



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 3 **S**

### CRIMINAL JUSTICE

#### *Retention of samples etc.: prosecutions for sexual and violent offences*

#### **83 Retention of samples etc.: prosecutions for sexual and violent offences **S****

- (1) In section 18(3) of the 1995 Act (prints, samples etc. in criminal investigations), after “below” where it first occurs there is inserted “ and section 18A of this Act ”.
- (2) After section 18 of that Act there is inserted—

#### **“18A Retention of samples etc.: prosecutions for sexual and violent offences**

- (1) This section applies to any sample, or any information derived from a sample, taken under subsection (6) or (6A) of section 18 of this Act, where the condition in subsection (2) below is satisfied.
- (2) That condition is that criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom 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 sample or information 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.

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**Changes to legislation:** Police, Public Order and Criminal Justice (Scotland) Act 2006, Cross Heading: Retention of samples etc.: prosecutions for sexual and violent offences is up to date with all changes known to be in force on or before 29 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (5) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (6) An application under subsection (5) above may be made to any sheriff—
- (a) in whose sheriffdom the person referred to in subsection (2) above resides;
  - (b) in whose sheriffdom that person is believed by the applicant to be; or
  - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (7) An order under subsection (5) above shall not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The decision of the sheriff on an application under subsection (5) above may be appealed to the sheriff principal within 21 days of the decision; and the sheriff principal's decision on any such appeal is final.
- (9) Subsection (3) above does not apply where—
- (a) an application under subsection (5) above has been made but has not been determined;
  - (b) the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
- (a) the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant; or
  - (c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,
- the sample or information shall be destroyed as soon as possible thereafter.
- (11) In this section—
- “the relevant chief constable” means—
- (a) the chief constable of the police force of which the constable who took or directed the taking of the sample was a member;
  - (b) the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or
  - (c) a chief constable who believes that that person is or is intending to come to the area of the chief constable's police force; and
- “relevant sexual offence” and “relevant violent offence” have the same meanings as in section 19A(6) of this Act and include any attempt, conspiracy or incitement to commit such an offence.”

**Changes to legislation:**

Police, Public Order and Criminal Justice (Scotland) Act 2006, Cross Heading: Retention of samples etc.: prosecutions for sexual and violent offences is up to date with all changes known to be in force on or before 29 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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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. 47A inserted by [2023 c. 41 s. 45\(3\)](#)