

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Three: Criminal Justice

Retention of samples etc.: prosecutions for sexual and violent offences

Section 83 – Retention of samples etc.: prosecutions for sexual and violent offences

177. This section inserts a new section 18A into the 1995 Act to allow the police to retain, for a period of time, DNA samples taken from people who have been arrested or detained, and also any information (such as a DNA profile) derived from those samples, provided that criminal proceedings have been raised against them for certain offences.
178. Subsection (2) of section 18A specifies that DNA samples and information deriving from these samples can only be retained where criminal proceedings in respect of a relevant sexual or violent offence (as defined in section 18A(11)) have been instituted against the person who is arrested or detained, and these proceedings did not result in a criminal conviction or an order for absolute discharge under section 246(3) of the 1995 Act (an order for absolute discharge is pronounced when a court is satisfied that the accused committed the offence but considers that it is inexpedient to punish them.). Therefore, DNA samples and information deriving from these samples can be kept if the relevant criminal proceedings are instituted, even if these are subsequently dropped or if a person is brought to trial but is acquitted by the court.
179. In cases where the new provisions apply, the police are empowered to retain the sample and information following the conclusion of the proceedings, until the date set for the destruction of the sample and information. The destruction date is initially set at 3 years following the conclusion of proceedings. However, within the last 3 months before the set destruction date, a relevant chief constable may apply to a sheriff, on summary application, for an extension. Where a sheriff upholds such an application, a new destruction date will be set, not more than 2 years later than the previous one. A relevant chief constable is defined in section 18A(11). The chief constable of the police force which took the sample, or a chief constable of a police force in the area in which the individual from whom the sample was taken now resides, can apply to the court to extend the time for which samples can be retained.
180. The provisions leave it open to chief constables to apply sequentially for more than one two-year extension period to the destruction date for the sample and information from a particular individual. If a relevant chief constable does not apply to a sheriff before the date of destruction elapses, the samples and any information which is retained must be destroyed.
181. Subsection (8) of section 18A provides that a decision by a sheriff to retain the sample (and any information) for a further two years, or to destroy this data, can be appealed

*These notes relate to the Police, Public Order and Criminal Justice (Scotland)
Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

to a sheriff principal, whose decision is final. An appeal must be lodged within 21 days of the sheriff's decision.

182. Subsections (3), (9) and (10) of section 18A provide that the police must destroy the sample and information by the set destruction date. However, if on that date there is an outstanding application to the sheriff for an extension or an outstanding appeal against a decision of a sheriff which orders that the sample must be destroyed, or if the period for beginning any such appeal has not yet elapsed, the sample and information must be destroyed as soon as possible after timescales for beginning an appeal have elapsed without a challenge being brought, or after the due legal processes have been concluded, if their conclusion is that there is no extension to the destruction date.