

## **Criminal Justice (Forensic Evidence and DNA Database System) Act 2014**

### **Post-enactment Report**

The DNA Database System, which was provided for in the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014, known as the 'DNA Act', is an intelligence resource with two purposes:

- (a) the investigation and prosecution of crime, and
- (b) the identification of missing persons, the identification of the seriously ill or injured and the identification of bodies of unknown deceased persons.

This comprehensive piece of legislation provided for the establishment, population, management and oversight of the DNA database and reformed the law governing the taking of samples and the creation of DNA profiles for use in evidence in criminal trials. The Database is used in solving a broad cross-section of offences, where the presence of crime scene DNA can be linked to a profile on the database. Such crimes would include murder, sexual crimes such as rape and sexual assault, and burglary.

The DNA Act provides for samples to be taken from a range of persons to facilitate the generation of DNA profiles for the database:

- all persons who are arrested in relation to a serious offence, i.e. one attracting a prison sentence on conviction of at least five years.
- prisoners who meet the same criteria, i.e. they have been sentenced in respect of offences that attract a prison sentence of 5 years or more.
- former offenders if the Garda Síochána are satisfied that it would assist in the investigation of crime
- volunteers. For example, the Garda Síochána may wish to take a sample from the victim of a crime for the purposes of investigating the crime
- taken as part of a "mass screening". This could arise where it is deemed necessary to take samples from a class of persons in the interests of the investigation of a crime.
- deceased persons who are suspected of having been involved in the commission of offences.
- members of the Garda Síochána, Forensic Science Ireland (FSI) and others whose work involves contact with crime scenes, evidence, etc. This is essentially for elimination purposes so as not to confuse the analysis of crime scene samples and such.

Finally, there is provision for the taking of samples from the relatives of missing persons and from unknown persons for the purpose of identification.

FSI is responsible for the operation of the national DNA Database System and to date the number of person profiles added since the establishment of the database is over 11,000.

A considerable amount of preparatory work was required before the DNA Act was substantively commenced on 20 November 2015, when the DNA Database System also became operational. This work included the preparation of detailed secondary legislation, particularly in relation to the taking of samples required for the creation of DNA profiles, a central element of the forensic process. A list and outline of all of the statutory instruments made to date under the Act is attached. Further regulations (under section 44 of the Act), which prescribe certain persons for elimination purposes in relation to the investigation of offences, have also been prepared and are in the process of being finalised by the Office of the Parliamentary Counsel.

Section 71 of the Act provides for the establishment of a committee to carry out a range of functions as specified in Section 71 to 74 of the Act. The committee shall oversee the management and operation of the DNA Database System for the purposes of maintaining the integrity and security of the System and to satisfy itself that the provisions of the Act in relation to the System are being complied with. The committee in its 2016 annual report highlighted the potential of the Database and its immediate benefits to the investigation of crime and have expressed its satisfaction with the management and operation of the System.

The Department of Justice and Equality also chairs meetings of the DNA Database Implementation Group. This Group was established to oversee the implementation of the Act and includes agencies with responsibility for the taking and processing of DNA samples. Representation on the Group includes the Garda Technical Bureau, FSI, the National Forensic Co-ordination Office, IYJS, IPS and GSOC. These agencies empowered to take samples were initially obliged to develop Codes of Practice to provide practical guidance as to the procedures involved.

## **Statutory Instruments made under the DNA Act**

### Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Commencement) Order 2015

This Order commenced the vast majority of the Act with effect from 20 November 2015, only excluding certain provisions relating to the automated exchange of data internationally in respect of which further preparatory work is required and ongoing.

### Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 156) Regulations 2015

These Regulations under section 156 of the Act relate to the taking of samples required for the creation of DNA profiles, a key part of the forensic process.

### Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Section 11) Order 2015

This Ministerial Order under section 11(5) of the Act excludes sampling under section 11 (i.e. solely for the database rather than for investigative purposes) for certain offences (mainly relating to white-collar crime) where DNA evidence would not assist in the investigation or prosecution of those offences.

### Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Certificates) Regulations 2015

These Regulations are required in relation to the certification of evidence concerning (i) the authorisation given by a member of the Garda Síochána for the taking of samples, and (ii) confirmation of the integrity of samples as part of the chain of evidence. The Regulations prescribe the form of certificates to be used under sections 162 and 169 of the Act.

### Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Commencement) Order 2014

This Order commenced sections 147 and 148 of the Act, which provide for the recognition of accredited forensic service providers carrying out laboratory activities in EU Member States.

