

# Joint Committee on Human Rights

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Rt Hon Jacqui Smith  
Home Secretary  
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## ***Monitoring the Government's Response to Human Rights Judgments: S and Marper v United Kingdom (App. No 30562/04 and 30566/04)***

During this session, the Joint Committee on Human Rights will be continuing its practice, established in the previous Parliament, of reviewing the implementation of judgments of the European Court of Human Rights finding the UK to be in breach of the European Convention on Human Rights (ECHR).

I am writing to ask for further information about the Government's response to the judgment of the Grand Chamber of the European Court of Human Rights in *S and Marper v United Kingdom (App. No 30562/04 and 30566/04, 4 December 2008)*. In this case, the Grand Chamber noted that the UK is currently the only member State of the Council of Europe expressly to permit the systematic and indefinite retention of DNA profiles and cellular samples of persons who have been acquitted or in respect of whom criminal proceedings have been discontinued. The applicants in this case were two people who had never been convicted of a crime, but whose fingerprints and DNA samples had been retained. One of the applicants was a child when his samples were taken. Section 64(1A) of the Police and Criminal Evidence Act 1984 (PACE) provides that fingerprints or samples taken for the purposes of investigating a crime need not be destroyed when a person has been convicted of that crime and his samples were also collected during the investigation. This has allowed the samples of a significant number of people never convicted of any crime to be retained. The Grand Chamber concluded that:

“The blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests...the retention at issue constitutes a disproportionate interference with the applicants' right to respect for private life and cannot be regarded as necessary in a democratic society.” (paragraph 125)

While the Court accepted that different levels of interference with individuals' private lives could arise in respect of different types of sample, it was particularly concerned about the impact on private life interests of the retention of cellular samples. It concluded that despite the differences in the nature of these impacts, the open-ended and blanket retention scheme in place in England, Wales and Northern Ireland required careful

scrutiny. The Grand Chamber rejected the Government's argument that innocent individuals suffered no detriment or stigma as a result of being treated in the same manner as individuals who had been convicted of an offence (paragraph 121-122). Although the Court was particularly concerned about the implications of retention for those whose samples had been taken when they were minors, the Court's decision hinged on the implication of treating the applicants differently from other unconvicted persons (those who volunteer their DNA can request its destruction). The Court thought that weighty reasons would be necessary to justify treating the applicants differently (paragraph 123-125). No such reasons had been provided by the Government.

This decision has received widespread coverage in the press and we note that the Government is 'disappointed' by the decision that the current arrangements for the national DNA database are operating in a way which is incompatible with the right to respect for private life of certain individuals, in breach of the UK's obligations under Article 8 ECHR (the right to respect for private life).

**I am writing to ask for further information on the Government's response to this judgment:**

- **What general measures does the Government consider are necessary in order to remove the breach of the Convention identified by the Grand Chamber?**
- **Does the Government now intend to destroy all fingerprints or samples currently held on the national DNA database, or otherwise held by the police, except those which were gathered during an investigation which led to the donor's conviction? If not, why not?**
- **Does the Government intend to amend the provisions of Section 64 (1A) PACE?**
- **Specifically, does the Government intend to bring forward proposals similar to those which currently apply in Scotland? If not, why not?<sup>1</sup>**
- **If the Government considers that legislative changes are necessary to remove the breach, does the Government intend to (a) use the remedial order process provided for in the Human Rights Act; or (b) bring forward proposals in the expected Policing and Crime Bill.**
- **If the Government intends to use a remedial order, I would be grateful if you could explain whether the Government intends to use the urgent or non-urgent procedure.**
- **If the Government considers that legislative changes are necessary but does not intend to bring forward proposals in the Policing and Crime Bill or in a remedial order, I would be grateful if you could provide a detailed explanation for that view.**

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<sup>1</sup> The Criminal Procedure (Scotland) Act 1995 provides that DNA samples and resulting profiles must be destroyed if the individual is not convicted or is granted an absolute discharge. In 2006, special provision was made for the retention of samples of those suspected of certain sexual or violent offences, for an additional period of up to 3 or 5 years.

- **If legislative reform is proposed, my Committee would be grateful for copies of the draft proposals as soon as they are available.**
- **If the Government does not consider that legislative changes are necessary, please provide a detailed explanation for that view.**

Following the timetable we recommended in our earlier reports, we would expect the Government to write to us with their initial reaction to the judgment by **4 January 2008** and with their proposed response to the judgment, including any proposals for general measures which the Government considers necessary to remedy the breach before **4 March 2008**.<sup>2</sup>

I look forward to receiving your response and would be grateful if a Word copy could also be provided to [jchr@parliament.uk](mailto:jchr@parliament.uk).

ANDREW DISMORE MP  
*Chair, Joint Committee on Human Rights*

CC: Michael Wills MP, Ministry of Justice

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<sup>2</sup> Sixteenth Report of Session 2006-07, paras 155 -163