

*These notes refer to the Criminal Justice Act (Northern Ireland)
2013 (c.7) which received Royal Assent on 25 April 2013*

Criminal Justice Act (Northern Ireland) 2013

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

The retention of fingerprints, samples etc

15. The existing framework for the taking, retention and destruction of fingerprints, DNA samples and the profiles derived from such samples is set out in Part VI of the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACENI”). A DNA sample is a sample taken for analysis, such as a mouth swab, plucked hair roots or blood, which contains the DNA of the individual. The DNA profile derived from the sample is the pattern of DNA characteristics used to distinguish individuals and is stored on the database as a numeric code. etc.
16. The amendments to PACENI made by the Police (Amendment)(Northern Ireland) Order 1995 enabled DNA samples to be taken from anyone charged with, reported for or convicted of a recordable offence, and allowed profiles obtained from such samples to be retained and checked for matches against other profiles obtained from victims or scenes of crime. If the person was acquitted, samples and profiles had to be destroyed.
17. The Criminal Justice and Police Act 2001 further amended PACENI so as to remove the obligation to destroy fingerprints, DNA samples or profiles when a suspect was not prosecuted for, or was acquitted of, the offence with which he or she was charged. The power to take and retain fingerprints, DNA samples and profiles was further widened by the Criminal Justice Act 2003, which allowed a DNA sample to be taken from any person arrested for a recordable offence and detained in a police station, whether or not they were subsequently charged. Any such sample, and the profile derived from it, could be retained indefinitely.
18. In December 2008, in the case of *S and Marper v United Kingdom* [2008] ECHR 1581, the European Court of Human Rights (“ECtHR”) ruled that the provisions in the Police and Criminal Evidence Act 1984 for England and Wales, permitting the indefinite retention of DNA and fingerprints from unconvicted individuals, violated Article 8 (right to privacy) of the European Convention on Human Rights. Northern Ireland has equivalent provisions in PACENI.

19. In particular, the Court was struck by the ‘blanket and indiscriminate’ nature of the power to retain material irrespective of the nature or gravity of the offence with which the individual was originally suspected or the age of the suspected offender. The Court found that retention was not time limited and there existed only limited possibilities for an acquitted individual to have the data removed from the database or materials destroyed. The Court pointed to the current retention policy in Scotland as a model which, in relation to unconvicted persons, discriminated between different kinds of cases and applied strictly defined storage periods for data, even in more serious cases. The equivalent legislation in Scotland is contained in sections 18 to 20 of the Criminal Procedure (Scotland) Act 1995 (as amended).
20. Since then, a number of proposals have been brought forward to remedy the incompatibility with Convention rights identified by the ECtHR. The overarching objective throughout the policy development process has been to put in place a retention framework which has the support and confidence of the public and achieves a proportionate balance between the rights of the individual and the protection of the public.