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30 November 2021

Dear Lord Paddick,

Police, Crime, Sentencing and Courts Bill: Power to photograph certain persons at a police station

Thank you for raising some important points in the debate on your amendments to clause 48 on 1 November (Official Report, columns 1077-1080), where you asked about the ability of the police to take photos of people with convictions outside the UK.

Biometrics – such as DNA, fingerprints, and images - are an important tool for the police to identify and eliminate suspects, and so protect the public. To set the context, the intention behind clause 48 is to provide consistency between the different types of biometrics, so that opportunities to use them to protect the public are not lost. Clause 48 simply extends the power for the police to take images that was introduced in the Protection of Freedoms Act 2012 (PoFA) for DNA and fingerprints in certain circumstances, including where someone has a conviction for a qualifying (i.e. serious) offence in a foreign jurisdiction, but where their biometrics have not already been taken. My understanding is that images were not included in the PoFA simply because they were not thought of as biometrics in the same way as the “first generation” biometrics (DNA and fingerprints) were at the time. We now recognise that the unique characteristics of an image can be used to identify an individual.

I will address the points you raised on the transfer of foreign conviction information in two parts.

What is the process by which the UK is notified of foreign convictions?

The exchange of conviction details is managed by ACRO Criminal Records Office. There is no automated process by which the UK is notified of foreign convictions. At present the UK relies on either an individual being encountered by an agency or the police, who then subsequently submit a conviction request through the secure communication channels of either the UK's Criminal Record Information System (UKCRIS) for EU countries or INTERPOL's I-24/7 system for non-EU countries.

Where we are notified that a UK national has been convicted of a recordable offence abroad, this will be placed on PNC. In the case of foreign nationals, the conviction will not be added to PNC unless the conviction indicates that the person represents an immediate and serious threat to public safety.

What are the safeguards in place to ensure that foreign conviction information is processed fairly?

Where criminal convictions are received under the provisions of the UK / EU Trade and Co-operation agreement (TCA) there are limitations on the use and further circulation of the data concerned. Conviction data can only be used for the specific purpose for which it was requested and EU Member States (MS) are only obliged to provide such data to support criminal proceedings. The conviction data is only made available outside of such proceedings where the conviction information received demonstrates that the individual concerned presents a serious and immediate threat to public safety. Whilst the TCA also provides avenues for the UK to request conviction data for purposes other than to support criminal proceedings, there is no legal obligation for EU member states to respond. Should an EU MS decided to respond to a request for conviction data that is not made in support of ongoing criminal proceedings, then the TCA stipulates that the conviction data can only be used for the specific purpose for which it was requested.

Outside of the EU, whilst there is no current legislation to govern the use of conviction data in the same manner as the UK/EU Trade and Co-operation agreement, the exchange or provision of overseas conviction data must be risk assessed within the recognised Overseas Judicial Assessment (OSJA) framework before any such exchange proceeds. All OSJAs must be suitably authorised and this can include Ministerial approval in high risk scenarios, before any conviction data is exchanged. All such assessments will consider the UK's obligations under international human rights and data protection legislation to ensure the use of overseas convictions remains lawful and proportionate.

The Home Office is also pursuing criminal conviction exchange agreements with key international partners outside of the UK and an agreement has been reached with Albania whilst the Criminal Records Office has agreements in place with Jamaica and the USA. The Home Office is keen to secure further agreements with priority partners to support the needs of UK Law Enforcement in protecting the public.

I am copying this letter to Lord Coaker and placing a copy in the library of the House.

A handwritten signature in dark ink, reading 'Sharpe of Epsom' in a cursive style.

LORD SHARPE OF EPSOM OBE

The Lord Paddick
House of Lords