HGC response to the Scottish Executive consultation on police retention of prints and samples

I would like to begin by saying that Members of the Human Genetics Commission (HGC) were grateful for the opportunity to comment on the Scottish Executive's draft proposals on the collection and retention of DNA samples and fingerprints in Scotland. As Chair of the HGC's Identity Testing Monitoring Group, I have been asked to respond to the consultation on behalf of my fellow Commissioners.

The HGC strongly supports the work of the police and the existence of the National DNA database as a criminal intelligence tool. However, the Commission is of the view that robust safeguards must be in place to ensure that the collection, retention and police use of samples does not discriminate against Scottish citizens.

The HGC position in respect of the forensic use of personal genetic information is set out in our report 'Inside Information - Balancing interests in the use of personal genetic data' (May 2002). This report contains several recommendations to Government concerning appropriate ethical oversight of the National DNA Database and I enclose a copy for your interest.

You will see from the report that the HGC has long expounded the view that any proposals to change the law relating to the use of personal genetic information for forensic purposes should be subject to a full public debate in order to examine the ethical, consent and confidentiality issues. The Scottish public should be fully aware of any proposed legislative changes in this area.

My final general point before turning to the set questions is that, in respect of key principles regarding the collection and retention of personal genetic information for forensic use, the HGC would like the law in England and Wales and the law in Scotland to be identical so that those providing forensic services are clear about their duties in respect of retention. For example, as we make clear in our response to question 2 of this
consultation, we support the Scottish Executive’s intention to keep the existing law relating to the collection and retention offinger prints and samples provided voluntarily. In particular, we support the caveat that consent to use samples and fingerprints provided voluntarily can be withdrawn at any time. Ideally, the Commission would welcome a change in the law in England and Wales on this issue to bring it in-line with Scotland’s position.

Our thoughts on the three consultation questions follow.

Question 1: Do you agree that the police should be able to retain prints and samples taken from those who are arrested or detained on suspicion of committing an offence punishable by imprisonment whether or not they are later convicted of that offence?

In order to respond to this question, the HGC would first wish to make a distinction between the retention of DNA samples from the retention of DNA profiles.

The HGC still holds the view set out in their report ‘Inside Information’, that there are differing privacy concerns between a DNA sample and a DNA profile. A profile contains no relevant medical or predictive genetic data. However, the stored DNA sample has the potential to be used for further, more intrusive, testing for purposes of identification, or for predictive profiling for physical, behavioural or racial characteristics. The HGC wishes to see a further discussion of the justification of the retention of samples, particularly for those not convicted of an offence. The Commission’s general view is that an assumption should be made that samples from those who are arrested and not charged or convicted should be destroyed when a successful profile has been obtained. Any proposal to routinely store such samples should be fully justified with regards to cost/benefit and to the legal and human rights concerns. If such storage is deemed to be essential, there may need to be additional safeguards to ensure that they are not used for other purposes without proper lawful reasons.

Question 2: Do you agree that samples given voluntarily should not be retained or checked against prints and samples taken from any crime scene without written consent and that the consent can be withdrawn in writing at any time?

The HGC strongly support the Scottish Executive’s intention to keep the existing law relating to the collection and retention of fingerprints and samples provided voluntarily. In particular, the HGC supports the caveat that consent to use samples and fingerprints provided voluntarily can be withdrawn at any time.

Question 3: Do you agree that the legislation should state that prints and samples retained by the police should only be used for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution?

The HGC welcome the Scottish Executive’s proposal to include a safeguard in the new Bill by requiring that all prints and samples retained by the police may only be used for
purposes related to the prevention or detection of crime, the investigation of an offence or
the conduct of a prosecution. The HGC views this proposal as vital, not only because
it serves to safeguard individual liberties, but also because it ensures a level of public
confidence in the database.

The Commission recognises that retained fingerprints and samples may be used for
research and development purposes aimed at improving the detection and prevention of
criminal activity. In the Commission's view, it is conceivable that some research projects
could prove valuable to this aim. However, it is essential that appropriate safeguards are
in place to oversee the use of samples for this purpose. The establishment of an
independent research ethics committee to approve such research would be an important
measure in ensuring that samples were used appropriately and would serve to maintain
public confidence in police use of personal genetic information.

We are aware that there are ongoing discussions in England and Wales concerning an
amendment to the Criminal Justice Act 2004, which would allow the police to also use
samples when searching for missing persons. The HGC broadly supports this proposal
and responded to that effect as part of the Home Office consultation, 'Consultation on
Policing Modernising police powers' in November last year. A copy of that response is
enclosed for your interest.

Whilst the circumstances leading to a person being missing may be related to a criminal
offence, there might not necessarily be a criminal aspect to a person's disappearance. We
would then raise this as a possible reason for the police to speculatively search retained
fingerprints or samples in future, which would fall outside your definition of "purposes
related to the prevention or detection of crime, the investigation of an offence or the conduct of a
prosecution."

I hope you find these comments useful. We would appreciate being kept up to date on
the progress of the consultation and the Police Bill.

Yours sincerely,

Professor Stephen Bain
Chair, Identity Testing Monitoring Group
Human Genetics Commission