



HOME OFFICE FULL EQUALITY IMPACT ASSESSMENT TEMPLATE

Directorate	Crime & Policing Group
Unit	Police Powers & Protection Unit
Date	19 January 2011

Name of Policy/Guidance/Operational activity
<i>DNA & Fingerprints – New Framework for their Retention and Destruction</i>

What are the aims, objectives & projected outcomes?
<i>The policy changes are intended to ensure that the right people are on the National DNA Database (NDNAD), removing from the NDNAD many of those who have not been convicted of an offence and defining fixed retention periods for those unconvicted individuals remaining on the Database.</i>

1 SCOPE OF THE EIA

1.1 Scope of the EIA work
<ul style="list-style-type: none"><i>We are aware of particular issues relating to race, disability, gender and age; there is no evidence to suggest that any of the other protected characteristics are particular causes of disproportionate representation on the NDNAD or impact of these changes.</i><i>The operation of the NDNAD has been assessed for its impact on equality issues over the past several years by the National Policing Improvement Agency (NPIA), which operates the NDNAD on behalf of the police service. Copies of those impact assessments are on the NPIA website at: http://www.npia.police.uk/en/14189.htm.</i><i>There is a large stakeholder community in respect of this policy area, including those representing the interests of police officers, police authorities and the public (HM Inspectorate of Constabulary (HMIC)) as well as non-governmental interest groups such as Black Mental Health, the Equalities and Human Rights Commission and Liberty. Other significant stakeholders include the NPIA, as well as the independent members of the NDNAD Strategy Board, which include the Human Genetics Commission, the Information Commissioner's Office and the NDNAD Ethics Group. Many of these stakeholders have been involved in contributing information to this EIA.</i>
1.2 Will there be a procurement exercise?
No.

2 COLLECTING DATA

2.1 What relevant quantitative and qualitative data do you have?

This may include national research, surveys or reports, or research done by colleagues in similar areas of work. Please list any evidence in the boxes below (complaints, satisfaction surveys, focus groups, questionnaires, meetings, email, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy/guidance/operational area.

<p>Race</p>	<p>Statistics over the past few years have indicated that disproportionate numbers of those on the NDNAD are from black and minority ethnic backgrounds (13.8% of the Database, with a further 9.4% unknown).</p> <p>However, before a person's profile can be added to it, the person must have been arrested for, charged with or convicted of a recordable offence or have volunteered a sample. Under the Police & Criminal Evidence Act 1984 (PACE), an arrest must be 'necessary' under one of the grounds set out in s24(5). In addition, the Equality Act 2010 makes it unlawful for police officers to discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers.</p>
<p>Religion/ belief & non belief</p>	<p>There is no evidence to suggest that religion and/or belief, as opposed to other factors, are particular causes of disproportionate representation on the NDNAD.</p>
<p>Disability</p>	<p>There is some anecdotal evidence from both criminal justice professionals and the third sector to suggest that individuals with one or more disabilities, most notably in respect of those with mental health issues, including learning disabilities, are over-represented as a proportion of those on the NDNAD. This seems to arise from their being arrested as a step towards accessing mental health care from a place of safety.</p>
<p>Gender</p>	<p>The NDNAD Annual Report shows that significantly more men than women are recorded on the NDNAD (by a factor of 4:1). However, as with race, this is due to the population of the NDNAD being derived from those arrested for recordable offences, rather than any inherent disproportionate use or effect of DNA or fingerprint evidence. This number of males on the database compared to the general population is nonetheless significantly less than that of the prison population, which has a factor of approximately 17:1 (as at February 2008).</p>

Gender Identity	There is no evidence to suggest that gender identity is a particular cause of disproportionate representation on the NDNAD.
Sexual Orientation	There is no evidence to suggest that sexual orientation is a particular cause of disproportionate representation on the NDNAD.
Age	According to the NDNAD Annual Report, 70% of those whose DNA profiles are on the NDNAD were aged over 10 but under 35 when their profiles were loaded, and almost 60% were in that age bracket as at 31 March 2009. This again is a result of the age of those arrested, charged and convicted in the CJS, rather than any over-representation arising from the operation of the DNA database itself, and reflects the age at which peak offending occurs, according to criminological literature.
Socio-economic	There is no evidence to suggest that socio-economic background is a particular cause of disproportionate representation on the NDNAD.
Human Rights	<p>Much of the impetus for this policy change originates in the December 2008 judgment of the European Court of Human Rights in the case of <i>S & Marper vs. the UK</i>, in which the Court found that the indefinite retention of fingerprints and DNA from those arrested but not convicted was a breach of Article 8 (right to private life). Although the court accepted that the retention pursues the legitimate purpose of the detection and prevention of crime, it found that the “blanket and indiscriminate nature” of the retention powers was disproportionate to those aims and failed to strike a fair balance between the public interest in preventing crime and the rights of the individual to private life.</p> <p>This policy seeks to establishment a retention framework which achieves the right balance between the rights of the individual, specifically under Article 8, and the wider needs of public protection under Articles 2 and 5. The Government considers that this policy achieves such a balance and complies with the ECtHR judgment.</p>

2.2 What are the overall trends/patterns in this data?

There is empirical and anecdotal evidence that those who are from a BME background, young and male are over-represented as a proportion of those on the NDNAD, but this is because proportionately more people from those categories are arrested, charged and convicted rather than due to the operation of the NDNAD itself.

2.3 Please list the specific equality issues and data gaps that may need to be addressed through consultation and/or further research?

Whether the key policy change (i.e. defined retention periods in respect of those not convicted) will lead to a change in the pre-existing level of over-representation. If anything, the new proposals will have a positive effect on the areas outlined above, as they apply to those who have not been convicted, and there is significantly greater over-representation at that stage of the CJS.

3 INVOLVING AND CONSULTING STAKEHOLDERS

In this section, describe the data you have gathered through stakeholder involvement and engagement.

3.1 Internal consultation and involvement: e.g. with Other Government Departments, Staff (including support groups), Agencies & NDPBs

Police officers (Police Federation, Police Superintendents' Association & Association of Chief Police Officers (ACPO)); Police Authorities (Association of Police Authorities (APA); Inspectorate (HM Inspectorate of Constabulary (HMIC)). Black Mental Health; Equalities and Human Rights Commission; Liberty and other significant stakeholders responded to the May 2009 consultation. Other significant stakeholders include the National Policing Improvement Agency (NPIA), which administers the Database on behalf of chief police officers, who are the data owners, as well as the independent members of the NDNAD Strategy Board, which include the Human Genetics Commission, the Information Commissioner's Office and the NDNAD Ethics Group.

3.2 External consultation and involvement: strand specific organisations e.g. charities, local community groups, third sector

As this policy was a specific commitment of the Coalition in its 'Programme for Government', published in May 2010, no external consultation has been carried out in this area since the May 2009 consultation by the previous Government. In response to the May 2009 consultation, a number of external organisations commented that they considered that the Scottish model of DNA retention was

considerably more proportionate than those proposals. These included Black Mental Health, the Equalities & Human Rights Commission, GeneWatch, Liberty and the National DNA Database Ethics Group. In the light of those representations, the Government has not sought specific external feedback on its proposals which, in accordance with the 'Programme for Government', are closely modelled on the system in place in Scotland.

4 ASSESSING IMPACT

In this section please record your assessment and analysis of the evidence. This is a key element of the EIA process as it explains how you reached your conclusions, decided on priorities, identified actions and any necessary mitigation.

4.1 Assessment of the impact

An examination of the statistics around the over-representation of certain groups at various stages of the CJS would tend to show that a greater degree of over-representation exists at earlier stages of the process, e.g. arrest, than at later stages, e.g. conviction. As such, the major focus of these changes (on the retention for a defined period of the biometric material of those who have been arrested but not subsequently convicted) should have a slight bias in favour of reducing the existing over-representation of people who are young, black and/or male.

We have taken account of the nature of offending by young people, which is often transitory, in providing for a finite retention period in respect of a first minor conviction and for shorter retention periods for those not convicted when compared with adults.

The engagement exercise leads us to believe that, while the NDNAD as it currently operates contains a greater proportion of young people, males and BME groups than are found in the general population, the proposed changes are unlikely to increase, either directly or indirectly, the proportion of such groups whose data is retained on the database.

Now complete the report and Action Plan.

5 REPORT, ACTION PLANNING AND SIGN OFF

5.1 EIA Report

The EIA Report is a concise summary of the results of this full EIA and is set out at Annex A.

5.2 Sign-off

Now submit your EIA and related evidence for clearance

Date of completion of EIA	19 January 2011
Compiled by	Andrew Alexander
SCS sign-off	Tyson Hepple
<i>I have read the Equality Impact Assessment and I am satisfied that all available evidence has been accurately assessed for its impact on equality strands. Mitigations, where appropriate, have been identified and actioned accordingly.</i>	
Date of publication of EIA Report	11 February 2011
Review date	11 February 2012

5.2 Publication and Review

Ensure that the EIA Report including the Action Plan are published alongside your policy/guidance/operational activity.

IMPORTANT - Review, revise and update annually!

Annex A – Equality Impact Assessment Report

TITLE

- *DNA & Fingerprints – New Framework for their Retention and Destruction*

BACKGROUND

- *The policy changes are intended to ensure that the right people are on the National DNA Database (NDNAD). This includes removing from the Database many of those who have not been convicted of an offence and defining appropriate, finite retention periods for those remaining on the NDNAD who have not been convicted of an offence.*
- *This change delivers the Coalition Commitment to 'adopt the protections of the Scottish model', which is also contained in the Home Office 2010/11 Business Plan at 5.4.i.*

SCOPING THE EIA

- *The equality impact of the National DNA Database itself is assessed in an EIA carried out by the National Policing Improvement Agency (who operate the Database) and published at: <http://www.npia.police.uk/en/14189.htm>*
- *This EIA focuses on the proposed policy changes and builds on the assessment carried out for the Crime & Security Bill in the last Parliamentary session (see: <http://webarchive.nationalarchives.gov.uk/20100413151441/http://www.crimereduction.homeoffice.gov.uk/legislation044o.doc>)*
- *In drawing up this assessment, we have looked at published national statistics for the criminal justice system, as well as anecdotal evidence from criminal justice professionals.*

COLLECTING DATA

- *We have examined a range of quantitative and qualitative data, including statistics produced by both the Ministry of Justice and the Home office on arrest, charge and conviction (as each of these stages in the criminal justice system is relevant to the proposed scheme for DNA retention) and on the impact of race in the criminal justice system.*
- *Statistics indicate that disproportionate numbers of those on the NDNAD are from black and minority ethnic backgrounds (13.8% of the Database, with a further 9.4% unknown). While significantly more men than women are recorded on the NDNAD (by a factor of 4:1), as with race, this is due to the population of the NDNAD being derived from those arrested for recordable offences, rather than any inherent disproportionate use or effect of DNA or fingerprint evidence. On the same basis, 70% of those whose DNA profiles are on the NDNAD were aged over 10 but under 35 when their profiles were loaded, and almost 60% were in that age bracket as at 31 March 2009. Finally, there is some anecdotal evidence to suggest that individuals with one or more disabilities, most notably in respect of those with mental health issues, including learning disabilities, are over-represented as a proportion of those on the NDNAD. This seems to arise from their being arrested as a step towards accessing mental health care from a place of safety.*

INVOLVING AND CONSULTING STAKEHOLDERS

- *There is a large stakeholder community in respect of this policy area, including those representing the interests of police officers, police authorities and the public (HM Inspectorate of Constabulary (HMIC)) as well as non-governmental interest groups such as Black Mental Health, the Equalities and Human Rights Commission and Liberty. Other significant stakeholders include the NPIA, who administer and operate the NDNAD, as*

well as the independent members of the NDNAD Strategy Board, which include the Human Genetics Commission, the Information Commissioner's Office and the NDNAD Ethics Group. Many of these stakeholders have been involved in contributing to this EIA.

- *As this policy was a specific commitment of the Coalition in its 'Programme for Government', published in May 2010, no external consultation has been carried out in this area since the May 2009 consultation by the previous Government. In response to the May 2009 consultation, a number of external organisations commented that they considered that the Scottish model of DNA retention was considerably more proportionate than those proposals. These included Black Mental Health, the Equalities & Human Rights Commission, GeneWatch, Liberty and the National DNA Database Ethics Group. In the light of those representations, the Government has not sought specific external feedback on its proposals which, in accordance with the 'Programme for Government', are closely modelled on the system in place in Scotland.*

ASSESSING IMPACT

- *The key finding of this process is that levels of disproportionality (in race, age and gender) are highest at the earliest stages of the criminal justice system. The proposed change will remove from the Database the majority of those who have not been convicted of an offence, i.e. those from the early stages of the CJS. The engagement exercise leads us to believe that, while the NDNAD as it currently operates contains a greater proportion of young people, males and BME groups than are found in the general population, the proposed changes are unlikely to increase, either directly or indirectly, the proportion of such groups whose data is retained on the database; indeed, any impact should be positive in these areas by removing large number of such individuals.*
- *Positive impacts: potential significant impacts for race, age and gender.*
- *Adverse impacts: none envisaged*
- *Recommendations: Describe how you will respond to the key findings:*
 - *The impact of this policy will be monitored and reviewed by the NPIA (and its successor as operator of the NDNAD) on behalf of the NDNAD Strategy Board and laid before Parliament as part of the Board's reporting arrangements set out in the Protection of Freedoms Bill;*
 - *Statistics on the composition of the NDNAD will continue to be published in the Strategy Board's Annual Reports, ensuring continued public access to information about the impact of this policy.*

ACTION PLAN

- *The impact of these measures will be assessed as part of the ongoing process of assessing the equality impact of the NDNAD, carried out by the NPIA as set out in the 'Scoping' section above.*