circuit Court judge;
- One ordinary member will be a member of staff of the Data Protection Commissioner who is nominated by the Data Protection Commissioner.¹⁸

The Committee may, if requested by the Minister, review any matter relating to the management and operation of the DNA Database System and must submit a report of any such review to the Minister.¹⁹ Pursuant to Section 95 of the Bill, the Minister is also required to review the part of the Bill which sets out the destruction/retention arrangements for samples and profiles within 6 years, and at any other time considered appropriate.²⁰

¹⁷ Ibid

¹⁸ Unpublished Oireachtas Library & Research Service Paper, L&RS Bill Digest: Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013, Bill No. 93 of 2013 (October 2013), page 24. Prepared based on an analysis of the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010. Copies can be requested from library.and.research@oireachtas.ie

¹⁹ Ibid, page 25

²⁰ Ibid

6 Recent Developments

Separately it is worth noting that the Garda Síochána (Recording Devices) Act 2023 provides the legislative basis for the deployment and use of body-worn cameras by members of the Garda Síochána and the extension of the circumstances in which Closed Circuit Television (CCTV) and Automatic Number Plate Recognition (ANPR) devices may be used by the Garda Síochána.²¹

The draft General Scheme of the Garda Síochána (Recording Devices) (Amendment) Bill 2024²² proposes to insert a new Part, Part 6A, into the Garda Síochána (Recording Devices) Act 2023 to provide for retrospective searching of images which are legally in the possession of An Garda Síochána through the safe and ethical use of facial recognition technology (FRT) in limited circumstances only and in relation to specific serious offences which are subject to a penalty on conviction of up to life imprisonment.²³

The Joint Oireachtas Committee on Justice published its pre-legislative scrutiny report in February 2024 which highlights concerns raised by a number of stakeholders, including the Data Protection Commission, Irish Council for Civil Liberties, Digital Rights Ireland and the Law Society of Ireland.²⁴ The Committee's report recommends that the rationale for introducing FRT be published in parallel with the progression of the legislation. It also calls for greater clarity to be provided from the Garda Síochána around the intended use of FRT.²⁵

Drafting of the Bill is at an advanced stage with an expectation that it would be ready for publication in October 2024.²⁶ However, it was not available at the time of writing and a General Election is expected on 29 November. Since the General Scheme was published, the EU's Artificial Intelligence Act has also been published which contains

²¹ [Garda Síochána \(Recording Devices\) Act 2023](#)

²² [Draft General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2024](#)

²³ Dáil Éireann Written Question on Legislative Programme [38202/24](#) (25 September 2024)

²⁴ Joint Committee on Justice Meeting, [General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill: Discussion](#) (13 February 2024)

²⁵ Joint Committee on Justice, [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2023](#) (February 2024)

²⁶ Ibid, footnote 23

certain regulations related to the use of biometric identification for law enforcement purposes.²⁷

²⁷ Regulation (EU) 2024/1689 of the European Parliament and of the Council, [Artificial Intelligence Act](#) (13 June 2024)