

Correspondence from
Mr Paul Goggins MP,
Parliamentary Under-Secretary of State
for Northern Ireland,
regarding the Draft Policing
(Miscellaneous Provisions) (NI)
Order 2007



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DRAFT POLICING (MISC PROV) (NI) ORDER 2007

I was grateful for the opportunity of meeting the Sub-group on 8 January. I undertook to respond in writing to three specific issues.

Firstly, I can confirm that 10 officers were appointed under Section 23 of the Police (NI) Act 2003 (appointment of constables with special policing skills), all of whom were serving previously in police forces in Great Britain.

Secondly, the Sub-group asked for clarification on PSNI's retention policy with regard to fingerprints or samples. Following changes introduced in December 2001 to Article 64 of the Police and Criminal Evidence (NI) Order 1989, police no longer need to destroy fingerprints or samples taken from a person in connection with an investigation of an offence, even if the person is acquitted or the case is not proceeded with. However, the retained samples can only be used for purposes related to the prevention and detection of crime, the investigation of any offence or the conduct of any prosecution.



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Retention of samples is a matter for the Chief Constable. ACPO guidance has been issued to all Chief Constables on the removal of such records thus ensuring a consistent approach nationally. The guidance states that discretion to remove records should only be exercised in exceptional cases. The exceptional cases may include those where the arrest was unlawful or where it was later established beyond doubt that no offence existed.

Finally, I undertook to clarify the requirements pertaining to the test of new and compelling evidence as set out in draft Article 11.

The requirements are contained in section 78 of the Criminal Justice Act 2003, which read:

- (1) The requirements of this section are met if there is new compelling evidence against the acquitted person in relation to the qualifying offence.*
- (2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted for (nor, if those were appeal proceedings to which the appeal related).*
- (3) Evidence is compelling if –**
 - (a) it is reliable,**
 - (b) it is substantial, and**
 - (c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.**



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(4) *The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.*

(5) *For the purposes of this section, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.*

The proposed provisions relating to the Police Ombudsman will only extend to the Ombudsman the powers provided to the Chief Constable under the Criminal Justice Act 2003. This extension is necessary to ensure equity in terms of handling all qualifying offences where new and compelling evidence supports re-trial of a previously acquitted case.

As I outlined to the Sub-group, final decisions on a re-trial of a case will rest with the Public Prosecution Service.

I hope this clarifies the issues in question and I look forward to hearing the views of the Sub-group on the terms of the draft Order in due course.

Yours
Paul

PAUL GOGGINS MP
Parliamentary Under Secretary of State for Northern Ireland

