

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 8 – Evidential, Jurisdictional and Procedural Matters

Section 56 – Retaining samples or relevant physical data where given voluntarily

298. **Section 56** provides a statutory basis for the police to take, retain and use fingerprints, other prints and impressions and samples, with the written consent of an individual, either for the investigation of a particular offence or for any offence, depending on the consent given. It also makes provision for the withdrawal of such written consent.
299. Subsection (1) provides that these arrangements only apply when samples or prints cannot be taken under any other power, such as section 18 of the Criminal Procedure (Scotland) Act 1995, or a court warrant or other statutory power. This is designed to ensure that the arrangements will only be used when the police have no other power to take samples or prints and the consent of the individual is required.
300. Subsection (2) allows the police to use such samples and prints, taken with consent, in the investigation of an offence or offences. This puts on a statutory footing the current practice where the police take samples or prints with consent and check them against evidence from a scene of crime, for example mass DNA screenings in a geographical area. It also provides the police with authority, in certain circumstances, to retain the samples and prints for use in subsequent investigations whereas presently they would be destroyed at the conclusion of the investigation in connection with which they were obtained.
301. Subsection (3) provides that the police can only use samples and prints taken with consent in the investigation of offences when the person giving the consent has agreed in writing to their use, and that this consent can be limited to the investigation of the actual offence for which the sample or print was taken. A written consent limited in this way would be analogous to the current situation where the police will use samples or prints taken with consent to investigate a particular offence and then destroy them. The wider consent will allow the police to avoid taking samples or prints repeatedly from certain people by retaining them for future investigations with the consent of the individual concerned.
302. Subsection (4) lays out how a person may withdraw consent to the sample or print being used to investigate offences. It provides that consent may be withdrawn by:
- giving notice in writing to the chief constable of the police force on whose behalf the print or sample was taken; or
 - visiting any police station in that area and giving notice, either orally or in writing, to a constable or another authorised person.
303. It also provides that the person who receives the notice of withdrawal of consent must provide the person who gave the prints or sample with a written acknowledgement of

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

receipt of the notice of withdrawal. This is intended to provide proof of the fact of withdrawal and its time and date if this becomes significant.

304. Subsection (5) provides that the withdrawal takes effect from the point when notice under subsection (4) is received. Subject to subsection (6) the sample or print, and information derived from it, is to be destroyed as soon as possible after notice of withdrawal is given.
305. Subsection (6) provides that subsections (4) and (5) do not affect the use of such samples or prints in evidence if checks made against any other sample or print were undertaken before consent was withdrawn, whether in the prosecution of the offence for which they were taken or for any other offence, depending on the consent the person has given under subsection (3). Subsection (6) makes clear that withdrawal of consent does not affect the admissibility of any evidence the police have uncovered during the course of their investigations prior to withdrawal taking effect, or the admissibility of evidence in respect of the taking of the sample and the giving and withdrawal of consent.
306. Subsection (7) defines when a check will fall within subsection (6).
307. Subsection (8) makes clear the meanings of “sample” and “relevant physical data” in the section, which are the same as the existing meanings in the 1995 Act.