



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART II

#### POLICE FUNCTIONS

##### *Prints and samples*

#### **18 Prints, samples etc. in criminal investigations.**

- (1) This section applies where a person has been arrested and is in custody or is detained under section 14(1) of this Act.
- (2) A constable may take from the person [<sup>F1</sup>, or require the person to provide him with, such relevant physical data] as the constable may, having regard to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take [<sup>F2</sup>from him or require him to provide, and the person so required shall comply with that requirement].
- [<sup>F3</sup> (3) Subject to subsection (4) below [<sup>F4</sup>and [<sup>F5</sup>sections 18A to 18F] of this Act], all record of any relevant physical data taken from or provided by a person under subsection (2) above, all samples taken under subsection (6) [<sup>F6</sup>or (6A)] below and all information derived from such samples shall be destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 246(3) of this Act.]
- (4) The duty under subsection (3) above to destroy samples taken under subsection (6) [<sup>F7</sup>or (6A)] below and information derived from such samples shall not apply—
  - (a) where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken; or
  - (b) where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.

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- (5) No sample, or information derived from a sample, retained by virtue of subsection (4) above shall be used—
  - (a) in evidence against the person from whom the sample was taken; or
  - (b) for the purposes of the investigation of any offence.
- (6) A constable may, with the authority of an officer of a rank no lower than inspector, take from the person—
  - (a) from the hair of an external part of the body other than pubic hair, by means of cutting, combing or plucking, a sample of hair or other material;
  - (b) from a fingernail or toenail or from under any such nail, a sample of nail or other material;
  - (c) from an external part of the body, by means of swabbing or rubbing, a sample of blood or other body fluid, of body tissue or of other material;
  - (d) <sup>F8</sup> .....

[<sup>F9</sup>(6A) A constable, or at a constable’s direction a police custody and security officer, may take from the inside of the person’s mouth, by means of swabbing, a sample of saliva or other material.]

<sup>F10</sup>(7) .....

[<sup>F11</sup>(7A) For the purposes of this section and [<sup>F12</sup>, subject to the modification in subsection (7AA), sections 18A to 19C] of this Act “ relevant physical data ” means any—

- (a) fingerprint;
- (b) palm print;
- (c) print or impression other than those mentioned in paragraph (a) and (b) above, of an external part of the body;
- (d) record of a person’s skin on an external part of the body created by a device approved by the Secretary of State.

[<sup>F13</sup>(7AA) The modification is that for the purposes of section 19C as it applies in relation to relevant physical data taken from or provided by a person outwith Scotland, subsection (7A) is to be read as if in paragraph (d) the words from “created” to the end were omitted.]

(7B) The Secretary of State by order made by statutory instrument may approve a device for the purpose of creating such records as are mentioned in paragraph (d) of subsection (7A) above.]

- (8) Nothing in this section shall prejudice—
  - (a) any power of search;
  - (b) any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
  - (c) any power to take [<sup>F14</sup>relevant physical data] or samples under the authority of a warrant.

**Textual Amendments**

**F1** Words in s. 18(2) substituted (1.8.1997) by 1997 c. 48, s. 47(1)(a)(i); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

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- F2** Words in s. 18(2) inserted (1.8.1997) by 1997 c. 48, s. 47(1)(a)(ii); S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F3** S. 18(3) substituted (*retrospective* to 1.8.1997) by 1998 c. 37, ss. 119, 121(2), **Sch. 8 para. 117(2)**
- F4** Words in s. 18(3) inserted (1.1.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 83(1), 104; S.S.I. 2006/607, **art. 3**, **Sch.**
- F5** Words in s. 18(3) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 77(2)(a), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 4)
- F6** Words in s. 18(3) inserted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, **Sch. 6 para. 4(2)**; S.S.I. 2006/432, **art. 2(g)(h)**
- F7** Words in s. 18(4) inserted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, **Sch. 6 para. 4(2)**; S.S.I. 2006/432, **art. 2(g)(h)**
- F8** S. 18(6)(d) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(2)(a)}, 89; S.S.I. 2003/288, **art. 2**, **Sch.**
- F9** S. 18(6A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(2)(b)}, 89; S.S.I. 2003/288, **art. 2**, **Sch.**
- F10** S. 18(7) repealed (17.11.1997) by 1997 c. 48, ss. 47(1)(c), 62(2), **Sch. 3**; S.I. 1997/2694, **art. 2(2)(a)(d)**
- F11** S. 18(7A)(7B) inserted (1.8.1997) by 1997 c. 48, s. 47(1)(d); S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F12** Words in s. 18(7A) substituted (1.8.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 77(2)(b), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 4)
- F13** S. 18(7AA) inserted (1.8.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 77(2)(c), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 4)
- F14** Words in s. 18(8)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 30**; S.S.I. 2011/178, art. 2, sch.

#### **Modifications etc. (not altering text)**

- C1** S. 18 applied (with modifications) (19.2.2001) by 2000 c. 11, ss. 41, 53, Sch. 7 para. 6, **Sch. 8 para. 20(1)**; S.I. 2001/421, **art. 2**
- C2** S. 18 applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), Sch. 2 para. 2(3)(4) (with art. 6(2)))
- C3** S. 18(3)-(5) applied (17.12.2001) by 2001 asp 13, s. 17, **Sch. 4 para. 7** (with s. 29); S.S.I. 2001/456, **art. 2**

### **[<sup>F15</sup>18A Retention of samples etc. : prosecutions for sexual and violent offences**

[<sup>F16</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>F17</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>F18</sup>relevant physical data, sample or information derived from a sample] shall be destroyed no later than the destruction date.

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- (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 relevant chief constable 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.
- (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>F19</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>F20</sup>relevant physical data, sample or information derived from a sample] shall be destroyed as soon as possible thereafter.
- (11) In this section—
- “ the relevant chief constable ” means—
- (a) the chief constable of the police force of which the constable who [<sup>F21</sup>took the relevant physical data or to whom it was provided or who] took or directed the taking of the sample was a member;

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- (b) the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or
- (c) a chief constable who believes that that person is or is intending to come to the area of the chief constable's police force; and
  - “ relevant sexual offence ” and “ relevant violent offence ” have<sup>F22</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>F23</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—

- “(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

- F15** 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.
- F16** 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)
- F17** 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)
- F18** 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)
- F19** 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)
- F20** 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)
- F21** Words in s. 18A(11) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(f\)\(i\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F22** 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)
- F23** 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)

#### <sup>F24</sup>**18B Retention of samples etc. where offer under sections 302 to 303ZA accepted**

- (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 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 the offence or offences in relation to which a relevant offer is issued to the person, and
  - (b) the person—

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- (i) accepts a relevant offer, or
  - (ii) in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.
- (3) In this section “relevant offer” means—
- (a) a conditional offer under section 302,
  - (b) a compensation offer under section 302A,
  - (c) a combined offer under section 302B, or
  - (d) a work offer under section 303ZA.
- (4) Subject to subsections (6) and (7) and section 18C(9) and (10), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.
- (5) In subsection (4), “destruction date” means—
- (a) in relation to a relevant offer that relates only to—
    - (i) a relevant sexual offence,
    - (ii) a relevant violent offence, or
    - (iii) both a relevant sexual offence and a relevant violent offence, the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,
  - (b) in relation to a relevant offer that relates to—
    - (i) an offence or offences falling within paragraph (a), and
    - (ii) any other offence,
 the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,
  - (c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.
- (6) If a relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after—
- (a) the prosecutor decides not to issue a further relevant offer to the person,
  - (b) the prosecutor decides not to institute criminal proceedings against the person, or
  - (c) the prosecutor institutes criminal proceedings against the person and those proceedings conclude otherwise than with a conviction or an order under section 246(3).
- (7) If a relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after the setting aside.
- (8) In this section, “relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.
- (9) 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 relevant offer (as defined in section 18B(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;”.]

#### Textual Amendments

**F24** Ss. 18B-18C inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 78, 206(1); [S.S.I. 2011/178](#), art. 2, sch. (with art. 5)

### [<sup>F24</sup>18C Section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences

- (1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18B(5)(a) or (b).
- (2) On a summary application made by the relevant chief constable 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.
- (3) An application under subsection (2) may be made to any sheriff—
  - (a) in whose sheriffdom the appropriate person 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.
- (4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.
- (5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.
- (6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.
- (7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The sheriff principal's decision on an appeal under subsection (5) is final.
- (9) Section 18B(4) does not apply where—
  - (a) an application under subsection (2) has been made but has not been determined,
  - (b) the period within which an appeal may be brought under subsection (5) 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) may be brought has elapsed without such an appeal being brought,

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- (b) such an appeal is brought and is withdrawn or finally determined against the appellant, or
- (c) an appeal brought under subsection (5) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.

(11) In this section—

“appropriate person” means the person from whom the relevant physical data was taken or by whom it was provided or from whom the sample was taken,

“destruction date” has the meaning given by section 18B(5),

“the relevant chief constable” has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the appropriate person.]

#### Textual Amendments

**F24** Ss. 18B-18C inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 78, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 5)

### [<sup>F25</sup>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
  - (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.



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- (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.]

#### **Textual Amendments**

**F25** S. 18D inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 79, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 6)

#### **[<sup>F26</sup>18E Retention of samples etc.: children referred to children's hearings**

- (1) This section applies to—
- (a) relevant physical data taken from or provided by a child under section 18(2); and
  - (b) any sample, or any information derived from a sample, taken from a child under section 18(6) or (6A),
- where the first condition, and the second, third or fourth condition, are satisfied.
- (2) The first condition is that the child's case has been referred to a children's hearing under section 65(1) of the Children (Scotland) Act 1995 (c.36) (the “Children Act”).
- (3) The second condition is that—

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- (a) a ground of the referral is that the child has committed an offence mentioned in subsection (6) (a “relevant offence”);
  - (b) both the child and the relevant person in relation to the child accept, under section 65(5) or (6) of the Children Act, the ground of referral; and
  - (c) no application to the sheriff under section 65(7) or (9) of that Act is made in relation to that ground.
- (4) The third condition is that—
- (a) a ground of the referral is that the child has committed a relevant offence;
  - (b) the sheriff, on an application under section 65(7) or (9) of the Children Act—
    - (i) deems, under section 68(8) of the Children Act; or
    - (ii) finds, under section 68(10) of that Act, the ground of referral to be established; and
  - (c) no application to the sheriff under section 85(1) of that Act is made in relation to that ground.
- (5) The fourth condition is that the sheriff, on an application under section 85(1) of the Children Act—
- (a) is satisfied, under section 85(6)(b) of that Act, that a ground of referral which constitutes a relevant offence is established; or
  - (b) finds, under section 85(7)(b) of that Act, that—
    - (i) a ground of referral, which was not stated in the original application under section 65(7) or (9) of that Act, is established; and
    - (ii) that ground constitutes a relevant offence.
- (6) A relevant offence is such relevant sexual offence or relevant violent offence as the Scottish Ministers may by order made by statutory instrument prescribe.
- (7) An order under subsection (6) may prescribe a relevant violent offence by reference to a particular degree of seriousness.
- (8) Subject to section 18F(8) and (9), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.
- (9) The destruction date is—
- (a) the date of expiry of the period of 3 years following—
    - (i) where the second condition is satisfied, the date on which the ground of referral was accepted as mentioned in that condition;
    - (ii) where the third condition is satisfied, the date on which the ground of referral was established as mentioned in that condition;
    - (iii) where the ground of referral is established as mentioned in paragraph (a) of the fourth condition, the date on which that ground was established under section 68(8) or, as the case may be, (10) of the Children Act; or
    - (iv) where the ground of referral is established as mentioned in paragraph (b) of the fourth condition, the date on which that ground was established as mentioned in that paragraph; or
  - (b) such later date as an order under section 18F(1) may specify.
- (10) No statutory instrument containing an order under subsection (6) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

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(11) In this section—

“relevant person” has the same meaning as in section 93(2) of the Children Act;

“relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (12), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.

(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—

“(g)public indecency if it is apparent from the ground of referral relating to the offence that there was a sexual aspect to the behaviour of the child;”.

#### Textual Amendments

**F26** Ss. 18E, 18F inserted (13.12.2010 for the insertion of s. 18E(6)(7)(10), 15.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 80, 206(1)**; [S.S.I. 2010/413](#), art. 2, sch.; [S.S.I. 2011/178](#), art. 2, sch. (with art. 7)

#### 18F Retention of samples etc. relating to children: appeals

- (1) On a summary application made by the relevant chief constable 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.
- (2) An application under subsection (1) may be made to any sheriff—
  - (a) in whose sheriffdom the child mentioned in section 18E(1) resides;
  - (b) in whose sheriffdom that child is believed by the applicant to be; or
  - (c) to whose sheriffdom that child is believed by the applicant to be intending to come.
- (3) An order under subsection (1) must not specify a destruction date more than 2 years later than the previous destruction date.
- (4) The decision of the sheriff on an application under subsection (1) may be appealed to the sheriff principal within 21 days of the decision.
- (5) If the sheriff principal allows an appeal against the refusal of an application under subsection (1), the sheriff principal may make an order amending, or further amending, the destruction date.
- (6) An order under subsection (5) must not specify a destruction date more than 2 years later than the previous destruction date.
- (7) The sheriff principal's decision on an appeal under subsection (4) is final.
- (8) Section 18E(8) does not apply where—
  - (a) an application under subsection (1) has been made but has not been determined;
  - (b) the period within which an appeal may be brought under subsection (4) against a decision to refuse an application has not elapsed; or

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- (c) such an appeal has been brought but has not been withdrawn or finally determined.

(9) Where—

- (a) the period within which an appeal referred to in subsection (8)(b) 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 (4) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed or, as the case may be, the appeal is withdrawn or determined.

(10) In this section—

“destruction date” has the meaning given by section 18E(9); and

“relevant chief constable” has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in section 18E(1).]

#### Textual Amendments

**F26** Ss. 18E, 18F inserted (13.12.2010 for the insertion of s. 18E(6)(7)(10), 15.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 80**, 206(1); S.S.I. 2010/413, art. 2, sch.; S.S.I. 2011/178, art. 2, sch. (with art. 7)

## 19 Prints, samples etc. in criminal investigations: supplementary provisions.

(1) [<sup>F27</sup>Without prejudice to any power exercisable under section 19A of this Act, this] section applies where a person convicted of an offence—

- (a) has not, since the conviction, had [<sup>F28</sup>taken from him, or been required to provide, any relevant physical data or had any impression or sample] taken from him; or
- (b) has [<sup>F29</sup>at any time had—
- (i) taken from him or been required (whether under paragraph (a) above or under section 18 [<sup>F30</sup>, 19A or 19AA] of this Act or otherwise) to provide any relevant physical data; or
- (ii) any <sup>F31</sup>... sample taken from him,

which was not suitable for the means of analysis for which the data were taken or required or the <sup>F31</sup>... sample was taken] or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.

(2) Where this section applies, a constable may, within the permitted period—

- [<sup>F32</sup>(a) take from or require the convicted person to provide him with such relevant physical data as he reasonably considers it appropriate to take or, as the case may be, require the provision of]; <sup>F33</sup> . . .
- (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to [<sup>F34</sup>(c)]

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- of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample<sup>[F35]</sup> and]
- <sup>[F36]</sup>(c) take, or direct a police custody and security officer to take, from the person any sample mentioned in subsection (6A) of that section by the means specified in that subsection.]
- (3) A constable—
- (a) may require the convicted person to attend a police station for the purposes of subsection (2) above;
  - (b) may, where the convicted person is in legal custody by virtue of section 295 of this Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.
- (4) In subsection (2) above, “the permitted period” means—
- (a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;
  - (b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that <sup>[F37]</sup>the relevant physical data were or]the sample, <sup>F38</sup> . . . was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.
- (5) A requirement under subsection (3)(a) above—
- (a) shall give the person at least seven days’ notice of the date on which he is required to attend;
  - (b) may direct him to attend at a specified time of day or between specified times of day.
- (6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.

#### Textual Amendments

- F27** Words in s. 19(1) substituted (17.11.1997) by 1997 c. 48, s. 48(1); S.I. 1997/2694, art. 2(2)(b)
- F28** Words in s. 19(1)(a) substituted (1.8.1997) by 1997 c. 48, s. 47(2)(a)(i); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F29** Words and s. 19(1)(b)(i)(ii) substituted (1.8.1997) for words in s. 19(1)(b) by 1997 c. 48, s. 47(2)(a)(ii); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F30** Words in s. 19(1)(b)(i) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 77(3), 104; S.S.I. 2006/432, art. 2(d)
- F31** Words in s. 19(1)(b) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 7 para. 31; S.S.I. 2011/178, art. 2, sch.
- F32** S. 19(2)(a) substituted (1.8.1997) by 1997 c. 48, s. 47(2)(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F33** Word in s. 19(2) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(a)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F34** Word in s. 19(2)(b) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(b)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F35** S. 19(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F36** S. 19(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(c)}, 89; S.S.I. 2003/288, art. 2, Sch.

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- F37** Words in s. 19(4)(b) inserted (1.8.1997) by 1997 c. 48, s. 47(2)(c)(i); S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F38** Words in s. 19(4)(b) repealed (1.8.1997) by 1997 c. 48, ss. 47(2)(c)(ii), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

**[<sup>F39</sup>19A Samples etc. from persons convicted of sexual and violent offences.**

- (1) This section applies where a person—
- (a) is convicted on or after the relevant date of a relevant offence and is sentenced to imprisonment;
  - (b) was convicted before the relevant date of a relevant offence, was sentenced to imprisonment and is serving that sentence on or after the relevant date;
  - (c) was convicted before the relevant date of a specified relevant offence, was sentenced to imprisonment, is not serving that sentence on that date or at any time after that date but was serving it at any time during the period of five years ending with the day before that date.
- (2) Subject to subsections (3) and (4) below, where this section applies a constable may—
- (a) take from the person or require the person to provide him with such relevant physical data as the constable reasonably considers appropriate; <sup>F40</sup> . . .
  - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to [<sup>F41</sup>(c)] of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample [<sup>F42</sup> and]
  - <sup>F43</sup>(c) [ take, or direct a police custody and security officer to take, from the person any sample mentioned in subsection (6A) of that section by the means specified in that subsection.]
- (3) The power conferred by subsection (2) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under [<sup>F44</sup>subsection (2) of section 19 of this Act in a case where the power conferred by that subsection was exercised by virtue of subsection (1)(a) of that section][<sup>F45</sup>, under this section or under section 19AA(3) of this Act] unless the data so taken or required have been or, as the case may be, the sample so taken or required has been lost or destroyed.
- (4) Where this section applies by virtue of—
- (a) paragraph (a) or (b) of subsection (1) above, the powers conferred by subsection (2) above may be exercised at any time when the person is serving his sentence; and
  - (b) paragraph (c) of the said subsection (1), those powers may only be exercised within a period of three months beginning on the relevant date.
- (5) Where a person in respect of whom the power conferred by subsection (2) above may be exercised—
- (a) is no longer serving his sentence of imprisonment, subsections (3)(a), (5) and (6);
  - (b) is serving his sentence of imprisonment, subsection (3)(b),
- of section 19 of this Act shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (6) In this section—

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“ conviction ” includes—

- (a) an acquittal , by virtue of section 54(6) or 55(3) of this Act, on the ground of the person’s insanity at the time at which he committed the act constituting the relevant offence;
- (b) a finding under section 55(2) of this Act,

and “ convicted ” shall be construed accordingly;

“ relevant date ” means the date on which section 48 of the <sup>M1</sup> Crime and Punishment (Scotland) Act 1997 is commenced;

“ relevant offence ” means any relevant sexual offence or any relevant violent offence;

“ relevant sexual offence ” means any of the following offences—

- (a) rape [<sup>F46</sup>at common law];
- (b) clandestine injury to women;
- (c) abduction of a woman with intent to rape;
- (ca) [<sup>F47</sup>abduction with intent to commit the statutory offence of rape;]
- (d) assault with intent to rape or ravish;
- (da) [<sup>F48</sup>assault with intent to commit the statutory offence of rape;]
- (e) indecent assault;
- (f) lewd, indecent or libidinous behaviour or practices;
- (g) [<sup>F49</sup>public indecency if the court, in imposing sentence or otherwise disposing of the case, determined for the purposes of paragraph 60 of Schedule 3 to the Sexual Offences Act 2003 (c.42) that there was a significant sexual aspect to the offender's behaviour in committing the offence;]
- (h) sodomy; <sup>F50</sup> . . .
- (i) any offence which consists of a contravention of any of the following statutory provisions—
  - (i) section 52 of the <sup>M2</sup> Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
  - (ii) section 52A of that Act (possession of indecent images of children);
  - (iii) [<sup>F51</sup>section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non consensual sexual acts);]
  - (iv) [<sup>F52</sup>section 313 of that Act (persons providing care services: sexual offences);]
  - (v) section 1 of the <sup>M3</sup> Criminal Law (Consolidation)(Scotland) Act 1995 (incest);
  - (vi) section 2 of that Act (intercourse with step-child);
  - (vii) section 3 of that Act (intercourse with child under 16 years by person in position of trust);
  - (viii) section 5(1) or (2) of that Act (unlawful intercourse with girl under 13 years);
  - (ix) section 5(3) of that Act (unlawful intercourse with girl aged between 13 and 16 years);
  - (x) section 6 of that Act (indecent behaviour towards girl between 12 and 16 years);
  - (xi) section 7 of that Act (procuring);

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- (xii) section 8 of that Act (abduction and unlawful detention of women and girls);
  - (xiii) section 9 of that Act (permitting use of premises for unlawful sexual intercourse);
  - (xiv) section 10 of that Act (liability of parents etc in respect of offences against girls under 16 years);
  - (xv) section 11(1)(b) of that Act (soliciting for immoral purpose);
  - (xvi) section 13(5)(b) and (c) of that Act (homosexual offences); <sup>F53</sup> and
- (j) any offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—
- (i) section 1 (rape),
  - (ii) section 2 (sexual assault by penetration),
  - (iii) section 3 (sexual assault),
  - (iv) section 4 (sexual coercion),
  - (v) section 5 (coercing a person into being present during a sexual activity),
  - (vi) section 6 (coercing a person into looking at a sexual image),
  - (vii) section 7(1) (communicating indecently),
  - (viii) section 7(2) (causing a person to see or hear an indecent communication),
  - (ix) section 8 (sexual exposure),
  - (x) section 9 (voyeurism),
  - (xi) section 18 (rape of a young child),
  - (xii) section 19 (sexual assault on a young child by penetration),
  - (xiii) section 20 (sexual assault on a young child),
  - (xiv) section 21 (causing a young child to participate in a sexual activity),
  - (xv) section 22 (causing a young child to be present during a sexual activity),
  - (xvi) section 23 (causing a young child to look at a sexual image),
  - (xvii) section 24(1) (communicating indecently with a young child),
  - (xviii) section 24(2) (causing a young child to see or hear an indecent communication),
  - (xix) section 25 (sexual exposure to a young child),
  - (xx) section 26 (voyeurism towards a young child),
  - (xxi) section 28 (having intercourse with an older child),
  - (xxii) section 29 (engaging in penetrative sexual activity with or towards an older child),
  - (xxiii) section 30 (engaging in sexual activity with or towards an older child),
  - (xxiv) section 31 (causing an older child to participate in a sexual activity),
  - (xxv) section 32 (causing an older child to be present during a sexual activity),
  - (xxvi) section 33 (causing an older child to look at a sexual image),
  - (xxvii) section 34(1) (communicating indecently with an older child),



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- (xxviii) section 34(2) (causing an older child to see or hear an indecent communication),
- (xxix) section 35 (sexual exposure to an older child),
- (xxx) section 36 (voyeurism towards an older child),
- (xxxi) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
- (xxxii) section 37(4) (engaging while an older child in consensual sexual conduct with another older child),
- (xxxiii) section 42 (sexual abuse of trust) but only if the condition set out in section 43(6) of that Act is fulfilled,
- (xxxiv) section 46 (sexual abuse of trust of a mentally disordered person);]

“relevant violent offence” means any of the following offences—

- (a) murder or culpable homicide;
- (b) uttering a threat to the life of another person;
- (c) perverting the course of justice in connection with an offence of murder;
- (d) fire raising;
- (e) assault;
- (f) reckless conduct causing actual injury;
- (g) abduction; and
- (h) any offence which consists of a contravention of any of the following statutory provisions—
  - (i) sections 2 (causing explosion likely to endanger life) or 3 (attempting to cause such an explosion) of the <sup>M4</sup> Explosive Substances Act 1883;
  - (ii) section 12 of the <sup>M5</sup> Children and Young Persons (Scotland) Act 1937 (cruelty to children);
  - (iii) sections 16 (possession of firearm with intent to endanger life or cause serious injury), 17 (use of firearm to resist arrest) or 18 (having a firearm for purpose of committing an offence listed in Schedule 2) of the <sup>M6</sup> Firearms Act 1968;
  - (iv) section 6 of the <sup>M7</sup> Child Abduction Act 1984 (taking or sending child out of the United Kingdom); and
  - (v) [<sup>F54</sup>section 47(1) (possession of offensive weapon in public place), 49(1) (possession of article with blade or point in public place), 49A(1) or (2) (possession of article with blade or point or offensive weapon on school premises) or 49C(1) (possession of offensive weapon or article with blade or point in prison) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39);]

“sentence of imprisonment” means the sentence imposed in respect of the relevant offence and includes—

- (a) a [<sup>F55</sup>compulsion] order, a restriction order, a hospital direction and any order under section 57(2)(a) or (b) of this Act; and
- (b) a sentence of detention imposed under section 207 or 208 of this Act,

and “sentenced to imprisonment” shall be construed accordingly; and any reference to a person serving his sentence shall be construed as a reference to the person being detained in a prison, hospital or other place in pursuance of a sentence of imprisonment; and

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“specified relevant offence” means—

- (a) any relevant sexual offence mentioned in paragraphs (a), (b), (f) and (i)(viii) of the definition of that expression and any such offence as is mentioned in paragraph (h) of that definition where the person against whom the offence was committed did not consent; and
- (b) any relevant violent offence mentioned in paragraph (a) or (g) of the definition of that expression and any such offence as is mentioned in paragraph (e) of that definition where the assault is to the victim’s severe injury,

but, notwithstanding subsection (7) below, does not include—

- (i) conspiracy or incitement to commit; and
- (ii) aiding and abetting, counselling or procuring the commission of, any of those offences.

[ In subsection (6)—

- <sup>F56</sup>(6A)
- (a) the references to “rape” in paragraphs (c) and (d) of the definition of “relevant sexual offence” are to the offence of rape at common law; and
  - (b) the references in paragraphs (ca) and (da) of that subsection to “the statutory offence of rape” are (as the case may be) to?
    - (i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or
    - (ii) the offence of rape of a young child under section 18 of that Act.]

(7) In this section—

- (a) any reference to a relevant offence includes a reference to any attempt, conspiracy or incitement to commit such an offence; and
- (b) any reference to—
  - (i) a relevant sexual offence mentioned in paragraph (i) [<sup>F57</sup>or (j)]; or
  - (ii) a relevant violent offence mentioned in paragraph (h),

of the definition of those expressions in subsection (6) above includes a reference to aiding and abetting, counselling or procuring the commission of such an offence.]

#### Textual Amendments

- F39** S. 19A inserted (17.11.1997) by 1997 c. 48, s. 48(2); S.I. 1997/2694, art. 2(2)(b)
- F40** Word in s. 19A(2) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (a)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F41** Word in s. 19A(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (b)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F42** S. 19A(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F43** S. 19A(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F44** Words in s. 19A(3) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, Sch. 6 para. 4(3); S.S.I. 2006/432, art. 2(g)(h)
- F45** Words in s. 19A(3) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 77(4), 104; S.S.I. 2006/432, art. 2(d)

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- F46** Words in s. 19A(6)(a) inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), **Sch. 5 para. 2(4)(a)(i)**; S.S.I. 2010/413, **art. 2, Sch.**
- F47** S. 19A(6): words in definition of “relevant sexual offence” inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provision) Order 2010 (S.S.I. 2010/421), art. 2, **Sch. para. 1(2)(a)(i)**
- F48** S. 19A(6): words in definition of “relevant sexual offence” inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provision) Order 2010 (S.S.I. 2010/421), art. 2, **Sch. para. 1(2)(a)(ii)**
- F49** Words in s. 19A(6) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 81(a)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 8)
- F50** Word in s. 19A(6) repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), **Sch. 5 para. 2(4)(a)(ii)**; S.S.I. 2010/413, **art. 2, Sch.**
- F51** S. 19A(6)(i): words in the definition of “relevant sexual offence” substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 27(2)(a)(i)**
- F52** S. 19A(6)(i): words in the definition of “relevant sexual offence” substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 27(2)(a)(ii)**
- F53** S. 19A(6)(j) and word inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), {Sch. 5 para. 2 (4)(a)(iii)}; S.S.I. 2010/413, **art. 2, Sch.**
- F54** Words in s. 19A(6) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 81(b)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 8)
- F55** S. 19A(6)(i): word in the definition of “sentence of imprisonment” substituted and the word “hospital” omitted (27.9.2005) by virtue of The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 27(2)(b)**
- F56** S. 19A(6A) inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provision) Order 2010 (S.S.I. 2010/421), art. 2, **Sch. para. 1(2)(b)**
- F57** Words in s. 19A(7)(b)(i) inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), **Sch. 5 para. 4(b)**; S.S.I. 2010/413, **art. 2, Sch.**

#### Marginal Citations

- M1** 1997 c.48.  
**M2** 1982 c.45.  
**M3** 1995 c.39.  
**M4** 1883 c.3.  
**M5** 1937 c.37.  
**M6** 1968 c.27.  
**M7** 1984 c.37.

#### [<sup>F58</sup>19AASamples etc. from sex offenders

- (1) This section applies where a person is subject to—
- the notification requirements of Part 2 of the 2003 Act;
  - an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)(a risk of sexual harm order); or
  - an order under section 123 of the 2003 Act (which makes provision for England and Wales and Northern Ireland corresponding to section 2 of that Act of 2005).
- (2) This section applies regardless of whether the person became subject to those requirements or that order before or after the commencement of this section.

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- (3) Subject to subsections (4) to (8) below, where this section applies a constable may—
- (a) take from the person or require the person to provide him with such relevant physical data as the constable considers reasonably appropriate;
  - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample;
  - (c) take, or direct a police custody and security officer to take, from the person any sample mentioned in subsection (6A) of that section by the means specified in that subsection.
- (4) Where this section applies by virtue of subsection (1)(c) above, the power conferred by subsection (3) shall not be exercised unless the constable reasonably believes that the person's sole or main residence is in Scotland.
- (5) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under section 19(2) or 19A(2) of this Act unless the data so taken or required have been or, as the case may be, the sample so taken has been, lost or destroyed.
- (6) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under that subsection unless the data so taken or required or, as the case may be, the sample so taken—
- (a) have or has been lost or destroyed; or
  - (b) were or was not suitable for the particular means of analysis or, though suitable, were or was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis.
- (7) The power conferred by subsection (3) above may be exercised only—
- (a) in a police station; or
  - (b) where the person is in legal custody by virtue of section 295 of this Act, in the place where the person is for the time being.
- (8) The power conferred by subsection (3) above may be exercised in a police station only—
- (a) where the person is present in the police station in pursuance of a requirement made by a constable to attend for the purpose of the exercise of the power; or
  - (b) while the person is in custody in the police station following his arrest or detention under section 14(1) of this Act in connection with any offence.
- (9) A requirement under subsection (8)(a) above—
- (a) shall give the person at least seven days' notice of the date on which he is required to attend;
  - (b) may direct him to attend at a specified time of day or between specified times of day; and
  - (c) where this section applies by virtue of subsection (1)(b) or (c) above, shall warn the person that failure, without reasonable excuse, to comply with the requirement or, as the case may be, to allow the taking of or to provide any relevant physical data, or to provide any sample, under the power, constitutes an offence.

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- (10) A requirement under subsection (8)(a) above in a case where the person has previously had taken from him or been required to provide relevant physical data or any sample under subsection (3) above shall contain intimation that the relevant physical data were or the sample was unsuitable or, as the case may be, insufficient, as mentioned in subsection (6)(b) above.
- (11) Before exercising the power conferred by subsection (3) above in a case to which subsection (8)(b) above applies, a constable shall inform the person of that fact.
- (12) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (8)(a) above.
- (13) This section does not prejudice the generality of section 18 of this Act.
- (14) In this section, “ the 2003 Act ” means the Sexual Offences Act 2003 (c. 42).”.

#### Textual Amendments

**F58** Ss. 19AA, 19AB inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(2\), 104](#); [S.S.I. 2006/432](#), [art. 2\(d\)](#)

### **19AB Section 19AA: supplementary provision in risk of sexual harm order cases**

- (1) This section applies where section 19AA of this Act applies by virtue of subsection (1) (b) or (c) of that section.
- (2) A person who fails without reasonable excuse—
  - (a) to comply with a requirement made of him under section 19AA(8)(a) of this Act; or
  - (b) to allow relevant physical data to be taken from him, to provide relevant physical data, or to allow a sample to be taken from him, under section 19AA(3) of this Act,shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above shall be liable on summary conviction to the following penalties—
  - (a) a fine not exceeding level 4 on the standard scale;
  - (b) imprisonment for a period—
    - (i) where the conviction is in the district court, not exceeding 60 days; or
    - (ii) where the conviction is in the sheriff court, not exceeding 3 months; or
  - (c) both such fine and such imprisonment.
- (4) Subject to subsection (6) below, all record of any relevant physical data taken from or provided by a person under section 19AA(3) of this Act, all samples taken from a person under that subsection and all information derived from such samples shall be destroyed as soon as possible following the person ceasing to be a person subject to any risk of sexual harm orders.
- (5) For the purpose of subsection (4) above, a person does not cease to be subject to a risk of sexual harm order where the person would be subject to such an order but for an order under section 6(2) of the 2005 Act or any corresponding power of a court in England and Wales or in Northern Ireland.

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(6) Subsection (4) above does not apply if before the duty to destroy imposed by that subsection would apply, the person—

- (a) is convicted of an offence; or
- (b) becomes subject to the notification requirements of Part 2 of the 2003 Act.

(7) In this section—

“ risk of sexual harm order ” means an order under—

- (a) section 2 of the 2005 Act; or
- (b) section 123 of the 2003 Act;

“ the 2005 Act ” means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9);

“ the 2003 Act ” has the meaning given by section 19AA(14) of this Act; and

“ convicted ” shall be construed in accordance with section 19A(6) of this Act. ]

#### Textual Amendments

**F58** Ss. 19AA, 19AB inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(2\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)

#### [<sup>F59</sup>19B Power of constable in obtaining relevant physical data etc.

[ A constable may use reasonable force in—

- <sup>F60</sup>(1) (a) taking any relevant physical data from a person or securing a person’s compliance with a requirement made under section 18(2), 19(2)(a) or 19A(2)(a) of this Act [<sup>F61</sup>, or under subsection (3)(a) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section] ;
- (b) exercising any power conferred by section 18(6), 19(2)(b) or 19A(2)(b) of this Act [<sup>F62</sup>, or under subsection (3)(b) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section] .

[ A constable may, with the authority of an officer of a rank no lower than inspector, <sup>F63</sup>(2) use reasonable force in (himself) exercising any power conferred by section 18(6A), 19(2)(c) or 19A(2)(c) of this Act [<sup>F64</sup>, or under subsection (3)(c) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section] . ]]

#### Textual Amendments

**F59** S. 19(B) inserted (17.11.1997) by [1997 c. 48, s. 48\(2\)](#); S.I. 1997/2694, [art. 2\(2\)\(b\)](#)

**F60** S. 19B renumbered as s. 19B(1) (27.6.2003) by virtue of [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), [ss. 55\(4\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

**F61** Words in s. 19B(1)(a) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(5\)\(a\)\(i\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)

**F62** Words in s. 19B(1)(b) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(5\)\(a\)\(ii\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)

**F63** S. 19B(2) added (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), [ss. 55\(4\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.

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**F64** Words in s. 19B(2) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 77\(5\)\(b\), 104](#); S.S.I. 2006/432, [art. 2\(d\)](#)

[<sup>F65</sup>**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.
- (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

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- (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.]

#### Textual Amendments

**F65** S. 19C inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. **82(1)**, **206(1)**; S.S.I. 2011/178, art. 2, sch. (with art. 9)

#### <sup>F66</sup>**20 Use of prints, samples etc.**

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#### Textual Amendments

**F66** S. 20 repealed (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 33**; S.S.I. 2011/178, art. 2, sch.



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