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Executive's plans for database of DNA may be illegal

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MINISTERS' plans to create a police DNA database may be unlawful and could lead to inaccurate prosecutions, leading legal figures have warned.

The Scottish information commissioner believes the Scottish Executive's proposals to retain suspects' fingerprint and DNA evidence may breach data protection laws. The commissioner, who is the data regulator in Scotland, warned against keeping the DNA profiles of people who have been arrested but not convicted. At present, DNA samples can be kept only if a suspect is subsequently convicted.

The executive's proposals suggest DNA and fingerprint data should be kept from those arrested or detained, "on suspicion of committing an offence punishable by imprisonment whether or not they are later convicted of that offence".

Other bodies warn the move would breach human rights legislation and that the retention of all such data would lead to its misuse in prosecutions and scientific research. In England and Wales, DNA profiles of people arrested have been retained on a national database since 2003 but the move has proved controversial.

Ken Macdonald, the assistant information commissioner for Scotland, wrote: "This will result in real and ongoing intrusion into the private lives of innocent people."

Senior police officers in Scotland claim the move would help to identify and eliminate suspects more efficiently and would save money in the long term. But a number of respondents to a consultation on the new laws have raised concerns.

A letter from the information commissioner's office states: "The retention of prints will also promote differences in treatment between innocent people who had contact with the police and those who have not; thus it may not satisfy the requirement under the Data Protection Act 1998 that personal data are processed fairly. "Our view is that the proposals are excessive."

GeneWatch UK, a policy research group concerned with the regulation of genetic technologies, said the database in England and Wales has already been misused. Their response also warns it could exacerbate discrimination against ethnic minorities as the English list contains DNA profiles of one third of all black men in England and Wales, compared to just 8% of white.

GeneWatch's submission said: "The practice of allowing genetic research without consent means that anyone retained on the database loses their right to refuse to take part in potentially highly controversial research. DNA profiles exported to the national database from Scotland will inevitably be misused in this way."

Iain McKie, whose daughter Shirley is planning to sue the Scottish Criminal Records Office after losing her job following false accusations of perjury relating to inaccurate claims that her fingerprint had been found at a murder scene, said: "They have got to sort out their forensic sciences first and satisfy the public they can be trusted. I believe innocent people would suffer and mistakes would be made."

The Scottish Human Rights Centre said the proposed policy would breach the European Convention on Human Rights, explaining it "may infringe an individual's right to privacy and the right to be presumed innocent until proven guilty."

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