

Policing and Crime Bill

DNA and Fingerprint Retention

Background

1. At present DNA profiles and fingerprints of those arrested under the Police and Criminal Evidence Act 1984 (“PACE”) can be retained on the basis of previous convictions for any recordable offence in England and Wales (or, if they are arrested under the Terrorism Act 2000, on the basis of such an offence in any part of the UK). However, this information can be retained on the basis of convictions elsewhere only in certain, restricted, circumstances.
2. Firstly, the conviction must be for one of a number of ‘qualifying’ offences (that is, specified serious, mainly sexual and violent, offences). This means that if a person has a conviction elsewhere for an offence such as theft, his or her DNA and fingerprints cannot be retained. Secondly, even where the person has a conviction for a qualifying offence, DNA and fingerprints must be taken specifically in relation to that conviction, rather than it being possible to retain DNA and fingerprints taken on arrest for the current offence.
3. For example, person A is arrested for theft, his DNA and fingerprints are taken, proceedings for that offence are dropped, but it is found he has a previous conviction for theft in England and Wales. The DNA profile and fingerprints taken for the arrest offence can be retained because of the previous conviction. For person B, the same circumstances apply except that in this case he has a previous conviction outside England or Wales for theft. Person B’s DNA profiles and fingerprints cannot be retained, as theft is not a ‘qualifying’ offence.
4. For person C, the same circumstances apply except that he has a previous conviction outside England or Wales for rape. As this is a ‘qualifying’ offence, the police have the power to take and retain person C’s DNA and fingerprints, but they cannot use the DNA profile and fingerprints taken for the arrest offence, rather they have to take a new set. Because of the time taken to get information from other states, the person will usually have been released before any convictions are known, so the police will have to decide whether to locate, re-arrest, re-sample and re-fingerprint the person, or not to exercise the power.
5. The overwhelming majority of arrests take place using the powers in PACE which applies to England and Wales. However, people may also be arrested or detained under powers in the Terrorism Act 2000 (“the 2000 Act”).
6. Schedule 8 to the 2000 Act provides a broadly equivalent regime to that in PACE for the retention and destruction of DNA and fingerprints taken from those detained following arrest under section 41 of the 2000 Act (power to arrest suspected terrorists) or detained for examination under Schedule 7 to

the 2000 Act (port and border controls). The key difference is that the Schedule 8 regime extends to the whole of the UK.

7. The PACE anomaly referred to above (whereby a previous conviction in Scotland would not allow for indefinite retention of material taken from someone arrested in England) would not arise in the context of a person detained under Schedule 8 to the 2000 Act. However, material taken from a person who is detained under Schedule 8 in, for example, England cannot be retained indefinitely if they have been convicted of a relevant offence outside of the UK.
8. About 30% of persons arrested in London and 15% in England and Wales are foreign nationals¹. It is therefore likely there are significant numbers arrested who have convictions elsewhere, whose DNA and prints either cannot be retained, or can be retained only after an unnecessary re-arrest and re-sampling. This makes it harder to solve crimes in which such persons may be involved.

Issues addressed by the DNA and fingerprint retention measures

9. The current situation both poses risks to public protection and results in unnecessary costs to the police. In cases where the police either do not have the power to retain a person's DNA and fingerprints or cannot practically exercise it because resampling is required, it is likely to be more difficult to link offenders to crimes they may commit in future. In cases where the police do decide to retake the DNA and fingerprints, they incur costs in locating, re-arresting, re-sampling and re-fingerprinting the person which could be avoided if they could simply retain the DNA and fingerprints already taken. The Biometrics Commissioner recommended in his 2015 Annual Report that legislation should be taken forward on this issue².

Amendments to PACE and Schedule 8 to the Terrorism Act 2000

10. Clauses x and y of the Bill therefore amend PACE and Schedule 8 to the Terrorism Act 2000 to put retention of DNA and fingerprints on the basis of convictions outside England and Wales onto the same footing as retention on the basis of convictions in England and Wales.
11. The Bill does not allow retention of DNA and fingerprints from persons convicted abroad for acts which are not crimes here. The retention periods for DNA and fingerprints under PACE are set out in the attached table.

**Home Office
July 2016**

¹ <https://www.gov.uk/government/publications/prum-business-and-implementation-case>), page 10

² <https://www.gov.uk/government/publications/biometrics-commissioner-annual-report-2014-to-2015>, paragraphs 68-75

Retention Schedule

Biometric retention periods as defined under the Protection of Freedoms Act 2012³:

Individuals convicted of an offence

Situation	Fingerprint & DNA Retention Period
Adult convicted (including cautions, reprimands and final warnings) of any recordable offence	Indefinite
Under 18 convicted (including cautions, reprimands and final warnings) of a qualifying offence	Indefinite
Under 18 convicted of a minor offence	1 st conviction: Five years (plus length of any custodial sentence), or indefinite if the custodial sentence is five years or more. 2 nd conviction: indefinite

Individuals not convicted of an offence

Situation	Fingerprint & DNA Retention Period
Any age charged with but not convicted of a qualifying offence	Three years + two year extension if granted by District Judge (or indefinite if previously convicted of a recordable offence which is not excluded)
Any age arrested for but not charged with a qualifying offence	Three years if granted by Biometrics Commissioner + two year extension if granted by District Judge (or indefinite if previously convicted of a recordable offence which is not excluded)
Any age arrested for or charged with a minor offence	None (or indefinite if there is a previous conviction for a recordable offence which is not excluded) but speculatively searched against National DNA Database (NDNAD) and national fingerprint database (IDENT1)
Penalty Notice for Disorder	Two years

³ Source: National Police Chiefs' Council, ACRO Criminal Records Office, [Retention Schedule](#)