

Response ID ANON-13A8-UFN5-U

Submitted to **Consultation on proposals to amend the legislation governing the retention of DNA and fingerprints in Northern Ireland**
Submitted on **2020-08-28 17:28:16**

Introduction

What is your name?

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What is your organisation?

Organisation:
Ulster Human Rights Watch (UHRW)

Policy Background

Retention of DNA and fingerprints of convicted persons

1 Do you agree/disagree with the aim of this policy proposal?

Strongly Disagree

2 To what extent do you agree/disagree with the proposed maximum periods of retention for DNA and fingerprints of convicted persons?

Strongly Disagree

3 To what extent do you agree/disagree that the proposal is balanced and proportionate?

Strongly Disagree

4 To what extent do you agree/disagree that the policy proposal complies with the judgment of the European Court of Human Rights pertaining to the retention of biometric data of convicted persons?

Strongly Disagree

5 To what extent do you agree/disagree that the retention of biometric data should be subject to periodic review?

Strongly Agree

6 Do you have any other comments? (250 words)

Comments 1:

The issue to be addressed in relation to the retention of biometric data is that of striking a fair balance between the competing public and private interests.

The European Court of Human Rights in the Judgement *Gaughran v. UK* quoting Judgement *Peruzzo and Martens v. Germany* (4 June 2013) did not rule out the possibility of choosing indefinite retention of biometric data (paragraphs 87, 88 and 94). What the Court said was that it is necessary to have relevant guarantees in order to justify the continued retention of data, such as a review mechanism. The Court stated that when establishing the relevant regime the State should take into account the seriousness of the offence, the continuing need to retain the data and the safeguards available to the individual to apply to have the data deleted if conserving the data no longer appears necessary in view of the nature of the offence, the age of the person concerned, the length of time that has elapsed and the person's current personality (paragraph 94). What is essential when the State applies indefinite retention is the existence and functioning of certain safeguards (paragraph 88).

Therefore, the principle of indefinite retention should remain in force, particularly for the most serious violent crimes, such as murder and terrorism and the 75/50/25 year maximum retention periods should not replace it. However, in addition proper safeguards and review mechanisms should be introduced in compliance with the European Court case law.

Periodic review of biometric data of convicted persons

7 Do you agree/disagree with the aim of this policy proposal?

Strongly Disagree

8 To what extent do you agree/disagree with the proposal to introduce a regulation making power within CJA to allow the Department to set out a detailed review mechanism?

Strongly Agree

9 Do you have views on the form the review mechanism might take which may assist the Department in shaping any future Regulations? (250 words)

Comments 2:

The review mechanism should be based on the prevention of crimes or disorder while acknowledging and respecting the individual's right to private and family life.

The regime should provide for 'unconvicted' persons and for convicted persons and the DNA profile regime should be more stringent than that for fingerprints and photographs considering the narrower (DNA profile) and wider (fingerprints and photographs) margin of appreciation given to the State (Gaughran v. UK, paragraph 96).

Safeguards should be included, such as a review mechanism to be implemented at regular intervals by the public authority in charge, to decide on the necessity of retaining the data, depending on the seriousness of the offence.

Individuals should also be given the right to apply to the authority withholding the data pertaining to them if retaining the data no longer appears necessary in view of the nature of the offence, the age of the person concerned, the length of time that has elapsed and the person's current personality. An appeal mechanism before an independent panel should also be made available to the applicant.

Retention of material by virtue of a conviction outside the UK

10 To what extent do you agree/disagree that a conviction overseas should be taken into account for the purposes of retaining DNA and fingerprints in Northern Ireland?

Strongly Agree

11 To what extent do you agree/disagree with the proposed maximum periods of retention for biometric data on the basis of convictions outside the UK?

Strongly Disagree

12 To what extent do you agree/disagree that retention on the basis of a conviction for a recordable offence is the appropriate level?

Strongly Disagree

13 Do you agree/disagree that the retention of biometric data under this proposal should be subject to periodic review?

Strongly Agree

14 Do you have any other comments? (250 words)

Comment 3:

The approach in relation to the retention of biometric data concerning overseas convictions should be dealt with in the same way as UK convictions.

The principle of indefinite retention should apply, particularly for the most serious violent crimes, such as murder and terrorism and the proposed retention of 50 and 25 years should not be introduced. However, in addition appropriate safeguards and a review mechanism should be introduced in compliance with the European Court case law.

Without using the concept of qualifying offences, a simplified regime could be established to deal with the retention of relevant data related to overseas convictions, taking into account the seriousness of the offence and the continuing need to retain the data.

Individuals should also be given the right to apply to the authority withholding the data pertaining to them if retaining the data no longer appears necessary in view of the nature of the offence, the age of the person concerned, the length of time that has elapsed and the person's current personality. An appeal mechanism before an independent panel should also be made available to the applicant.

Retention of material – Left on Books

15 To what extent do you agree/disagree with this policy proposal?

Agree

16 Do you have any other comments? (250 words)

Comments 4:

Since the decision for a particular offence to be 'Left on books' is taken by the court, it should be for the court to decide whether to retain DNA and fingerprints

taken in connection with that offence.

A review mechanism should be operated by the court at regular intervals to decide on the necessity to retain the data, taking into account the nature of the offence, the age of the person concerned and the person's current personality.

Extension of the scope of the Northern Ireland Commissioner for the Retention of Biometric Material

17 To what extent do you agree/disagree that the NI Commissioner for the Retention of Biometric Material should have a wider role in keeping under review the operation of the legislation relating to biometric data?

Strongly Agree

18 To what extent do you agree/disagree that this proposed oversight will complement existing arrangements for the oversight of policing in Northern Ireland?

Agree

19 Do you have any other comments? (250 words)

Comments 5:

These new measures, including the keeping under review of existing and future biometrics for use by the PSNI and other public bodies, will be further safeguards which would strengthen the overall DNA profile, fingerprint and photograph retention mechanisms in compliance with the European Court of Human Rights case law.

Equality Considerations

Privacy, Confidentiality and Access to Consultation Responses

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