



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART II

#### POLICE FUNCTIONS

##### *Lord Advocate's instructions*

#### 12 Instructions by Lord Advocate as to reporting of offences.

The Lord Advocate may, from time to time, issue instructions to [<sup>F1</sup>the] chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed <sup>F2</sup>....

##### Textual Amendments

- F1** Word in s. 12 substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 12\(2\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F2** Words in s. 12 repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 12\(2\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

##### *Detention and questioning*

#### 13 Powers relating to suspects and potential witnesses.

- (1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence at any place, he may require—
- (a) that person, if the constable finds him at that place or at any place where the constable is entitled to be, to give [<sup>F3</sup>the information mentioned in subsection (1A) below] and may ask him for an explanation of the circumstances which have given rise to the constable's suspicion;

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- (b) any other person whom the constable finds at that place or at any place where the constable is entitled to be and who the constable believes has information relating to the offence, to give [<sup>F4</sup>the information mentioned in subsection (1A) below].

[<sup>F5</sup>(1A) That information is—

- (a) the person's name;
  - (b) the person's address;
  - (c) the person's date of birth;
  - (d) the person's place of birth (in such detail as the constable considers necessary or expedient for the purpose of establishing the person's identity); and
  - (e) the person's nationality.]
- (2) The constable may require the person mentioned in paragraph (a) of subsection (1) above to remain with him while he (either or both)—
    - (a) subject to subsection (3) below, verifies any [<sup>F6</sup>information mentioned in subsection (1A) above] given by the person;
    - (b) notes any explanation proffered by the person.
  - (3) The constable shall exercise his power under paragraph (a) of subsection (2) above only where it appears to him that such verification can be obtained quickly.
  - (4) A constable may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with him.
  - (5) A constable shall inform a person, when making a requirement of that person under—
    - (a) paragraph (a) of subsection (1) above, of his suspicion and of the general nature of the offence which he suspects that the person has committed or is committing;
    - (b) paragraph (b) of subsection (1) above, of his suspicion, of the general nature of the offence which he suspects has been or is being committed and that the reason for the requirement is that he believes the person has information relating to the offence;
    - (c) subsection (2) above, why the person is being required to remain with him;
    - (d) either of the said subsections, that failure to comply with the requirement may constitute an offence.
  - (6) A person mentioned in—
    - (a) paragraph (a) of subsection (1) above who having been required—
      - (i) under that subsection to give [<sup>F7</sup>the information mentioned in subsection (1A) above]; or
      - (ii) under subsection (2) above to remain with a constable, fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale;
    - (b) paragraph (b) of the said subsection (1) who having been required under that subsection to give [<sup>F8</sup>the information mentioned in subsection (1A) above] fails, without reasonable excuse, to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

<sup>F9</sup>(7) .....

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Textual Amendments

F3

Words in s. 13(1)(a)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 81\(2\)](#), 104; S.S.I. 2006/432, [art. 2\(e\)](#)

F4

Words in s. 13(1)(a)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 81\(2\)](#), 104; S.S.I. 2006/432, [art. 2\(e\)](#)

F5

S. 13(1A) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 81\(3\)](#), 104; S.S.I. 2006/432, [art. 2\(e\)](#)

F6

Words in s. 13(2)(a) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 81\(4\)](#), 104; S.S.I. 2006/432, [art. 2\(e\)](#)

F7

Words in s. 13(6)(a)(i)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 81\(5\)](#), 104; S.S.I. 2006/432, [art. 2\(e\)](#)

F8

Words in s. 13(6)(a)(i)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 81\(5\)](#), 104; S.S.I. 2006/432, [art. 2\(e\)](#)

F9

S. 13(7) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 2\(a\)](#); S.S.I. 2017/345, art. 3, sch.

**F10 14 Detention and questioning at police station.**

Textual Amendments

F10

Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); S.S.I. 2017/345, art. 3, sch. (with arts. 4, 7)

**F10 14A Extension of period of detention under section 14**

Textual Amendments

F10

Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); S.S.I. 2017/345, art. 3, sch. (with arts. 4, 7)

**F10 14B Extension under section 14A: procedure**

Textual Amendments

F10

Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); S.S.I. 2017/345, art. 3, sch. (with arts. 4, 7)

**F10 15 Right of persons arrested or detained to have intimation sent to another person**

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**Textual Amendments**

**F10** Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 7)

**F10 15A Right of suspects to have access to a solicitor**

.....

**Textual Amendments**

**F10** Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 7)

**F10 16 Drunken persons: power to take to designated place.**

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**Textual Amendments**

**F10** Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 7)

*Arrest: access to solicitor*

**F10 17 Right of accused to have access to solicitor.**

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**Textual Amendments**

**F10** Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 7)

**F10 17A Right of person accused of sexual offence to be told about restriction on conduct of defence: arrest**

.....

**Textual Amendments**

**F10** Ss. 14-17A repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 27\(a\)](#); [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 7)

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## *Prints and samples*

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

- (1) This section applies where a person has been arrested and is in custody <sup>F11</sup>....
- (2) A constable may take from the person <sup>F12</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 <sup>F13</sup>or the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003)] in respect of which the person has been arrested <sup>F14</sup>..., reasonably consider it appropriate to take <sup>F15</sup>from him or require him to provide, and the person so required shall comply with that requirement].
- <sup>F16</sup>(3) Subject to <sup>F17</sup>subsections (3A) and (4)] below <sup>F18</sup>and <sup>F19</sup>sections 18A to <sup>F20</sup>18G]] 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>F21</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.]
- <sup>F22</sup>(3A) (3A) Subsection (3) does not apply to—
  - (a) relevant physical data taken under subsection (2) from, or provided under that subsection by, a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), and
  - (b) any sample, or any information derived from a sample, taken under subsection (6) or (6A) from a person arrested under such a power (but see section 18H).]
- (4) The duty under subsection (3) above to destroy samples taken under subsection (6) <sup>F23</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 <sup>F24</sup>the Police Service of Scotland] in relation to the person.
- (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>F25</sup>.....

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[<sup>F26</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>F27</sup>(7) .....

[<sup>F28</sup>(7A) For the purposes of this section and [<sup>F29</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.

[ The modification is that for the purposes of section 19C as it applies in relation <sup>F30</sup>(7AA) 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>F31</sup>relevant physical data] or samples under the authority of a warrant.

#### Textual Amendments

- F11** Words in s. 18(1) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016](#) (asp 1), s. 117(2), [sch. 2 para. 28\(1\)\(a\)](#); S.S.I. 2017/345, art. 3, sch. (with art. 4)
- F12** 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](#))
- F13** Words in s. 18(2) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016](#) (Consequential Provisions) Order 2018 (S.I. 2018/46), art. 2(2)(a)(f), [Sch. 5 para. 1\(2\)](#)
- F14** Words in s. 18(2) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016](#) (asp 1), s. 117(2), [sch. 2 para. 28\(1\)\(b\)](#); S.S.I. 2017/345, art. 3, sch. (with art. 4)
- F15** 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](#))
- F16** S. 18(3) substituted (*retrospective* to 1.8.1997) by 1998 c. 37, ss. 119, 121(2), [Sch. 8 para. 117\(2\)](#)
- F17** Words in s. 18(3) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016](#) (Consequential Provisions) Order 2018 (S.I. 2018/46), art. 2(2)(a)(f), [Sch. 5 para. 1\(3\)](#)
- F18** 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.](#)
- F19** 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)

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- F20** Word in s. 18(3) substituted (31.10.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 1 para. 6(2)** (with s. 97); S.I. 2013/1814, art. 2(k)
- F21** 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)**
- F22** S. 18(3A) inserted (25.1.2018) by The Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2018 (S.I. 2018/46), art. 2(2)(a)(f), **Sch. 5 para. 1(4)**
- F23** 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)**
- F24** Words in s. 18(4)(b) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 12(3)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F25** 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.**
- F26** 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.**
- F27** 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)**
- F28** 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)
- F29** 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)
- F30** 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)
- F31** 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 applied (with modifications) (12.2.2019 for specified purposes, 13.8.2020 in so far as not already in force) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(g), **Sch. 3 para. 42** (with s. 25(9)); S.I. 2020/792, reg. 2(g)
- C4** S. 18 applied (with modifications) (20.12.2023) by National Security Act 2023 (c. 32), s. 100(1), **Sch. 6 para. 18** (with s. 97, **Sch. 6 para. 2**); S.I. 2023/1272, reg. 2(a)
- C5** 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**
- C6** S. 18(3) modified (2.4.2020) by The Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020 (S.I. 2020/391), regs. 1, **4(3)(a)** (with reg. 5)
- C7** S. 18(3) modified (1.10.2020) by The Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No. 2) Regulations 2020 (S.I. 2020/973), regs. 1(1), **4(3)(a)(4)**

## [<sup>F32</sup>18A Retention of samples etc. : prosecutions for sexual and violent offences

[<sup>F33</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.]

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- (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>F34</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>F35</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>F36</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.
  - (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>F37</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



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(c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,  
the [F38 relevant physical data, sample or information derived from a sample] shall be destroyed as soon as possible thereafter.

(11) In this section—

F39  
...

(a)

(b)

(c)

“relevant sexual offence” and “relevant violent offence” have [F40, 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.]

[F41(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

- F32** 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.
- F33** 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)
- F34** 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)
- F35** 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)
- F36** 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)
- F37** 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)
- F38** 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)
- F39** 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)
- F40** 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)
- F41** 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)

[F42] **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

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- (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 [<sup>F43</sup>in custody] in connection with the offence or offences in relation to which a relevant offer is issued to the person, and
- (b) the person—
  - (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).

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- (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—
  - “(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

- F42** 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)
- F43** Words in s. 18B(2)(a) substituted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 28\(2\)](#); S.S.I. 2017/345, art. 3, sch. (with art. 4)

### [<sup>F42</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 [<sup>F44</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.
- (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—

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- (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,
- (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),

<sup>F45</sup> ...]

#### Textual Amendments

**F42** 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)

**F44** Words in s. 18C(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 12\(5\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

**F45** Definition in s. 18C(11) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 12\(5\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

### <sup>F46</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 <sup>F47</sup> ... 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 [<sup>F48</sup> in custody] in connection with that offence,

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- (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.
- (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

- F46** 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)
- F47** Words in s. 18D(2)(a) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **sch. 2 para. 28(3)(a)**; S.S.I. 2017/345, art. 3, sch. (with art. 4)

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**F48** Words in s. 18D(2)(b) substituted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 28\(3\)\(b\)](#); S.S.I. 2017/345, art. 3, sch. (with art. 4)

**[<sup>F49</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 [<sup>F50</sup>subsection (3), (4) or (5) applies.]

<sup>F51</sup>(2) .....

[<sup>F52</sup>(3) This subsection applies where—

- (a) in relation to a children's hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed an offence mentioned in subsection (6) (a “relevant offence”),
- (b) the ground is accepted by the child and each relevant person in relation to the child under section 91(1) or 105(1) of that Act, and
- (c) no application to the sheriff under section 93(2)(a) or 94(2)(a) of that Act is made in relation to that ground.

(4) This subsection applies where—

- (a) in relation to a children's hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed a relevant offence,
- (b) the sheriff, on an application under section 93(2)(a) or 94(2)(a) of that Act, determines under section 108 of that Act that the ground is established, and
- (c) no application to the sheriff under section 110(2) of that Act is made in relation to the ground.

(5) This subsection applies where, on an application under section 110(2) of the 2011 Act in relation to the child—

- (a) the sheriff is satisfied under section 114(2) or 115(1)(b) of that Act that a section 67 ground which constitutes a relevant offence is established or accepted by the child and each relevant person in relation to the child, or
- (b) the sheriff determines under section 117(2)(a) of that Act that—
  - (i) a section 67 ground which was not stated in the statement of grounds which gave rise to the grounds determination is established, and
  - (ii) the 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—

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- (a) the date of expiry of the period of 3 years following—
    - [<sup>F53</sup>(i) where subsection (3) applies, the date on which the section 67 ground was accepted as mentioned in that subsection,
    - (ii) where subsection (4) applies, the date on which the section 67 ground was established as mentioned in that subsection,
    - (iii) where the section 67 ground is established as mentioned in paragraph (a) of subsection (5), the date on which that ground was established under section 108 of the 2011 Act or, as the case may be, accepted under section 91(1) or 105(1) of that Act, or
    - (iv) where the section 67 ground is established as mentioned in paragraph (b) of subsection (5), the date on which that ground was established as mentioned in that paragraph,]
  - (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.
- (11) In this section—
- [<sup>F54</sup>“the 2011 Act” means the Children’s Hearings (Scotland) Act 2011 (asp 1),
  - “grounds determination” has the meaning given by section 110(1) of the 2011 Act;]
  - “relevant person” has the same meaning as in section [<sup>F55</sup>200(1) of the 2011 Act except that it includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that 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.
  - [<sup>F56</sup>“section 67 ground” has the meaning given by section 67(1) of the 2011 Act;
  - “statement of grounds” has the meaning given by section 89(3) of the 2011 Act.]
- (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 [<sup>F57</sup>section 67 ground] relating to the offence that there was a sexual aspect to the behaviour of the child;””.

### Textual Amendments

- F49** 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**)
- F50** Words in s. 18E(1) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), **art. 1**, **sch. 1 para. 10(2)(a)**
- F51** S. 18E(2) repealed (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), **art. 1**, **sch. 1 para. 10(2)(b)**
- F52** S. 18E(3)-(5) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), **art. 1**, **sch. 1 para. 10(2)(c)**



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- F53** S. 18E(9)(a)(i)-(iv) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 10\(2\)\(d\)](#)
- F54** Definitions in s. 18E(11) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 10\(2\)\(e\)\(i\)](#)
- F55** Words in s. 18E(11) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 10\(2\)\(e\)\(ii\)](#)
- F56** Definitions in s. 18E(11) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 10\(2\)\(e\)\(iii\)](#)
- F57** Words in s. 18E(12) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [sch. 1 para. 10\(2\)\(f\)](#)

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

- (1) On a summary application made by the [<sup>F58</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.
- (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
  - (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



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- (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

<sup>F59</sup> ...]

#### Textual Amendments

- F49** 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)
- F58** Words in s. 18F(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 12(6)(a)**; [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))
- F59** Definition in s. 18F(10) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 12(6)(b)**; [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

#### [<sup>F60</sup>18G Retention of samples etc: national security

- (1) This section applies to—

- (a) relevant physical data taken from or provided by a person under section 18(2) (including any taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000 [<sup>F61</sup>or by virtue of paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019][<sup>F62</sup>or paragraph 18 of Schedule 6 to the National Security Act 2023]),
- (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A) (including any taken by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000 [<sup>F63</sup>or by virtue of paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019][<sup>F64</sup>or paragraph 18 of Schedule 6 to the National Security Act 2023]),
- (c) any relevant physical data, sample or information derived from a sample taken from, or provided by, a person under section 19AA(3),
- (d) any relevant physical data, sample or information derived from a sample which is held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, and
- (e) any relevant physical data, sample or information derived from 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.

- (2) The relevant physical data, sample or information derived from a sample may be retained for so long as a national security determination made by [<sup>F65</sup>the chief constable of the Police Service of Scotland] has effect in relation to it.

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- (3) A national security determination is made if [<sup>F66</sup>the chief constable of the Police Service of Scotland] determines that is necessary for the relevant physical data, sample or information derived from a sample to be retained for the purposes of national security.
- (4) A national security determination—
  - (a) must be made in writing,
  - (b) has effect for a maximum of [<sup>F67</sup>5 years] beginning with the date on which the determination is made, and
  - (c) may be renewed.
- (5) Any relevant physical data, sample or information derived from a sample which is retained in pursuance of a national security determination must be destroyed as soon as possible after the determination ceases to have effect (except where its retention is permitted by any other enactment).

<sup>F68</sup>(6) . . . . .]

#### Textual Amendments

- F60** S. 18G inserted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 6\(3\)](#) (with s. 97); [S.I. 2013/1814, art. 2\(k\)](#)
- F61** Words in s. 18G(1)(a) inserted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(2\)\(d\), Sch. 4 para. 22\(2\)\(a\)](#); [S.I. 2020/792, reg. 2\(i\)](#)
- F62** Words in s. 18G(1)(a) inserted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\), reg. 1\(2\), Sch. para. 14](#)
- F63** Words in s. 18G(1)(b) inserted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(2\)\(d\), Sch. 4 para. 22\(2\)\(b\)](#); [S.I. 2020/792, reg. 2\(i\)](#)
- F64** Words in s. 18G(1)(b) inserted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\), reg. 1\(2\), Sch. para. 14](#)
- F65** Words in s. 18G(2) substituted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(2\)\(b\), Sch. 2 para. 7\(2\)](#); [S.I. 2020/792, reg. 2\(e\)](#)
- F66** Words in s. 18G(3) substituted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(2\)\(b\), Sch. 2 para. 7\(3\)](#); [S.I. 2020/792, reg. 2\(e\)](#)
- F67** Words in s. 18G(4)(b) substituted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(2\)\(b\), Sch. 2 para. 7\(4\)](#) (with s. 25(7)(8)); [S.I. 2020/792, reg. 2\(e\)](#)
- F68** S. 18G(6) omitted (13.8.2020) by virtue of [Counter-Terrorism and Border Security Act 2019 \(c. 3\), s. 27\(2\)\(b\), Sch. 2 para. 7\(5\)](#); [S.I. 2020/792, reg. 2\(e\)](#)

#### [<sup>F69</sup>18GARetention of further fingerprints

- (1) This section applies where—
  - (a) relevant physical data to which section 18G applies has been taken from or provided by a person, and
  - (b) the data is or includes the person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this section in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if—
  - (a) the further fingerprints were taken under or by virtue of—
    - (i) any provision, power or authority mentioned in section 18G(1), or

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- (ii) paragraph 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, and
- (b) the further fingerprints or the original fingerprints were taken—
  - (i) in connection with a terrorist investigation, as defined by section 32 of the Terrorism Act 2000, or
  - (ii) under a power conferred by virtue of paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.
- (3) Where a determination under this section is made in respect of the further fingerprints—
  - (a) the further fingerprints may be retained for as long as the original fingerprints are retained in accordance with this Part, and
  - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (4) Subsection (3)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (5) A written record must be made of a determination under this section.]

#### Textual Amendments

**F69** S. 18GA inserted (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(2)(b), Sch. 2 para. 8; S.I. 2020/792, reg. 2(e)

### [<sup>F70</sup>18H Retention of samples etc.: extradition

- (1) This section applies to—
  - (a) relevant physical data taken under section 18(2) from, or provided under that subsection by, a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), and
  - (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A) from a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003).
- (2) All record of any relevant physical data, all samples and all information derived from such samples must be destroyed as soon as possible following the final determination of the extradition proceedings.
- (3) The duty under subsection (2) to destroy samples taken under section 18(6) or (6A) and information derived from such samples does not apply where the circumstances in paragraph (a) or (b) of section 18(4) apply to the sample or information (and where such circumstances apply, the restrictions in section 18(5) apply to the sample or information retained).
- (4) For the purposes of this section, extradition proceedings are finally determined—
  - (a) if the person is extradited, on the day of the extradition,
  - (b) if the person is discharged and there is no right of appeal under the Extradition Act 2003 against the decision which resulted in the order for the person's discharge, when the person is discharged, on the day of the discharge,

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- (c) where the person is discharged at an extradition hearing or by the Scottish Ministers under section 93 of the Extradition Act 2003—
    - (i) if no application is made to the High Court for leave to appeal against the decision within the period during which such an application may be made, at the end of that period,
    - (ii) if such an application is made and is refused, on the day of the refusal,
  - (d) where the High Court orders the person’s discharge or dismisses an appeal against a decision to discharge the person—
    - (i) if no application is made to the High Court for permission to appeal to the Supreme Court within the 28 day period starting with the day of the High Court’s decision, at the end of that period,
    - (ii) if such an application is made to the High Court and is refused, and no application is made to the Supreme Court for permission to appeal to the Supreme Court within the period of 28 days starting with the day of the refusal, at the end of that period,
    - (iii) if such an application is made to the Supreme Court and is refused, on the day of the refusal,
    - (iv) if permission to appeal to the Supreme Court is granted, but no appeal is made within the period of 28 days starting with the day on which permission is granted, at the end of that period,
    - (v) if there is an appeal to the Supreme Court against the High Court’s decision, on the day on which the appeal is refused, is abandoned or is upheld with the effect that the person is discharged,
  - (e) if an appeal to the Supreme Court is upheld with the effect that the person is discharged, on the day of the decision to uphold the appeal.
- (5) In subsection (4)—
- “extradition hearing” has the meaning given by section 68 or as the case may be section 140 of the Extradition Act 2003,
- “extradition proceedings” means proceedings under the Extradition Act 2003.]

#### Textual Amendments

**F70** S. 18H inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 5 para. 1\(5\)](#) (with art. 9(3)(4))

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

- (1) [<sup>F71</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>F72</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>F73</sup>at any time had—
    - (i) taken from him or been required (whether under paragraph (a) above or under section 18 [<sup>F74</sup>, 19A or 19AA] of this Act or otherwise) to provide any relevant physical data; or
    - (ii) any <sup>F75</sup>... sample taken from him,

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which was not suitable for the means of analysis for which the data were taken or required or the <sup>F75</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>F76</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>F77</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>F78</sup>(c)] of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample [<sup>F79</sup> and]
- [<sup>F80</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 [<sup>F81</sup>Police Service of Scotland] receives written intimation that [<sup>F82</sup>the relevant physical data were or] the sample, <sup>F83</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

**F71** Words in s. 19(1) substituted (17.11.1997) by 1997 c. 48, s. 48(1); S.I. 1997/2694, art. 2(2)(b)

**F72** 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)

**F73** 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)

**F74** 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)

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- F75** 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.
- F76** 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)
- F77** 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.](#)
- F78** 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.](#)
- F79** 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.](#)
- F80** 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.](#)
- F81** Words in s. 19(4)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 12\(7\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F82** 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)
- F83** 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>F84</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>F85</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>F86</sup>(c)] of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample [<sup>F87</sup> and]
  - <sup>F88</sup> [ 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>F89</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>F90</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—



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- (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—
  - “conviction” includes—
    - (a) an acquittal [<sup>F91</sup>by reason of the special defence set out in section 51A of this Act;]
    - (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>F92</sup>at common law];
      - (b) clandestine injury to women;
      - (c) abduction of a woman with intent to rape;
      - (ca) [<sup>F93</sup>abduction with intent to commit the statutory offence of rape;]
      - (d) assault with intent to rape or ravish;
      - (da) [<sup>F94</sup>assault with intent to commit the statutory offence of rape;]
      - (e) indecent assault;
      - (f) lewd, indecent or libidinous behaviour or practices;
      - (g) [<sup>F95</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>F96</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>F97</sup>section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non consensual sexual acts);]

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- (iv) [<sup>F98</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);
- (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>F99</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),



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- (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),
- (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); <sup>F100</sup> ...

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- (v) [F101section 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);]
- (vi) [F102any of sections 140 to 142 and 152 to 154 of the Health and Care Act 2022 (offences relating to virginity testing and hymenoplasty)];

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

- (a) a [F103compulsion] 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

“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)—

- F104(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) [F105or (j)]; or
  - (ii) a relevant violent offence mentioned in paragraph (h),

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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

- F84** S. 19A inserted (17.11.1997) by 1997 c. 48, s. 48(2); S.I. 1997/2694, art. 2(2)(b)
- F85** 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.
- F86** 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.
- F87** 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.
- F88** 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.
- F89** 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)
- F90** 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)
- F91** Words in s. 19A(6) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 7 para. 32; S.S.I. 2012/160, art. 3, sch.
- F92** 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.
- F93** 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)
- F94** 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)
- F95** 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)
- F96** 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.
- F97** 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)
- F98** 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)
- F99** 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.
- F100** Word in s. 19A(6) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 16 para. 5(a); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F101** 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)
- F102** Words in s. 19A(6) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 16 para. 5(b); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F103** 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)

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**F104** 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\(2\)\(b\)](#)

**F105** 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>F106</sup>19A] Samples etc. from sex offenders**

- (1) This section applies where a person is subject to—
  - (a) the notification requirements of Part 2 of the 2003 Act;
  - (b) an order under [<sup>F107</sup>section 27 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016]; or
  - (c) an order under section [<sup>F108</sup>122A or] 123 of the 2003 Act (which makes provision for England and Wales and Northern Ireland corresponding to [<sup>F109</sup>section 27 of that Act of 2016]).
- (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.
- (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

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- (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 <sup>F110</sup>... 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.
- (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

- F106** 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\(d\)](#)
- F107** Words in s. 19AA(1)(b) substituted (31.3.2023) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), s. 45(2)(3), [sch. 2 para. 1\(2\)\(a\)](#) (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))
- F108** Words in s. 19AA(1)(c) inserted (8.3.2015) by [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), [Sch. 11 para. 51](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 2(g)(i)
- F109** Words in s. 19AA(1)(c) substituted (31.3.2023) by [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (asp 22), s. 45(2)(3), [sch. 2 para. 1\(2\)\(b\)](#) (with s. 44); S.S.I. 2023/51, reg. 2 (with reg. 3)

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**F110** Words in s. 19AA(8)(b) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 28\(4\)](#); S.S.I. 2017/345, art. 3, [sch.](#) (with art. 4)

## 19AB [F111Section 19AA: supplementary provision in sexual risk 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 [F112sexual risk orders].
- (5) For the purpose of subsection (4) above, a person does not cease to be subject to a [F113sexual risk order] where the person would be subject to such an order but for an order [F114of a court considering an appeal against the making of a sexual risk order suspending the effect of the order pending the determination of the appeal].
- (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—
 

F115  
...  
F115  
...

[F116“sexual risk order” means an order under section 27 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, and also includes an order under section 122A or 123 of the 2003 Act;]

“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.]

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### Textual Amendments

- F106** 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)**
- F111** S. 19AB heading substituted (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), s. 45(2)(3), **sch. 2 para. 1(3)(d)** (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))
- F112** Words in s. 19AB(4) substituted (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), s. 45(2)(3), **sch. 2 para. 1(3)(a)** (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))
- F113** Words in s. 19AB(5) substituted (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), s. 45(2)(3), **sch. 2 para. 1(3)(b)(i)** (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))
- F114** Words in s. 19AB(5) substituted (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), s. 45(2)(3), **sch. 2 para. 1(3)(b)(ii)** (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))
- F115** Words in s. 19AB(7) omitted (31.3.2023) by virtue of Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), s. 45(2)(3), **sch. 2 para. 1(3)(c)(i)** (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))
- F116** Words in s. 19AB(7) inserted (31.3.2023) by Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22), s. 45(2)(3), **sch. 2 para. 1(3)(c)(ii)** (with s. 44); S.S.I. 2023/51, reg. 2 (with regs. 3, 4(1))

### [<sup>F117</sup>19B Power of constable in obtaining relevant physical data etc.

[ A constable may use reasonable force in—

- <sup>F118</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>F119</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>F120</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>F121</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>F122</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

- F117** S. 19(B) inserted (17.11.1997) by 1997 c. 48, **s. 48(2)**; S.I. 1997/2694, **art. 2(2)(b)**
- F118** 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.
- F119** 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)**
- F120** 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)**
- F121** 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.
- F122** 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)**



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**[<sup>F123</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) [<sup>F124</sup>(including any taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000 [<sup>F125</sup>or by virtue of paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019][<sup>F126</sup>or paragraph 18 of Schedule 6 to the National Security Act 2023)],
- (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) [<sup>F127</sup>(including any taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000 [<sup>F128</sup>or by virtue of paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019][<sup>F129</sup>or paragraph 18 of Schedule 6 to the National Security Act 2023)],
- (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—
  - [<sup>F130</sup>(i) the Police Service of Scotland (“the Police Service”),]
  - (ii) the Scottish Police [<sup>F131</sup>Authority (“the Authority”),] or
  - (iii) a person acting on behalf of [<sup>F132</sup>the Police Service or the Authority].

(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, <sup>F133</sup> ...
- (b) for the identification of a deceased person or a person from whom the relevant physical data or sample came,
- [<sup>F134</sup>(c) in the interests of national security, <sup>F135</sup> ...
- [<sup>F136</sup>(ca) for the purposes of investigating foreign power threat activity, or]
- (d) for the purposes of a terrorist investigation].

(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 [<sup>F137</sup>the Police Service, the Authority or a person acting on behalf of the Police Service or the Authority, the Police Service] 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) [<sup>F138</sup>The Police Service, the Authority or a person acting on behalf of the Police Service or the Authority] 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.



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(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,<sup>F139</sup>...
- (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 [<sup>F140</sup>, <sup>F141</sup>...]
- [<sup>F142</sup>(ca) “foreign power threat activity” has the meaning given by section 33 of the National Security Act 2023, and]
- (d) “terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.]

(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

- F123** 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)
- F124** Words in s. 19C(1)(a) inserted (16.9.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298), art. 1(3), **Sch. para. 1(a)** (with art. 4(1)(4))
- F125** Words in s. 19C(1)(a) inserted (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(2)(d), **Sch. 4 para. 22(3)(a)**; S.I. 2020/792, reg. 2(i)
- F126** Words in s. 19C(1)(a) inserted (20.12.2023) by National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 7(2)** (with s. 97); S.I. 2023/1272, reg. 2(f)
- F127** Words in s. 19C(1)(b) inserted (16.9.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298), art. 1(3), **Sch. para. 1(a)** (with art. 4(1)(4))
- F128** Words in s. 19C(1)(b) inserted (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(2)(d), **Sch. 4 para. 22(3)(b)**; S.I. 2020/792, reg. 2(i)
- F129** Words in s. 19C(1)(b) inserted (20.12.2023) by National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 7(2)** (with s. 97); S.I. 2023/1272, reg. 2(f)
- F130** S. 19C(1)(e)(i) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 12(8)(a)(i)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F131** Words in s. 19C(1)(e)(ii) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 12(8)(a)(ii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F132** Words in s. 19C(1)(e)(iii) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 12(8)(a)(iii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F133** Word in s. 19C(2)(a) omitted (16.9.2011) by virtue of The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298), art. 1(3), **Sch. para. 1(b)(i)** (with art. 4(1)(4))

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- F134

S. 19C(2)(c)(d) inserted (16.9.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298), art. 1(3), **Sch. para. 1(b)(ii)** (with art. 4(1)(4))
- F135

Word in s. 19C(2)(c) omitted (20.12.2023) by virtue of National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 7(3)(a)** (with s. 97); S.I. 2023/1272, reg. 2(f)
- F136

S. 19C(2)(ca) inserted (20.12.2023) by National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 7(3)(b)** (with s. 97); S.I. 2023/1272, reg. 2(f)
- F137

Words in s. 19C(4) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 12(8)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F138

Words in s. 19C(5) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 12(8)(c)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F139

Word in s. 19C(6)(b) omitted (16.9.2011) by virtue of The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298), art. 1(3), **Sch. para. 1(c)(i)** (with art. 4(1)(4))
- F140

S. 19C(6)(d) and word inserted (16.9.2011) by The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011 (S.I. 2011/2298), art. 1(3), **Sch. para. 1(c)(ii)** (with art. 4(1)(4))
- F141

Word in s. 19C(6)(c) omitted (20.12.2023) by virtue of National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 7(4)(a)** (with s. 97); S.I. 2023/1272, reg. 2(f)
- F142

S. 19C(6)(ca) inserted (20.12.2023) by National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 7(4)(b)** (with s. 97); S.I. 2023/1272, reg. 2(f)

F143**20 Use of prints, samples etc.**

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Textual Amendments

F143

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.

Modifications etc. (not altering text)

C8

S. 20 applied (with modifications) (prosp.) by the Terrorism Act 2002 (c. 11), **Sch. 8 para. 21** (as inserted by Counter-Terrorism Act 2008 (c. 28), **ss. 17(3), 91, 100**) (with s. 101(2))

*F144Testing for Class A drugs*

Textual Amendments

F144

Ss. 20A, 20B and preceding cross-heading inserted (1.1.2007 for certain purposes, 25.2.2007 in regard to the inserted s. 20B(3), and otherwise in force at 12.6.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), **ss. 84, 104**; S.S.I. 2006/607, **art. 3**, Sch.; S.S.I. 2007/84, {art. 3(1)(a)(4)(a)}

**20A Arrested persons: testing for certain Class A drugs**

- (1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—

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- (a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or
  - (b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,

which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person's body.
- (2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.
- (3) This subsection applies where—
  - (a) the person is of 16 years of age or more;
  - (b) the period in custody in the police station has not exceeded 6 hours;
  - (c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and
  - (d) either—
    - (i) the person's arrest was on suspicion of committing or having committed a relevant offence; or
    - (ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.
- (4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—
  - (a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and
  - (b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.
- (5) Where—
  - (a) a person has been required to provide or has had taken a sample under subsection (1) above;
  - (b) any of the following is the case—
    - (i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person's body;
    - (ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or
    - (iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and
  - (c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),

an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.
- (6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.

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(7) A person who fails without reasonable excuse—

- (a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or
- (b) to allow a sample to be taken from him under subsection (1)(b) or (5) above, shall be guilty of an offence.

(8) In this section—

“appropriate grounds” means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;

“appropriate officer” means—

- (a) a constable; or
- (b) a police custody and security officer acting on the direction of a constable;

“misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

“relevant Class A drug” means any of the following substances, preparations and products—

- (a) cocaine or its salts;
- (b) any preparation or other product containing cocaine or its salts;
- (c) diamorphine or its salts;
- (d) any preparation or other product containing diamorphine or its salts;

“relevant offence” means any of the following offences—

- (a) theft;
- (b) assault;
- (c) robbery;
- (d) fraud;
- (e) reset;
- (f) uttering a forged document;
- (g) embezzlement;
- (h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);
- (i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;
- (j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;
- (k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;

“senior police officer” means a police officer of a rank no lower than inspector.

## **20B Section 20A: supplementary**

- (1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.
- (2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—

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- (a) about the carrying out of the function; or
  - (b) about matters connected to the carrying out of the function.
- (3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.
- (5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.
- (6) A person guilty of an offence under section 20A of this Act 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 conviction is in the district court, not exceeding 60 days; or
    - (ii) where conviction is in the sheriff court, not exceeding 3 months;
  - (c) both such fine and imprisonment.
- (7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.
- (8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person's body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—
  - (a) the sample may not be used, or supplied, for any other purpose; and
  - (b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.
- (9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—
  - (a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);
  - (b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;
  - (c) for the purpose of informing any decision of a children's hearing arranged to consider the person's case;
  - (d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;
  - (e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.
- (10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—

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- (a)

for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of “relevant offence”;
- (b)

for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of “relevant Class A drug”.
- (11)

An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).
- (12)

An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.]

Schedule 1 offences

<sup>F145</sup>**21 Schedule 1 offences: power of constable to take offender into custody.**

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**Textual Amendments**  
**F145** S. 21 repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **[sch. 2 para. 2\(b\)](#)**; [S.S.I. 2017/345](#), art. 3, sch.

<sup>F146</sup> ...

**Textual Amendments**  
**F146** S. 22 cross-heading repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **[sch. 2 para. 27\(b\)](#)**; [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 5)

<sup>F147</sup>**22 Liberation by police.**

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**Textual Amendments**  
**F147** Ss. 22-22ZB repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **[sch. 2 para. 27\(b\)](#)**; [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 5)

<sup>F147</sup>**22ZA Offences where undertaking breached**

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**Textual Amendments**  
**F147** Ss. 22-22ZB repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **[sch. 2 para. 27\(b\)](#)**; [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 5)

**<sup>F147</sup>22ZBEvidential and procedural provision**

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**Textual Amendments**  
**F147** Ss. 22-22ZB repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **[sch. 2 para. 27\(b\)](#)**; [S.S.I. 2017/345](#), art. 3, sch. (with arts. 4, 5)

**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.)