

A review of DNA legislation, policy and practice in Scotland

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Introduction

- Scotland as a jurisdiction
 - independent legal system and prosecution service
 - criminal appeals dealt with in Scotland
 - Juvenile justice process – Children's Hearings (non criminal)
 - UK, Scottish, English & Welsh, Northern Ireland Legislation
 - Civil Appeals ultimately UK Supreme Court
- Currently 8 police forces (soon to be single national force)
- All forensic science services provided by a single independent agency (Scottish Police Services Authority)
- Detailed differences in DNA law from England & Wales

Terms of reference

- To review the operation and effectiveness of the legislative regime governing police powers regarding the acquisition, use and destruction of forensic data in relation to:
- individuals who are prosecuted for a relevant sexual or violent offence, but not convicted (a) prior to a verdict, or (b) acquitted with a verdict of not guilty or not proven; (c) acquitted on grounds of insanity;
- individuals dealt with by a children's hearing, who accept that they have committed a relevant sexual or violent offence, or are found by a sheriff to have committed such an offence

Terms of Reference cont.

taking account of:

- the views of relevant stakeholders; and
 - available information; and
 - experience elsewhere;
- to identify proportionate options for reforming Scots law, by making appropriate provision for a temporary delay in the destruction of such data, in order to enhance crime prevention and detection capability;

Relevant sexual or violent offences

- A wide range of sexual offences
 - Rape and related offences
 - offences involving children
 - offences involving mentally disordered individuals
- Violent offences
 - Murder, culpable homicide, assault, abduction
 - Fire-raising ('arson')
 - Offences relating to explosives and firearms

<http://www.legislation.gov.uk/ukpga/1995/46/section/19A>

Main issues under consideration:

1. Given that law and practice in relation to DNA and fingerprints differs, should these be brought into line?
2. For those who have criminal proceedings initiated against them for relevant sexual or violent offences but are not convicted; is the current regime for temporary retention of samples appropriate and effective?
3. In relation to individuals who are dealt with by Children's Hearings for relevant sexual or violent offences, is the current law (which does not provide for the sampling or retention of forensic data) appropriate?

The legal situation at the outset

- Following conviction forensic data already on record may be retained indefinitely or may be acquired subsequently and retained indefinitely.
- For any individual who is not convicted following criminal proceedings for a relevant sexual or violent offence, DNA samples and data already on record in relation to this prosecution may be retained for 3 years.
- This period of retention can be extended in increments of two years if approved by a Sheriff. Forensic samples (and therefore data) cannot be subsequently obtained from individuals who were not convicted.
- Forensic samples and data obtained from Individuals who are the subject of proceedings for offences other than relevant sexual or violent offences and not convicted, the samples and data must be destroyed
- Samples and data obtained from individuals for offences that are subsequently not proceeded with must be destroyed except in relation to a relevant sexual or violent offence.

Retention of data from individuals

- Is there support for this approach in general terms?
- Is the period of retention appropriate and justified?
- Given that the legislation is comparatively recent, is it effective?

Research Questions

- What data are available on DNA and fingerprints that might provide general information on their potential or actual contribution to the criminal justice system?
- Are there any data available to inform the specific issues under consideration in this review?
- Are any data available which may inform understanding or evaluation of issues that have arisen as a consequence of the consultation process? An example of such an issue is forensic sampling of persistent young offenders.
- What are the governance and management structures of the Scottish DNA and fingerprint databases?
- What policies and practices are in operation in relation to storage and security of genetic material, and use of data from the databases for research purposes?

Methodology- consultation & data gathering

- The review took into account views, information and data from a wide range of stakeholders.
- Those directly consulted included
 - police service, police authorities, police service providers,
 - organizations involved with Children’s Hearings,
 - legal organizations and associations,
 - academic associations,
 - organizations representing victims of crime and special interest groups (e.g. GeneWatch.)
- Data from Scottish Police Services Authority
- Police forces in Scotland

Recommendations

1. The current governance arrangements for DNA and Fingerprint databases in Scotland should be reviewed as a matter of urgency.
2. Sufficient information regarding the governance and management of forensic databases should be in the public domain to maintain transparency, accountability and public confidence in their use.
3. Given that fingerprints and DNA have common aims in criminal justice terms, their acquisition and retention in legal and procedural terms should be equivalent.
4. Current legislation regarding temporary retention of forensic data and samples, from individuals subject to proceedings for a relevant sexual or violent offence but not convicted, should be retained. However, a national approach which coordinates policies and practices of police forces, SPSA, Crown Office and Procurator Fiscal Service (COPFS) and other relevant agencies, is essential to achieve the aims of the legislation.

Recommendations cont.

5. With the exception of assault (but including serious assault), children who accept they have committed a relevant sexual or violent offence (or who have been found to have done so by a Sheriff) should have DNA and fingerprint samples taken and retained in line with the procedures for adults who are convicted of an offence. This should be based on the offence for which the case is disposed of as opposed to the original grounds for referral to the Reporter.

6. Children who accept they have committed an assault (or who have been found to have done so by a Sheriff), which is sufficiently serious, should have their DNA and fingerprints sampled and retained in line with the procedure for adults who are convicted of an offence. As an interim indication this would include children who have committed assaults which would be categorized as 'grave' by the Reporter.

7. In relation to assault, further work and cooperation is required by relevant agencies (e.g. SCRA, COPFS, and the Police Service) to develop an agreed framework for identifying children that may merit forensic sampling and retention of forensic data on the basis of recommendation 5 above. The rationale for

Developments since review

- Forensic Data Working Group chaired by Scottish Government
<http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/dna-forensics/legislationscotland/FDWGPapers>
- Legislation - Criminal Justice and Licensing (Scotland) Act 2010 incorporating recommendations and specifying offences
<http://www.legislation.gov.uk/asp/2010/13/section/77>
- Process for destruction and application for extended retention
<http://www.scotland.gov.uk/Publications/2011/03/22121351/3>
- New website and data publication for DNA
http://www.spsa.police.uk/services/forensic_services/dna/dna_database
- Governance under consideration in light of major police reform in Scotland but extensive public information now available

Public Information Website

The screenshot shows the website for 'DNA and Forensic Science' on the Scottish Government's public information portal. The header features the Scottish Government logo and the text 'The Scottish Government Riaghaltas na h-Alba'. Navigation tabs include HOME, ABOUT, TOPICS, NEWS, PUBLICATIONS, and CONSULTATIONS. A search bar is located in the top right. The main content area is titled 'DNA and Forensic Science' and includes a DNA double helix graphic. The text explains that forensic evidence like DNA and fingerprints is used in crime investigations and that the public should feel confident about the laws governing this data. A sidebar on the left provides a navigation menu with categories like 'Law, Order & Public Safety', 'Public Safety', and 'Police'. Below the main text, there are several informational boxes: 'How DNA is Used?' with links to 'What is DNA?', 'DNA Samples', 'DNA Profiles', and 'How DNA is collected and used'; 'Solving Crime' with links to 'Why DNA and Fingerprinting is useful in solving crime' and 'The role of DNA and Fingerprints in the investigation'; 'Forensic Data - Your Rights' with links to 'Your right to know' and 'DNA from victims and witnesses'; 'Forensic Databases' with links to 'The Scottish DNA Database' and 'IDENT1'; 'The Law and Governance' with links to 'The legal framework outside Scotland', 'Review of procedures', 'Legislation & Guidance (Scotland)', 'Forensic Data Working Group', and 'Relevant Sexual or Violent Offences'; and 'FAQs and Useful Links' with links to 'FAQs' and 'Useful links'. The footer contains copyright information, privacy policy, and social media icons for YouTube, flickr, and Twitter.

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You are here: Topics > Law, Order & Public Safety > Public Safety > Police > DNA and Forensic Science Search site Search

DNA and Forensic Science

Forensic evidence such as DNA and fingerprints, provides a powerful tool in the investigation and prosecution of crime in Scotland.

The public must feel confident that the laws governing the acquisition and retention of DNA and fingerprint data are proportionate and that appropriate procedures are in place to manage this data.

The Scottish Government publishes and maintains this public information website to provide as much information as possible on the subject of forensic data, the laws surrounding it and the benefits it can bring to the detection and prevention of crime in Scotland.

How DNA is Used?

- [What is DNA?](#)
- [DNA Samples](#)
- [DNA Profiles](#)
- [How DNA is collected and used](#)

Solving Crime

- [Why DNA and Fingerprinting is useful in solving crime](#)
- [The role of DNA and Fingerprints in the investigation](#)

Forensic Data - Your Rights

- [Your right to know](#)
- [DNA from victims and witnesses](#)

Forensic Databases

- [The Scottish DNA Database](#)
- [IDENT1](#)

The Law and Governance

- [The legal framework outside Scotland](#)
- [Review of procedures](#)
- [Legislation & Guidance \(Scotland\)](#)
- [Forensic Data Working Group](#)
- [Relevant Sexual or Violent Offences](#)

FAQs and Useful Links

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Contacts
Email: [DNA TEAM](#)

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Page updated: Tuesday, May 2, 2012 10:56 AM
URL: [http://www.scotland.nhs.uk/forensic-science](#)

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Summary

- Review of effectiveness of DNA database in Scotland
- New legislation and procedures for relevant sexual and violent offences
- New legislation and procedures for ‘offences’ involving children
- Publication of data and increased transparency
- Governance structures still to be fully resolved
- Limited data available of the value that DNA contributes to criminal justice

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[http://www.sipr.ac.uk/downloads/Fraser DNA Report.pdf](http://www.sipr.ac.uk/downloads/Fraser_DNA_Report.pdf)