

GWENT POLICE AUTHORITY
Equality and Human Resources Committee

Date: 15th June, 2009

Item No: 7d

Heading: Home Office DNA Consultation

Report Author: Chief Executive

SUMMARY

This report provides an overview of the Home Office consultation entitled 'Keeping the Right People on the DNA Database'. An electronic copy of the paper is available on request.

RECOMMENDATION(S)

Members are invited to note the content of the report, and comment on the summary of recommendations to inform a response on behalf of Gwent Police Authority.

1. BACKGROUND

- 1.1 Following a ruling by the European Court of Human Rights (ECHR) in the case of S and Marper v United Kingdom in December 2008, the blanket policy in England and Wales of retaining indefinitely the fingerprints and DNA of all people who have been arrested but not convicted was deemed in breach of Article 8 of the European Convention on Human Rights. Article 8 is defined as the 'right to respect for private and family life'.
- 1.2 The case had previously appeared before the House of Lords, who found that private life considerations protected by Article 8 were not even engaged. The European Court unanimously found that the UK system for indefinite retention of DNA and fingerprints taken from people who have been arrested but not convicted breaches this and therefore decided that the UK's policy of retaining DNA samples and profiles of innocent people is indiscriminate and unlawful.
- 1.3 The consultation paper sets out the Home Office proposals to remove the current "blanket" retention policy and replace it with a DNA retention framework which has the support and confidence of the public and achieves a proportionate balance between the rights of the individual and protection of the public.

2. PROPOSAL FOR CONSIDERATION BY COMMITTEE AND CURRENT POSITION

2.1 The ECHR was particularly concerned by the fact that the current system takes no account of:

- Nature or gravity of the offence originally suspected or the age of the suspected offender;
- That retention is not time-limited;
- There exist only limited possibilities for an acquitted individual to have the data removed from the database or the sample destroyed;
- There is no provision for independent review of the decision to retain; and that arrested persons are stigmatised by being treated in the same way as those convicted of an offence.

2.2 The consultation paper focuses on the details of retention, recognising the important distinctions made in the judgement between cellular samples, which contain an individual's actual DNA, the DNA profiles on the database which simply describe for identification purposes certain non coding (junk) parts of the individual's DNA, and fingerprints. The existing threshold in the Police and Crime Act (PACE) for taking DNA and fingerprints on arrest from a person detained at a police station for a recordable offence is viewed as appropriate and was not called into question by the ECHR.

2.3 The Home Office recommendations for setting out the future framework for retention, destruction and governance of DNA and fingerprints is summarised as follows, along with comments received from ACPO, and preliminary observations on behalf of the police authority:

Summary of Recommendations	Comments on behalf of Force	Comments on behalf of GPA
Samples to be destroyed for all existing and future cases, both for persons arrested and not convicted and for those who have been convicted	Samples could be beneficial in terms of future database upgrade and potential advances in DNA technology. This would need to be balanced against the fact that samples contain a person's complete genetic make up, whereas profiles only reveal a limited amount of information about an individual. Recommendation accepted.	There could be issues around DNA advancement and solving of 'cold cases'; however, in these circumstances, profiles may be sufficient. Recommendation accepted.
Samples to be retained for up to six-months maximum for possible re-examination purposes only. Samples to be destroyed when an effective profile is on the National DNA Database (NDNAD)	Further information regarding the rationale around the six month retention period would be beneficial; this could appear unnecessarily limiting in terms of successfully loading profiles to the database	Six-months could be limiting, and there may be issues around adhering to timescales.
Legacy samples to be destroyed within 12 months of date of commencement of regulations	General approval to principle as above	Agreed
All profiles to be retained for six years for persons arrested	There may be argument as to whether sufficient justification	This may require further rationale for the period

for a recordable offence but not convicted	exists for keeping DNA profiles for non-convictions; opposing this is the view that inroads are made in the fight against crime via DNA technology. The introduction of destruction timescales is agreed	indicated, depending on public response; however, this appears agreeable in principle.
Profiles of persons subject to arrest within that period to be subject to an automatic retention period of a further six years	This will require robust procedures in terms of arrest update, and will no doubt attract attention in respect of arrests not transferred into convictions	As per force comment.
Profiles of persons arrested but not convicted for specified violent or sexual terrorism-related offences or to be retained for 12 years (sic)	There appears to be a typing error in document ("or"), but the additional retention period recommended is agreed	Again, there may be public contention around the time period stated, but the recommendation is agreeable.
Persons over the age of 10 years and under 18 years of age to have profiles deleted at reaching 18 years old whether or not convicted (subject to the violent or sexual offences criteria) unless arrested for a subsequent offence before they reach 18, in which case the rules applicable to adults apply	Unable to comment on detail available in the paper – as it reads this could result in a seventeen year old convicted of an offence having their profile removed on reaching eighteen (which could be the following day). Whilst recognising the need for a different approach for young people, this recommendation would not be supported as it stands	This requires further clarification as there would appear to be a 'loop hole' for those in their seventeenth year, who could escape entry onto the database. Unable to support this recommendation for this reason.
Regulations to set out criteria for making an application for deletion of profiles	Essential but worthy of further consultation prior to introduction	As per force comment.
Six year and twelve year retention periods to start from date of arrest, except in the case of a control date where the period of retention will commence from the date of the order	Agreed	Agreed
Deletion of profiles on the database for persons arrested but not convicted to be applied from six years from the date of commencement of the regulations	Agreed	Agreed
Provide the police with a power to take a sample and fingerprints following arrest if the initial data is not sufficient for profiling or IDENT1 needs (proposal for primary legislation)	Agreed	Agreed
Provide the police with a power to take data post convictions of persons who were not sampled or fingerprinted during the investigation or court process (proposal for primary legislation)	Agreed	Agreed
Provide the police with a	Agreed	Agreed

power to take data from UK nationals and UK residents convicted of violent or sexual offences overseas (proposal for primary legislation)		
IDENT1 database to retain for 6 years for persons arrested but not convicted on all offences; and 12 years for those arrested and not convicted for a violent, sexual or terrorist related offence	No comment received	Agreed
Audit trail of any copying of fingerprints and their use	No comment received	Agreed
Automatic destruction of copies when no longer required for investigative purposes	No comment received	Agreed
Removal of individual's ability to witness destruction of fingerprints	No comment received	No accompanying information is provided as to why this is proposed. Would removal of this right damage public confidence in the system? Unable to support without further information.
Existing volunteer samples to be removed from the NDNAD	No comment received	Agreed
Future profiles and samples to be destroyed when no longer required for investigative purposes	No comment received	Agreed
Future volunteer samples and profiles to be subject to distinct processes from speculative searching on the NDNAD	No comment received	Agreed
Restructuring of the National DNA Strategy Board to have more external, independent membership	No comment received	Agreed
The establishment of a strategic and independent advisory panel to monitor and scrutinise the retention policy and the processes of consideration for destruction of profiles	No comment received	Agreed, as adherence to timescales would need to be rigorously monitored to retain public confidence.
Annual reporting by the independent advisory panel to Ministers	No comment received	Agreed
Quarterly/Annual publication of the key statistics on NDNAD numbers, speculative searches, deletions and applications for deletions	No comment received	Agreed

2.4 Members are invited to comment on the recommendations outlined above, from the point of view of Article 8 of the Human Rights Act, in order to form a fuller response to the consultation. Comments are requested to the Equalities and Research Officer by Friday 3rd July, 2009.

3. STAFFING/PERSONNEL IMPLICATIONS

3.1 There are no staffing/personnel implications associated with this report.

4. FINANCIAL IMPLICATIONS

4.1 There are none rising directly from the content of this report.

5. CONSULTATION

5.1 Consultation has taken place with ACPO as detailed in section 2.3.

6. PROJECT ASSESSMENT FOR EQUALITY AND DIVERSITY MATTERS

6.1 This project/proposal has been considered against the general duty to promote equality, as stipulated under the Police Authority's Equality Scheme, and has been assessed not to discriminate against any particular group. The consultation carries with it an impact assessment which may be found attached to the original document.

7. RISK ASSESSMENT

7.1 There are no risks arising from the content of this report.

8. STAYING AHEAD (2011 REVIEW)

8.1 The matters raised in this report have been considered in the context of the Staying Ahead Project and are not considered to have any direct consequences for the outcomes.

9. CONCLUSION

9.1 The commentary from the force on this consultation will be taken forward by ACPO on behalf of Gwent Police. Police Authorities Wales is proposing an all-Wales response to the paper, which will be informed by comments and feedback from Police Authority Members.

10. CONTACT OFFICER

10.1 Caroline Hawkins, Equalities and Research Officer

11. BACKGROUND PAPERS

11.1 'Keeping the Right People on the DNA Database'; Home Office, May 2009

12. APPENDICES

12.1 None