



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 3

CRIMINAL PROCEDURE

Retention and use of samples etc.

82 Use of samples etc.

(1) After section 19B of the 1995 Act insert—

“19C Sections 18 and 19 to 19AA: use of samples etc.

(1) Subsection (2) applies to—

- (a) relevant physical data taken or provided under section 18(2), 19(2)(a), 19A(2)(a) or 19AA(3)(a),
- (b) a sample, or any information derived from a sample, taken under section 18(6) or (6A), 19(2)(b) or (c), 19A(2)(b) or (c) or 19AA(3)(b) or (c),
- (c) relevant physical data or a sample taken from a person—
 - (i) by virtue of any power of search,
 - (ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or
 - (iii) under the authority of a warrant,
- (d) information derived from a sample falling within paragraph (c), and
- (e) relevant physical data, a sample or information derived from a sample taken from, or provided by, a person outwith Scotland which is given by any person to—
 - (i) a police force,
 - (ii) the Scottish Police Services Authority, or
 - (iii) a person acting on behalf of a police force.

Status: This is the original version (as it was originally enacted).

- (2) The relevant physical data, sample or information derived from a sample may be used—
- (a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
 - (b) for the identification of a deceased person or a person from whom the relevant physical data or sample came.
- (3) Subsections (4) and (5) apply to relevant physical data, a sample or information derived from a sample falling within any of paragraphs (a) to (d) of subsection (1) (“relevant material”).
- (4) If the relevant material is held by a police force, the Scottish Police Services Authority or a person acting on behalf of a police force, the police force or, as the case may be, the Authority or person may give the relevant material to another person for use by that person in accordance with subsection (2).
- (5) A police force, the Scottish Police Services Authority or a person acting on behalf of a police force may, in using the relevant material in accordance with subsection (2), check it against other relevant physical data, samples and information derived from samples received from another person.
- (6) 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 Scotland 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 Scotland.
- (7) This section is without prejudice to any other power relating to the use of relevant physical data, samples or information derived from a sample.”.
- (2) In section 56 of the Criminal Justice (Scotland) Act 2003 ([asp 7](#)) (use of samples etc. voluntarily given)—
- (a) in subsection (1), after “from,” insert “or provided by”,
 - (b) in subsection (2), for the words from “may” where it first occurs to the end substitute “, 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, or
 - (b) for the identification of a deceased person or a person from whom the sample or relevant physical data came.”,
 - (c) in subsection (3), after “information” insert “derived from a sample”,
 - (d) in subsection (5)(b), the words “with all information derived from them” are repealed,
 - (e) in subsection (6)(a), for “it or them” substitute “the sample”,

- (f) in subsection (7)(a), the words “or relevant physical data”, in the second place where they occur, are repealed, and
- (g) after subsection (7) insert—
 - “(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.”.