



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 8 **S**

EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

Evidential matters

54 **Certificates relating to physical data: sufficiency of evidence** **S**

In section 284(2) of the 1995 Act (no entitlement to challenge sufficiency of evidence in certificate relating to certain physical data), for the words “such other party shall not be entitled to challenge the sufficiency of the evidence contained within the certificate” there is substituted “, if that other party serves on the first party, not more than seven days after the date of service of the copy on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.”.

55 **Taking samples by swabbing** **S**

(1) The 1995 Act is amended as follows.

(2) In section 18 (prints, samples etc. in criminal investigations)—

- (a) in subsection (6), paragraph (d) is repealed; and
- (b) after that subsection there is inserted—

“(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.”.

(3) In each of sections 19(2) (prints, samples etc. in criminal investigations: supplementary provisions) and 19A(2)(samples etc. from persons convicted of sexual and violent offences)—

- (a) the word “and” which immediately follows paragraph (a) is repealed;
- (b) in paragraph (b), for the word “(d)” there is substituted “(c)”; and
- (c) after that paragraph there is added the word “ and ” and the following paragraph—

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“(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) In section 19B (power of constable in obtaining relevant physical data etc.), the existing provisions become subsection (1); and after that subsection there is added—

“(2) A constable may, with the authority of an officer of a rank no lower than inspector, use reasonable force in (himself) exercising any power conferred by section 18(6A), 19(2)(c) or 19A(2)(c) of this Act.”.

56 Retaining sample or relevant physical data where given voluntarily **S**

(1) This section applies only to a person other than is mentioned in subsection (1) of section 18 of the 1995 Act (application of that section) and does not apply where a sample is, or relevant physical data are, taken from [^{F1}or provided by] a person—

- (a) by virtue of any power of search;
- (b) by virtue of any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
- (c) under the authority of a warrant.

(2) In the circumstances mentioned in subsection (3), a sample or relevant physical data taken from and with the consent of the person (or provided by and with the consent of the person) in connection with the investigation of an offence [^{F2}, or information derived from that sample may be held and used—

- (a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, ^{F3} ...
- (b) for the identification of a deceased person or a person from whom the sample or relevant physical data came.]

[^{F4}(c) in the interests of national security, or

- (d) for the purposes of a terrorist investigation]

(3) The circumstances are that the person consents in writing to the sample, data or information [^{F5}derived from a sample] being so held and used; but in giving such consent the person may elect to confine it to consent to holding and using in connection with the investigation and prosecution of the offence in connection with which the sample was, or data were, taken or provided.

(4) The person may at any time withdraw such written consent by—

- (a) giving notice in writing of such withdrawal to the chief constable of the [^{F6}Police Service of Scotland;] or
- (b) attending at any police station ^{F7}... and giving such notice to—
 - (i) any constable ^{F8}...; or
 - (ii) any person authorised to receive it by the officer in charge of the station,

and the chief constable, constable or as the case may be person so authorised shall, on receipt of that notice, provide the person withdrawing consent with a written acknowledgment of receipt.

(5) The withdrawal takes effect when notice given under subsection (4) is received by the person to whom it falls to provide an acknowledgment under that subsection; and subject to subsection (6)—

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- (a) the sample, with all information derived from it, is;
 - (b) the data, ^{F9} ..., are,
- to be destroyed as soon as possible after such receipt.

(6) Subsections (4) and (5) are without prejudice to—

- (a) the use of the sample, data or information derived from [^{F10}the sample] in evidence—
 - (i) unless an election was made under subsection (3), in any prosecution; and
 - (ii) if such an election was so made, in the prosecution of the offence in connection with which the sample was, or data were, taken or provided,where and in so far as that evidence relates to, or to circumstances connected with or arising out of, a check such as is mentioned in subsection (7);
- (b) the admissibility of any evidence as to—
 - (i) the taking or provision of the sample or data; or
 - (ii) the giving or withdrawal of consent.

(7) The check is one which—

- (a) was against any other sample or relevant physical data, or against any information derived from any other sample ^{F11} ...; and
- (b) took place before the withdrawal took effect.

[^{F12}(7A) In subsection (2)—

- (a) the reference to crime includes a reference to—
 - (i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or
 - (ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,
- (b) the reference to an investigation includes a reference to an investigation outside the United Kingdom of a crime or suspected crime, and
- (c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside the United Kingdom.]

(8) In this section—

“sample” means a sample such as is mentioned in section 18(6) or (6A) of the 1995 Act, being one taken as so mentioned; ^{F13} ...

“relevant physical data” has the same meaning as it has for the purposes of section 18 of that Act [^{F14}; and

“terrorist investigation” has the meaning given by section 32 of the Terrorism Act 2000.]

Textual Amendments

- F1** Words in s. 56(1) inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(a\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F2** Words in s. 56(2) substituted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 82\(2\)\(b\)](#), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)

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- F3** Word in s. 56(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. 2(a)(i)** (with art. 4(1)(4))
- F4** S. 56(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. 2(a)(ii)** (with art. 4(1)(4))
- F5** Words in s. 56(3) inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 82(2)(c)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F6** Words in s. 56(4)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 21(2)(a)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F7** Words in s. 56(4)(b) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 21(2)(b)(i)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F8** Words in s. 56(4)(b)(i) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 21(2)(b)(ii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F9** Words in s. 56(5)(b) repealed (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 82(2)(d)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F10** Words in s. 56(6)(a) substituted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 82(2)(e)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F11** Words in s. 56(7)(a) repealed (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 82(2)(f)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F12** S. 56(7A) inserted (1.8.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 82(2)(g)**, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 9)
- F13** Word in s. 56(8) 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. 2(b)(i)** (with art. 4(1)(4))
- F14** Words in s. 56(8) 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. 2(b)(ii)** (with art. 4(1)(4))

57 Convictions in other member States of the European Union S

- (1) The 1995 Act is amended as follows.
- (2) In section 101(8) (manner of proving previous conviction in solemn proceedings)—
 - (a) after the words “section 285” there is inserted “ , or as the case may be 286A, ”; and
 - (b) for the words “said section” there is substituted “ section in question ”.
- (3) In section 286 (proof of previous conviction in support of substantive charge), at the end there is added—
 - “(3) The reference in subsection (1)(a) above to “the clerk of court having custody of the record containing the conviction” includes, in relation to a previous conviction by a court in another member State of the European Union, a reference to any officer of that court or of that State having such custody.”.
- (4) After section 286 there is inserted—

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“286A Proof of previous conviction by court in other member State

- (1) A previous conviction by a court in another member State of the European Union may be proved against any person in any criminal proceedings by the production of evidence of the conviction and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.
- (2) A certificate—
 - (a) bearing—
 - (i) to have been sealed with the official seal of a Minister of the State in question; and
 - (ii) to contain particulars relating to a conviction extracted from the criminal records of that State; and
 - (b) including copies of fingerprints and certifying that those copies—
 - (i) are of fingerprints appearing from those records to have been taken from the person convicted on the occasion of the conviction, or on the occasion of his last conviction; and
 - (ii) would be admissible in evidence in criminal proceedings in that State as a record of the skin of that person’s fingers, shall be sufficient evidence of the conviction or, as the case may be, of the person’s last conviction and of all preceding convictions and that the copies of the fingerprints included in the certificate are copies of the fingerprints of the person convicted.
- (3) A conviction bearing to have been—
 - (a) extracted from the criminal records of the State in question; and
 - (b) issued by an officer of that State whose duties include the issuing of such extracts,shall be received in evidence without being sworn to by witnesses.
- (4) Subsection (9) of section 285 of this Act applies in relation to this section as it does in relation to that section.”.
- (5) In section 307 (interpretation)—
 - (a) in subsection (1), in the definition of “extract conviction” and “extract of previous conviction”, at the end there is added “ and also include a conviction extracted and issued as mentioned in section 286A(3)(a) and (b) of this Act ”; and
 - (b) in subsection (5), at the end there is added “except—
 - (a) where the context otherwise requires; and
 - (b) in sections 69(2) and 166, where such a reference includes a reference to a previous conviction, by a court in another member State of the European Union, of an act punishable under the law in force in that State (an act so punishable being taken to constitute an offence under that law however described in that law)”.

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Changes and effects yet to be applied to :

- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to legislation.gov.uk. This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

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. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)