



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART II

#### POLICE FUNCTIONS

##### *Prints and samples*

#### **[<sup>F1</sup>18A Retention of samples etc. : prosecutions for sexual and violent offences**

[<sup>F2</sup>(1) This section applies to—

- (a) relevant physical data taken or provided under section 18(2), and
- (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A),

where the condition in subsection (2) is satisfied.]

(2) That condition is that criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom [<sup>F3</sup>the relevant physical data was taken or by whom it was provided or, as the case may be, from whom] the sample was taken but those proceedings concluded otherwise than with a conviction or an order under section 246(3) of this Act.

(3) Subject to subsections (9) and (10) below, the [<sup>F4</sup>relevant physical data, sample or information derived from a sample] shall be destroyed no later than the destruction date.

(4) The destruction date is—

- (a) the date of expiry of the period of 3 years following the conclusion of the proceedings; or
- (b) such later date as an order under subsection (5) below may specify.

(5) On a summary application made by the [<sup>F5</sup>chief constable of the Police Service of Scotland] within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.

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- (6) An application under subsection (5) above may be made to any sheriff—
- (a) in whose sheriffdom the person referred to in subsection (2) above resides;
  - (b) in whose sheriffdom that person is believed by the applicant to be; or
  - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (7) An order under subsection (5) above shall not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The decision of the sheriff on an application under subsection (5) above may be appealed to the sheriff principal within 21 days of the decision; and the sheriff principal's decision on any such appeal is final.
- [ If the sheriff principal allows an appeal against the refusal of an application under <sup>F6</sup>(8A) subsection (5), the sheriff principal may make an order amending, or further amending, the destruction date.
- (8B) An order under subsection (8A) must not specify a destruction date more than 2 years later than the previous destruction date.]
- (9) Subsection (3) above does not apply where—
- (a) an application under subsection (5) above has been made but has not been determined;
  - (b) the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
- (a) the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant; or
  - (c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,
- the [<sup>F7</sup>relevant physical data, sample or information derived from a sample] shall be destroyed as soon as possible thereafter.
- (11) In this section—
- <sup>F8</sup> ...
- (a)
  - (b)
  - (c)
- “relevant sexual offence” and “relevant violent offence” have [<sup>F9</sup>, subject to the modification in subsection (12),] the same meanings as in section 19A(6) of this Act and include any attempt, conspiracy or incitement to commit such an offence.]
- [<sup>F10</sup>(12) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—

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“(g) public indecency if it is apparent from the offence as charged in the indictment or complaint that there was a sexual aspect to the behaviour of the person charged;”]

#### Textual Amendments

- F1** S. 18A inserted (1.1.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 83\(2\)](#), 104; S.S.I. 2006/607, [art. 3](#), Sch.
- F2** S. 18A(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(a\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))
- F3** Words in s. 18A(2) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(b\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))
- F4** Words in s. 18A(3) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(c\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))
- F5** Words in s. 18A(5) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), [s. 129\(2\)](#), [sch. 7 para. 12\(4\)\(a\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F6** S. 18A(8A)(8B) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(d\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))
- F7** Words in s. 18A(10) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(e\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))
- F8** Definition in s. 18A(11) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), [s. 129\(2\)](#), [sch. 7 para. 12\(4\)\(b\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F9** Words in s. 18A(11) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(f\)\(ii\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))
- F10** S. 18A(12) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(g\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), sch. (with [art. 4](#))

**Changes to legislation:**

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**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. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)