



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 3

CRIMINAL PROCEDURE

Retention and use of samples etc.

79 Retention of samples etc. taken or provided in connection with certain fixed penalty offences

After section 18C of the 1995 Act insert—

“18D Retention of samples etc. taken or provided in connection with certain fixed penalty offences

- (1) This section applies to—
- (a) relevant physical data taken from or provided by a person under section 18(2), and
 - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),
- where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
- (a) the person was arrested or detained in connection with a fixed penalty offence,
 - (b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,
 - (c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—
 - (i) a fixed penalty notice in respect of that offence (the “main FPN”), or

Status: This is the original version (as it was originally enacted).

- (ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and
 - (d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—
 - (i) pays the fixed penalty, or
 - (ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.
- (3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—
- (a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,
 - (b) where subsection (2)(c)(ii) applies and—
 - (i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,
 - (ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.
- (4) Where—
- (a) subsection (2)(c)(i) applies, and
 - (b) the main FPN is revoked under section 133(1) of the 2004 Act,
- the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.
- (5) Where—
- (a) subsection (2)(c)(ii) applies, and
 - (b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,
- the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.
- (6) In this section—
- “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 ([asp 8](#)),
 - “fixed penalty notice” has the meaning given by section 129(2) of the 2004 Act,
 - “fixed penalty offence” has the meaning given by section 128(1) of the 2004 Act.”.