

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 8 – Evidential, Jurisdictional and Procedural Matters

Section 55 – Taking samples by swabbing

293. **Section 55** amends the Criminal Procedure (Scotland) Act 1995 to remove the requirement to obtain authorisation from an inspector before a police constable can exercise compulsory powers to take a DNA sample by mouth swab, without force.
294. This is achieved by amending sections 18, 19, 19A and 19B of the 1995 Act which contain the statutory powers to obtain samples for DNA purposes. Section 18 applies where a person has been arrested and is in custody, or has been detained under section 14 of the 1995 Act. Sections 19 and 19A apply where a person has been convicted of an offence, although 19A covers only those offenders convicted of a sexual or violent offence as defined in subsection (6). Section 19B details circumstances where a constable may use reasonable force when obtaining samples.
295. Subsection (2) amends section 18 of the 1995 Act to:
- repeal subsection (6)(d) which includes mouth swabs among the methods of taking DNA samples that require the authorisation of an officer of at least the rank of inspector; and
 - insert a subsection (6A) which provides a new power for a constable or police custody and security officer (at a constable's direction) to take a DNA sample by mouth swab, without the need for authorisation by a more senior officer.
296. Subsection (3) amends sections 19 and 19A of the 1995 Act to:
- remove mouth swabs from the methods of taking DNA samples that require the authorisation of at least an inspector; and
 - insert in both sections a new subsection allowing a constable, or police custody and security officer (at a constable's direction) to take DNA samples by way of mouth swab when these sections apply, without the need for authorisation by a more senior officer.
297. Subsection (4) amends section 19B of the 1995 Act to insert a new subsection (2) which provides that the authority of an officer of at least the rank of inspector is required before a constable may use force to take a DNA sample by mouth swab under sections 18, 19 or 19A of that Act.