



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Secondary Legislation: DOJ Briefing

18 June 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Paul Frew
Mr Chris Hazzard
Mr Alban Maginness
Mr Patsy McGlone

Witnesses:

Mr Gary Dodds	Department of Justice
Ms Lorraine Montgomery	Department of Justice

The Chairperson (Mr Ross): I welcome Lorraine Montgomery, head of police powers and HR policy branch, and Gary Dodds, from the Department's police powers and HR policy branch. You will be aware that the meeting is being reported by Hansard. The report will appear on the website in due course. When you are ready, you can brief us on the issue, and, following that, I will open it up to questions.

Ms Lorraine Montgomery (Department of Justice): Thank you for the opportunity to brief the Committee on three SL1s for orders required in readiness for commencement of the new biometric retention framework on 31 October 2015. The Committee will be aware that a complex programme of work has been ongoing to implement the DNA and fingerprint provisions, as set out in schedule 2 to the Criminal Justice (Northern Ireland) Act 2013. That work involves the PSNI, Forensic Science Northern Ireland (FSNI) and the Department. A number of consequential orders need to be made and brought into force in parallel with the coming into operation of schedule 2.

If I may, I will start with the Qualifying Offences (Amendment) Order. Qualifying offences are defined as serious violent, sexual or terrorist offences and are an important aspect of the new biometric retention framework. The DNA profile and fingerprints taken from persons arrested, charged or convicted of qualifying offences will, in certain circumstances, attract an extended biometric retention period than other less serious recordable offences. The order will also add additional offences to the original list of qualifying offences, as inserted into the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) by section 13 of the Crime and Security Act 2010. At present, the list includes only sexual offences currently in force and not equivalent offences under repealed legislation. The order will rectify that and ensure that persons accused now of offences that took place when past legislation was in force will have their biometrics retained under the rules of the new regime. A small number of non-sexual offences have been added, which were not included on the original list.

Secondly, an order is required to give effect to revisions to PACE code of practice D. The revisions will regulate the exercise of additional powers contained in the Crime and Security Act 2010 for police to take DNA and fingerprints in a wider range of circumstances and to reflect the new Criminal Justice Act biometric retention provisions. In particular, the PSNI will have the power to obtain the DNA and fingerprints of persons convicted of serious offences outside Northern Ireland, regardless of whether the conviction occurred before or after the coming into force of the provisions. That is an important public protection measure and will ensure that material from those who are involved in serious crime is retained on the police biometric databases.

Thirdly, a transitional and savings provisions order will be required to ensure that material taken before the commencement of the new biometric retention regime is subject to the same retention rules as material taken after the new legislation is commenced. In effect, that will mean that a quantity of DNA profiles and fingerprints that may no longer be retained under the new framework will be required to be deleted from the respective databases.

At this juncture, I will refer briefly to a paper that the Committee is also scheduled to consider today on an amendment to the transitional order that I have just referred to. The paper sets out the Department's intention to consult on a proposal to take snapshots of the local DNA and fingerprints databases prior to commencement of the destruction process under the Criminal Justice Act. The PSNI has highlighted a risk to the Department that the planned destruction of material under the Criminal Justice Act may undermine the Historical Investigation Unit's (HIU) future biometric search capability and could result in investigative leads being lost to it. Under the proposal, snapshots of the databases would be taken by the PSNI prior to the destruction of relevant material under the new retention rules. The data will then be cleansed of any material relating to individuals born on or after 10 April 1982, which is those who were 16 years or younger on the date of the Good Friday Agreement. That will reduce the amount of data to be retained on the snapshots that would otherwise fall to be destroyed. In the case of DNA profiles, that will be a reduction of about 50%, and, in the case of fingerprint sets, about 20%. The snapshots will be held securely for the exclusive use of HIU, when established. The material which falls to be destroyed in line with schedule 2 to the Criminal Justice Act would then be deleted from police databases.

The Department has taken legal advice and, after careful consideration, believes that the snapshot proposal takes a proportionate approach to strike a fair balance between the competing demands of article 8, a right to privacy, and the state's obligations under article 2. The snapshots will ensure that all possible evidential opportunities are made available to HIU, when established, in order that it can fully discharge its future article 2 responsibilities to conduct investigations into conflict-related deaths. We acknowledge that that is a difficult issue and, for that reason, we are keen to be as transparent as possible and to seek views by consulting widely on the proposal.

We believe that a further transitional provision is required to provide statutory authority for the retention of PACE material in the snapshots until 1 May 2017. A similar statutory authority would be required for the retention of material on the databases taken under the Terrorism Act, which will be covered by a transitional provision put in place at Westminster. That should allow sufficient time for a longer-term provision to be made in the Stormont House Agreement to provide cover for the retention of material until the HIU concludes its work. With the Committee's permission, I suggest that both transitional orders be merged into a single order that can be brought back to the Committee after summer recess following consultation on the snapshot proposal. A revised SL1 will be put to the Committee at that stage.

Finally, I should emphasise that the PSNI will proceed with the deletion of the relevant DNA profiles and fingerprints from police databases in accordance with the new retention rules set out in the Criminal Justice Act (Northern Ireland) 2013. That will ensure that such material is no longer available or searchable for normal policing purposes, thus ensuring compliance with article 8 and the Marper judgment. The Committee can be assured that strict arrangements will be put in place to ensure that the snapshots are retained securely and will be made available only for the exclusive use of HIU in the investigation of conflict-related deaths. The snapshots will not be used for any other purpose and will be destroyed as soon as the HIU has discharged its responsibilities.

We are happy to answer any questions that the Committee has on any aspect of the SL1 that you are considering or indeed the Department's intention to consult on the proposal for snapshots of the databases to be taken for the exclusive future use of HIU.

The Chairperson (Mr Ross): Thank you very much.

Mr McCartney: There is an eight-week consultation period. I want to make the point about people's view of consultation periods over the summer months. Sometimes, you get from the public that they feel that it is a way of rushing something through. I hope that if there is not an extension, there would certainly be a bit of latitude if people were late with their submissions and that the Department would honour that in the holiday period.

Ms Montgomery: We completely understand the concern. We are under some pressure to ensure that the provisions are in place before destruction of the material is required by the end of October. Certainly, we will, where possible, provide latitude with regard to the consultation period.

Mr McCartney: I am sure that we will come back to this in time. Some of the powers that the Department seeks are significant. Would you agree with that?

Mr Gary Dodds (Department of Justice): The powers that it seeks for the snapshot?

Mr McCartney: The whole range of things that you are looking for in relation to this.

Mr Dodds: We are looking for a power only for statutory cover for the retention of material in the snapshot that would fall to be destroyed under the new regime. There are about 33,000 DNA profiles and 91,000 fingerprints that would fall to be destroyed come 31 October. It is the statutory cover that we need for that material.

Mr McCartney: I am not sure whether you are following the discussion on clause 86 of the Justice Bill, which gives the Minister power after legislation has been passed to change it. Is this the type of provision that allows him to do that? Is it already written into the Criminal Justice Act 2013 that the Minister has the power to do that by statutory rule?

Mr Dodds: No.

Mr McCartney: It is not written into it.

Mr Douglas: Thank you for your presentation. I have a couple of questions. One may be a bit hypothetical. Will this cover people who have been released as part of the early-release scheme under the Good Friday Agreement?

Mr Dodds: It will. Presumably, most of the material on people released under the Good Friday Agreement would be terrorism-related. That material will be part of the snapshot.

Mr Douglas: We have not implemented the Stormont House Agreement. If that does not happen, what will the scenario be with regard to the consultation period?

Ms Montgomery: At the moment, we are working on the basis that HIU is formally established. I think that we would have to consider that this, the transitional provision that we are seeking, would allow an 18-month window for that to be addressed. I suppose that we would need to deal with any change in the plans in that period.

Mr Douglas: Obviously costs will be incurred. Who will meet those costs?

Ms Montgomery: The cost of compliance will be met by the PSNI and is budgeted for in its budgets.

The Chairperson (Mr Ross): Are there any other questions? We have let you off easy today.

Are members generally content with the proposed statutory rules?

Members indicated assent.