Response to DOJ Consultation on Proposals to Amend the Legislation Governing the Retention of DNA and Fingerprints in NI

Children's Law Centre
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Introduction

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice/ information/ representation service. We have a dedicated free phone legal advice line for children and young people and their parents called CHALKY, we provide legal information and advice via an online chatbot 'REE' and have a youth advisory group called Youth@CLC. CLC has been working on issues relating to youth justice for over 20 years.

From its perspective as an organisation which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is very grateful for the opportunity to make this submission to the consultation on proposals to amend the legislation governing the retention of DNA and fingerprints in Northern Ireland.

Section 75 Northern Ireland Act 1998

The Children's Law Centre believes that the implementation of section 75 of the NI Act 1998 is one of the most significant developments in the promotion of equality in this jurisdiction.

Direct consultation with children and young people

Central to compliance with the statutory duties imposed under section 75 is the concept of increased participation in policy making and development. The Equality Commission's guidance[1] states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected

[1] 'Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010, p.14

by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.[2]

Furthermore, under the DOJ Equality Scheme, the Department have a duty to consult directly with children and young people in respect of the development of these proposals:

> *"We have signed up to a Participation Policy Statement commissioned by the Northern Ireland Commissioner for Children and Young People. The statement, signed by the Minister, outlines our commitment to involve children and young people in the work that we do. It pays due regard to current local, national and international legislation/conventions and will provide the foundation for the Department to be an example of good practice when involving children and young people in its decision making processes."*[3]

In failing to consult directly with children and young people, the Department have not only breached their own Equality Scheme they have also deprived themselves of the opportunity to be fully informed when developing these proposals.

CLC would welcome details of any direct consultation with children and young people that the Department of Justice has carried out, or intends to carry out on the proposals to amend the legislation governing the retention of DNA and fingerprints in NI in compliance with its equality scheme and fulfilment of its statutory duty.

These proposals directly affect children and young people and therefore children and young people must be consulted in relation to them. **Given that these proposals will impact directly on children and young people, we would be grateful if you could advise by return, details of <u>direct</u> engagement that Department of Justice has undertaken with children and young people in relation to the proposals to amend the legislation governing the retention of DNA and fingerprints in NI.**

Such consultation is essential not only in ensuring compliance with section 75, but also in ensuring the Government's compliance with Article 12 of the UNCRC (respect

[2] Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010 p. 38 and 39

[3] Para 6.6 DOJ Equality Scheme 2015 https://www.justice-ni.gov.uk/sites/default/files/publications/doj/doj-equality-scheme-revised.pdf

for the views of the child). In examining the government's compliance with Article 12, the UN Committee on the Rights of the Child recommended that the government:

> *"Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving children and children in vulnerable situations, such as children with disabilities…. [and] ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children."*[4]

CLC accept that during the consultation period, it may not have been possible to consult with young people face-to-face because of the current COVID-19 restrictions, however, online methods to consult directly with young people could be employed. We also note that the Department's equality duties continue during the current health crisis. To that end, the Equality Commission have emphasised the importance of discharging section 75 duties in the context of the need to legislate and develop policy quickly. They also recognised that decisions made in the current circumstances may actually exacerbate the disadvantage already suffered by some of the protected categories. The Department of Justice will be aware of the advice note prepared by the Equality Commission, for public authorities on the Section 75 duties when developing policies during the Covid-19 crisis:

https://www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Section-75-duties-when-developing-Covid-19-related

Consultation period

CLC believes that is also incumbent upon us to raise the timeframe for responses to the current consultation. Respondents have been given from 3rd July 2020 to 28th August 2020. The Department's approved Equality Scheme states that:

> *"The consultation period lasts for a* ***minimum of twelve weeks*** *to allow adequate time for groups to consult amongst themselves as part of the process*

[4] CRC/C/GBR/CO/5 para 31 (a) and (d)

of forming a view. However, in exceptional circumstances when this timescale is not feasible, for example when implementing EU Directives or UK wide legislation, meeting Health and Safety requirements, addressing urgent public health matters or complying with Court judgements, the Department may shorten timescales to eight weeks or less before the policy is implemented. The Department may continue consultation thereafter and will review the policy as part of the monitoring commitments. Where, under these exceptional circumstances, the Department must implement a policy immediately, as it is beyond our control, it may consult after implementation of the policy to ensure that any impacts of the policy are considered."[5]

As these policy proposals are not COVID-19 related and do not engage any of the other exemptions which allow for a reduced consultation period, the required 12 weeks consultation period should have been adhered to. CLC would assert that If anything, the current COVID-19 restrictions reinforces the duty on the Department of Justice to adhere to the stated consultation period in their Equality Scheme allowing for consultation engagement including with children and young people to be undertaken via technology.

CLC therefore would request that the DoJ comply with their Equality Scheme and at a minimum extend the consultation to 12 weeks. We would also recommend that in recognition of COVID-19 restrictions, the DoJ consider extending the current consultation period beyond 12 weeks. We would further suggest that the DoJ should again, in compliance with their Equality Scheme, take proactive steps to create opportunities for effective and meaningful consultation with children and young people and their representative groups regarding these policy proposals including via the use of technology to allow for virtual consultation. Ongoing monitoring and review will also be required to ensure that these proposals, if implemented, promote equality of opportunity.

Purpose of Equality Screening

The Equality Screening document provided by the Department of Justice in relation to these proposals states that *"the policy will apply equally to everyone who has their*

[5] Department of Justice Equality Scheme para 3.10 https://www.justice-ni.gov.uk/sites/default/files/publications/doj/doj-equality-scheme-revised.pdf

DNA or fingerprints taken by the PSNI and who has subsequently been convicted of an offence."[6]

The fact that the proposals will be applied equally across all section 75 groups and the fact that there was no intention to target a specific group is a concerning misunderstanding of the Department's duties under section 75. It is irrelevant that the proposals apply equally for the purposes of compliance with the Department's obligations under section 75 of the Northern Ireland Act 1998 and proper discharge of its Equality Scheme. The question the DoJ should have asked was whether or not there is the potential for differential adverse impact and if that potential exists, as CLC strongly believes it does in respect of this policy, a full EQIA must be carried out, **particularly given the Department's identification of impact on equality of opportunity on young people.** This principle is set out clearly in the 2004 Final Report of the Equality Commission's Investigation under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 – Children's Law Centre and the NIO, the Equality Commission stated that:

> *"...the purpose of screening, as set out in the Commission's Guide to the Statutory Duties, is;*
>
> *"to identify those policies which are likely to have a significant impact on equality of opportunity..."*
>
> *The Commission did not accept that the... reasons for not undertaking an Equality Impact Assessment, which focused on the reasons for adverse impact and the fact that such impact was not intentional, rather than the potential for adverse impact, represented a proper consideration of whether the policy was likely to have significant impact on equality of opportunity.*
>
> *It is necessary but not sufficient to establish whether a proposed policy is 'targeted' at a s75 sub-category such as children and young people. It is also necessary to establish 'inadvertent differential impact'. It is not adequate to*

[6] Equality Screening Form – Justice (Misc Provisions Bill) – Biometric Legislative Amendments, June 2020 page 22

deny significant differential impact if a majority of those likely to be affected are 17 or younger (and in some cases as young as 10)….".[7]

We are very concerned that 16 years after the Equality Commission produced the above referenced SDI Report the DoJ, who is now discharging the functions which the NIO discharged when the report was prepared, is still misapplying this test when determine if there is a need to carry out a full EQIA.

Section 75 of the Northern Ireland Act 1998 requires more than avoidance of adverse impact, it also requires a proactive approach to be taken by designated public bodies to ensure the promotion of equality of opportunity. The Equality Commission's Guidance for public authorities in relation to section 75 states that:

"The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities."[8]

Designated public bodies are therefore required to not only ensure that there is no adverse impact suffered by members of any of the section 75 categories as a result of the proposed legislation, policy or practice, but also to have due regard to the need to promote equality of opportunity among members of the nine groups. This means that there is a statutory obligation on the Department of Justice as a designated public authority for the purposes of section 75 of the Northern Ireland Act 1998 to take action to mitigate adverse impact or inequality as well as to proactively promote equality of opportunity in order to comply with section 75 of the Northern Ireland Act 1998. **CLC would disagree with the Department's decision that the impact on grounds of age is 'minor' and would assert that the proposals to mitigate adverse impact for those under 18 are wholly inadequate to address adverse impact. The DoJ**

[7] SDI/22/04.

[8] Equality Commission's Guidance for public authorities in relation to section 75 https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf

have therefore breached their Equality Scheme in this respect i.e. by failing to promote equality of opportunity.

Use of data in Equality Screening

CLC note the use of some data within the Equality Screening Form, however section 16 repeatedly states that *"there is a lack of data to substantiate particular needs, experiences and priorities associated with this particular group."*

It is insufficient to make an equality screening decision without using data including independent disaggregated data to provide evidence for the decision. To fulfill its statutory duties under section 75 and before this policy is progressed CLC would assert that the DoJ should gather relevant disaggregated data and carry out a full EQIA, including consulting directly with children and young people. Failure to do so constitutes a breach of the DoJ's Equality Scheme.

Screening decision

The Screening document states that,

> *"On the basis of the screening exercise there is considered to be no adverse impact on any section 75 group which would warrant an equality impact assessment. It has been decided not to conduct an equality impact assessment."*[9]

We do not agree with the DoJ's screening decision, we believe the way in which the DoJ has carried out its screening is flawed. Given the clear potential of these proposals to differentially adversely impact on children and young people, CLC would request that the Department of Justice would properly discharge their section 75 duty and comply with their Equality Scheme and carry out a full EQIA using comprehensive disaggregated data sets and accessible information. The DoJ must also consult publicly and widely, including direct consultation with children and young people as part of this process.

[9] Equality Screening Form – Justice (Misc Provisions Bill) – Biometric Legislative Amendments, June 2020 page 21

International Human Rights Standards

As the UK government has ratified the UNCRC, consideration of the Department of Justice's proposals to fingerprint and DNA retention should be set within the framework of the UNCRC and other international standards and also should take into consideration all relevant recommendations of the United Nations Committee on the Rights of the Child. The UNCRC is a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified. The Government has therefore given a commitment to implement the terms of the Convention by ensuring that all law, policy and practice relating to children is in conformity with UNCRC standards.

All children and young people under 18 are entitled to enjoy the protection of all rights afforded by the UNCRC.

Article 3 of the UNCRC outlines:

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the* ***best interests of the child*** *shall be a primary consideration."* (Our emphasis).

Furthermore, the Justice Act (NI) 2015 in relation to the 'Aims of the youth justice system' states that:

> *"98 (3) But all such persons and bodies must also—*
>
> *(a)have the best interests of children as a primary consideration; and*

(b)have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development."

The United Nations Committee also recommended that the United Kingdom government should establish the *best interests of the child* as the paramount

consideration in all legislation and policy affecting child (notably within criminal justice).[10]

The proposals within this consultation are clearly not in the best interests of the child and therefore in contravention of both the UNCRC and the Justice Act (NI) 2015.

Article 40 of the UNCRC is engaged in this instance. Article 40 (1):

> *1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

The DOJ's proposals vis-à-vis the retention of DNA and fingerprints is a clear breach of Article 40 (1) of the UNCRC.

State parties are also required under Article 40 (3) to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.

In this instance, the legal proposals clearly do not recognise the particularity of children's rights.

In addition, Article 16 of the UNCRC states that:

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
2. *The child has the right to the protection of the law against such interference or attacks.*

The proposal to retain biometric data of children for 75/50/25 years after an offence has been committed is a clear breach of privacy, family life and home life. Offences

[10] Recommended in both the 2008 Concluding Observations and the 2016 Concluding Observations

committed by children under the age of 18 will remain linked to that young person, in some cases, for the remainder of their natural lives.

The United Nations Committee on the Rights of the Child recommended in October 2002[11], in October 2008[12] and July 2016[13] that the United Kingdom should establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular Articles 3, 37 and 40 together with the other international standards in this area outlined above.

The Committee has also recommended that the UK government:

> *"Ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy, including by introducing stronger regulations for data protection."*[14]

Furthermore, the UN Committee on the Rights of the Child in their General Comment No.24 (2019) on children's rights in the child justice system are clear on the retention of criminal records for those under 18. We would suggest that retention of DNA and fingerprints is equivalent to the retention of criminal records:

> *"… the Committee recommends that State parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review."*[15]

This is echoed in the Youth Justice Review that recommended that young offenders should be allowed to apply for a clean slate at age 18:[16]

> *Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include:*

[11] Concluding Observations of the Committee on the Rights of the Child CRC/C/15, 4 October 2002
[12] Concluding Observations of the Committee on the Rights of the Child CRC/C/GBR/CO/4, 3rd October 2008
[13] Concluding Observations of the Committee on the Rights of the Child CRC/C/GBR/CO/5, 12th July 2016
[14] Concluding Observations of the Committee on the Rights of the Child CRC/C/GBR/CO/4, 3rd October 2008
[15] General comment No. 24 (2019) on children's rights in the child justice system GC/C/GC/ 24 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en
[16] Recommendation 21 (b)

a) *diversionary disposals should not attract a criminal record or be subject to employer disclosure;*

b) *young offenders should be allowed to apply for a clean slate at age 18;*

c) *for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed.*

CLC would urge the Minister and the Department of Justice to implement this outstanding recommendation immediately and ensure they are applied to the retention of DNA and fingerprints.

Furthermore, noting that the review mechanism will be consulted upon at a later date, CLC believe, given the impact of non-removal of information on the child's life, that Article 8 ECHR will be engaged in certain circumstances; therefore to guarantee their Article 8 rights and to guarantee the child's Article 6 ECHR rights in this process, legal aid should be available to those challenging the refusal to remove information for the young person's certificate. We believe that this would be a vital element to this process for all children but especially for children with additional needs or who require additional support such as children with mental health problems, a learning disability, special educational needs, literacy or communication problems or looked after children.

CLC would also seek confirmation from the Department that they have sought verification from the Information Commissioner's Office that these proposals are compliant with GDPR and Data Privacy legislation.

Minimum Age of Criminal Responsibility

One of CLC's biggest concerns with regard to the retention of DNA and fingerprints relates to the extremely low minimum age of criminal responsibility in Northern Ireland. Despite concerns expressed by the UNCRC Committee in 2002, 2008 and 2016 Concluding Observations following the UK examination that the age at which children enter the criminal justice system was low and clear recommendations that the UK

Government considerably raise the age of criminal responsibility, the situation remains unchanged in Northern Ireland.

Furthermore, the Chairperson of the UN Committee on the Rights of the Child has elaborated on the Committee's stance on the Minimum Age of Criminal Responsibility, stating that:

> *"the Committee clearly expressed the importance of raising it to 12, with a view of eventually raising it even further… In order to persuade State parties to seriously raising the age of criminal responsibility… 12 was decided as the absolute minimum age by the Committee… Furthermore, it was the general understanding of the Committee that industrialized, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16."*[17]

It is therefore the case that once a child reaches the age of 10, s/he can be arrested. If the offence is recordable, as most offences are, a sample of their DNA can be taken and the profile derived from it retained on the National DNA database. This extremely low minimum age of criminal responsibility is not only in breach of the UNCRC, but also in breach of a number if international standards.

General Comments

CLC has serious concerns about the taking of DNA and fingerprints from children and young people and the retention of this data. We believe that fingerprinting and taking DNA from a child is disproportionate, unjustifiable and in clear breach of children's rights standards. We firmly recommend that these practices be halted immediately within the formal criminal justice system.

We are extremely concerned that the proposals put forward by Department of Justice to amend the legislation governing the retention of DNA and fingerprints in Northern Ireland does not fully and adequately consider the particular vulnerabilities of children and young people or give any consideration to the Department's duties in relation to children's rights including Art 98 (3) Justice Act (NI) 2015. **We believe that the Department should not be taking or retaining biometric data of children and any**

[17] Professor Yanghee lee, Chairperson of the UN Committee on the Rights of the Child – The Convention on the Rights of the Child: From Geneva to Northern Ireland, Bringing Children's Rights Home, CLC Annual Lecture, 13th March 2008

biometric that is held should be deleted when a child reaches the age of 18 as per the Departments human rights obligations.

Without diminishing the assertion above that biometric data should not be taken, retained and that any biometric data held should be deleted when a child reaches 18, CLC would also like to make comment on the 75/50/25 years model set out in the consultation document.

75 years retention for serious offences

The Department is proposing to hold biometric data for 75 years for all convictions associated with serious violent, sexual and terrorism offences.

As outlined in the consultation document, the proposals contained therein are to ensure compliance with the findings of the judgement in *Gaughran v UK*. As the Department will be aware, the court unanimously ruled that the indefinite retention of biometric data and photographs of persons convicted of an offence punishable by imprisonment was a breach of a person's right to respect for their private life under Article 8 of the European Convention on Human Rights. This was because, under the retention scheme, the applicant's personal data was to be retained indefinitely, even if spent, *"without reference to the seriousness of the offence or the need for indefinite retention and in the absence of any real possibility of review, failed to strike a fair balance between the competing public and private interests."*[18] The scheme was therefore a disproportionate interference with the applicant's right to respect for his private life and could not be regarded as necessary in a democratic society.

Given the courts criticism of indefinite retention of data, CLC would assert that retaining data for 75 years is *de facto* indefinite retention, given that fingerprints and DNA data will be held for the natural lifetime of the person convicted. We do not believe this to be following the findings of the court and would urge the Department to reconsider this proposal, by reducing the time which biometric data can be retained, to ensure a fair balance between the protection of rights and security.

Secondly, CLC have concerns in relation how children who are convicted of serious offences are regarded. Children involved in committing serious offences are often also

[18] Gaughran v UK para 96

victims, who have been manipulated, groomed or abused by adults. This is compounded by the extremely low age of criminal responsibility in this jurisdiction.

A report by the Juvenile Justice Observatory on Children, The Justice System, Violent Extremism and Terrorism, states that:

> *"Although the number of children alleged to be or engaged in terrorist-related activity in Europe is relatively small, national counter-terrorism strategies do not always effectively interrogate the ways in which children are affected by violent extremism nor how they could pose security risks. As a consequence, there is insufficient attention paid to the fact that children involved in terrorist-related offending are often specifically targeted for recruitment by terrorist groups whether within or outside their country. This can be for propaganda purposes or because of a perception that children are more susceptible to grooming than adults. They are therefore victims and offenders, and this duality in status is not always clearly accommodated within criminal justice and protection systems that are largely designed for adults, and are not always in compliance with children's rights."*[19]

In relation to under 18s being convicted of sexual offences, in a 2008 commentary published in the journal *Child Maltreatment*, psychologist and researcher Mark Chaffin noted that *"offenders may be young boys or girls re-enacting their own sexual abuse, or impulsive kids who act without thinking or without understanding the law or the consequences of their actions. Some children behave badly out of mental illness; some are satisfying their curiosity by experimenting without a mature understanding of the harm they may be doing".*[20]

We therefore do not believe retention of the DNA of children and young people convicted of an offence adequately considers the particular circumstances of children and young people.

[19] Juvenile Justice Observatory – Children, The Justice System, Violent Extremism and Terrorism (page 11) https://www.oijj.org/sites/default/files/en_regional_report.pdf accessed 11th August 2020
[20] https://hub.jhu.edu/magazine/2018/spring/children-who-are-child-sexual-abusers/

50 / 25 years retention for non-serious offences

Similar to comments made above, CLC do not believe that retaining biometric data for 25 or 50 years after a child has committed 2 or more non-serious offences is proportionate and balanced. To that end, CLC would seek confirmation from the Department of Justice in relation to what will constitute a non-serious offence. Will, for example, 2 convictions for low level crime such as shop lifting result in the retention of DNA data? Does that include scenarios where young people accept a caution or a diversionary disposal? **A definitive list of non-serious offences that retention will apply to must be included as part of this consultation and CLC would request information in this regard as a matter of urgency.** Failure to provide this information within the consultation document effectively renders the consultation meaningless.

It is CLC's experience that many young people accept cautions or diversionary disposals in the absence of a solicitor and therefore in the absence of legal advice. It is therefore extremely worrying that should the situation arise where a young person accepts a caution or diversionary disposal more than once, that their DNA and fingerprints can be potentially retained for 25 years. In the case of diversionary disposals received by a child, CLC believes that there should be a caveat in place to ensure the of non-retention of biometric data.

CLC believe that retention of 25 years and 50 years respectively is too long and does not allow for the right to a private life to the respected, within the meaning of Article 8 of the ECHR.

Retention of the DNA and fingerprints makes assumptions about the likely actions of children in the future and disproportionately impacts on children, particularly given that their DNA and fingerprints can be held for the rest of their lives. When one considers this penalty as a percentage of the lifetime of a young person it becomes clear that further consideration of the lives of children is necessary in formulating proposals for the retention of the DNA of under 18s. It is also difficult to see how the Department can determine, through the proposals to retain the DNA and fingerprints of child, that a child or young person is likely to pose a significant risk of harm by committing further offences when one considers children's developmental process.

To apply the same standards of criminal responsibility to a 10 year old as we would to an adult is to ignore large amounts of evidence about the immaturity of children at that

age[21]. Children do not have the emotional maturity to be responsible by law for their actions. Although it is true at 10 children are likely to know the difference between right and wrong, they do not have the capacity to fully understand the consequences of their actions. Neuroscience data has found that there are developmental differences in the brain's biochemistry and anatomy that may limit adolescents' ability to perceive risks, control impulses, understand consequences and control emotions.[22] In particular, the prefrontal cortex, which is responsible for decision-making, impulse control and cognitive control, is among the slowest parts of the brain to mature and is not fully developed until around the age of 18-20.[23]

In light of this, we would urge the DOJ to carry out a UNCRC compliant child impact assessment of its proposals to amend the legislation governing the retention of DNA and fingerprints in NI as we do not believe that they are compatible with children's rights standards which the UK government has ratified and committed to uphold.

Furthermore, CLC note that the Department is proposing to set out in secondary legislation a detailed review mechanism that will apply to all material falling within the 75/50/25 maximum retention periods and that regulations made under this power would be subject to a separate consultation. CLC welcome the proposal to include a review process and would urge the Department that when developing the proposals for the review mechanism that there is an assumption that all children have their biometric data deleted upon reaching their 18th birthday.

Conclusion

The Children's Law Centre is grateful to have the opportunity to comment on the Department of Justice's consultation on its proposals to amend the legislation governing the retention of DNA and fingerprints in Northern Ireland. We hope that our comments have been constructive and useful to the Department. We look forward to the receipt of information requested and look forward to engaging further with the DOJ on issues detailed in this response.

[21] Michael E Lamb and Megan PY Sim, (2013), Developmental Factors Affecting Children in Legal Contexts, Youth Justice, 2013 13: 131

[22] Enys Delmage, (2013), The Minimum Age of Criminal Responsibility: A Medico Legal Perspective, Youth Justice, 2013 13:102.

[23] Raise the Age briefing, February 2015