



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 8

#### EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

##### *Evidential matters*

#### **56 Retaining sample or relevant physical data where given voluntarily**

- (1) This section applies only to a person other than is mentioned in subsection (1) of section 18 of the 1995 Act (application of that section) and does not apply where a sample is, or relevant physical data are, taken from [<sup>F1</sup>or provided by] a person—
  - (a) by virtue of any power of search;
  - (b) by virtue of any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
  - (c) under the authority of a warrant.
- (2) In the circumstances mentioned in subsection (3), a sample or relevant physical data taken from and with the consent of the person (or provided by and with the consent of the person) in connection with the investigation of an offence [<sup>F2</sup>, or information derived from that sample may be held and used—
  - (a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, <sup>F3</sup> ...
  - (b) for the identification of a deceased person or a person from whom the sample or relevant physical data came.]

[<sup>F4</sup>(c) in the interests of national security, or

  - (d) for the purposes of a terrorist investigation]
- (3) The circumstances are that the person consents in writing to the sample, data or information [<sup>F5</sup>derived from a sample] being so held and used; but in giving such consent the person may elect to confine it to consent to holding and using in connection with the investigation and prosecution of the offence in connection with which the sample was, or data were, taken or provided.
- (4) The person may at any time withdraw such written consent by—

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- (a) giving notice in writing of such withdrawal to the chief constable of the [<sup>F6</sup>Police Service of Scotland;] or
  - (b) attending at any police station <sup>F7</sup>... and giving such notice to—
    - (i) any constable <sup>F8</sup>...; or
    - (ii) any person authorised to receive it by the officer in charge of the station,
 and the chief constable, constable or as the case may be person so authorised shall, on receipt of that notice, provide the person withdrawing consent with a written acknowledgment of receipt.
- (5) The withdrawal takes effect when notice given under subsection (4) is received by the person to whom it falls to provide an acknowledgment under that subsection; and subject to subsection (6)—
- (a) the sample, with all information derived from it, is;
  - (b) the data, <sup>F9</sup>..., are,
- to be destroyed as soon as possible after such receipt.
- (6) Subsections (4) and (5) are without prejudice to—
- (a) the use of the sample, data or information derived from [<sup>F10</sup>the sample] in evidence—
    - (i) unless an election was made under subsection (3), in any prosecution; and
    - (ii) if such an election was so made, in the prosecution of the offence in connection with which the sample was, or data were, taken or provided,
 where and in so far as that evidence relates to, or to circumstances connected with or arising out of, a check such as is mentioned in subsection (7);
  - (b) the admissibility of any evidence as to—
    - (i) the taking or provision of the sample or data; or
    - (ii) the giving or withdrawal of consent.
- (7) The check is one which—
- (a) was against any other sample or relevant physical data, or against any information derived from any other sample <sup>F11</sup>...; and
  - (b) took place before the withdrawal took effect.
- [<sup>F12</sup>(7A) In subsection (2)—
- (a) the reference to crime includes a reference to—
    - (i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or
    - (ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,
  - (b) the reference to an investigation includes a reference to an investigation outside the United Kingdom of a crime or suspected crime, and
  - (c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside the United Kingdom.]
- (8) In this section—

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“sample” means a sample such as is mentioned in section 18(6) or (6A) of the 1995 Act, being one taken as so mentioned;<sup>F13</sup>...

“relevant physical data” has the same meaning as it has for the purposes of section 18 of that Act [<sup>F14</sup>; and

“terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.]

### Textual Amendments

- F1** Words in s. 56(1) inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(a\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F2** Words in s. 56(2) substituted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(b\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F3** Word in s. 56(2)(a) omitted (16.9.2011) by virtue of [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2011 \(S.I. 2011/2298\)](#), art. 1(3), [Sch. para. 2\(a\)\(i\)](#) (with art. 4(1)(4))
- F4** S. 56(2)(c)-(d) inserted (16.9.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2011 \(S.I. 2011/2298\)](#), art. 1(3), [Sch. para. 2\(a\)\(ii\)](#) (with art. 4(1)(4))
- F5** Words in s. 56(3) inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(c\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F6** Words in s. 56(4)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 21\(2\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F7** Words in s. 56(4)(b) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 21\(2\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F8** Words in s. 56(4)(b)(i) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 21\(2\)\(b\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F9** Words in s. 56(5)(b) repealed (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(d\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F10** Words in s. 56(6)(a) substituted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(e\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F11** Words in s. 56(7)(a) repealed (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(f\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F12** S. 56(7A) inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(g\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F13** Word in s. 56(8) omitted (16.9.2011) by virtue of [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2011 \(S.I. 2011/2298\)](#), art. 1(3), [Sch. para. 2\(b\)\(i\)](#) (with art. 4(1)(4))
- F14** Words in s. 56(8) inserted (16.9.2011) by [The Criminal Justice and Licensing \(Scotland\) Act 2010 \(Consequential Provisions and Modifications\) Order 2011 \(S.I. 2011/2298\)](#), art. 1(3), [Sch. para. 2\(b\)\(ii\)](#) (with art. 4(1)(4))

**Changes to legislation:**

Criminal Justice (Scotland) Act 2003, Section 56 is up to date with all changes known to be in force on or before 30 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to [legislation.gov.uk](#). This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)