



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART IV

#### POLICE

##### *Police funding and organisation*

#### **45 Police grant**

- (1) For section 32 of the Police (Scotland) Act 1967 there shall be substituted the following section—

**“32 Police grant**

- (1) Subject to the following provisions of this section, the Secretary of State shall for the financial year 1997-98 and for each subsequent financial year make grants out of money provided by Parliament for police purposes to police authorities and joint police boards.
- (2) Where a grant is made under subsection (1) above to a joint police board, no grant under that subsection shall be payable to a constituent authority.
- (3) For each financial year the Secretary of State shall with the approval of the Treasury by order determine—
- (a) the aggregate amount of grants to be made under subsection (1) above; and
  - (b) the amount of the grant to be made to each police authority or joint police board,

and any determination under this subsection for any financial year may be varied or revoked by a subsequent such determination for that year.

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- (4) In making a determination under subsection (3)(b) above, the Secretary of State may exclude certain categories of expenditure for police purposes from a grant made under subsection (1) above.
  - (5) A grant made to a police authority or to a joint police board by virtue of an order made under subsection (3) above may be subject to such conditions and shall be paid at such times and in such manner as the Secretary of State may with the approval of the Treasury by order determine; and any such time may fall within or after the financial year concerned.
  - (6) The Secretary of State shall prepare a report stating the considerations which he took into account in making the determinations mentioned in subsection (3) above.
  - (7) The considerations which the Secretary of State takes into account in making a determination under subsection (3)(b) above may be different for different authorities or different joint police boards.
  - (8) A statutory instrument containing an order made under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (9) A copy of a report prepared under subsection (6) above shall be laid before each House of Parliament at the time at which the statutory instrument containing the order made under subsection (3) above to which it relates is so laid.
  - (10) Where in consequence of the variation or revocation of an order made under subsection (3) above the amount of a police authority's or a joint police board's grant is less than the amount already paid to it for the year concerned, a sum equal to the difference shall be paid by the authority or, as the case may be, board to the Secretary of State on such day as he may specify.
  - (11) In this section "financial year" has the meaning assigned to it by section 116 of the Local Government Finance Act 1992."
- (2) A determination made under section 32(3) (police grant) of the Police (Scotland) Act 1967 (as inserted into that Act by subsection (1) above) for the financial year 1997-98 may, notwithstanding that this section comes into force after the beginning of that financial year, relate to the whole of that year; and the first such determination shall take effect in place of any determination made for that year under section 32(1) of that Act as it had effect prior to the coming into force of this section.

#### **46 Common police services**

- (1) For section 36 of the Police (Scotland) Act 1967 there shall be substituted the following section—

**“36 Common services**

- (1) The Secretary of State may—
- (a) himself—
    - (i) provide and maintain facilities and services; or
    - (ii) establish and maintain institutions and organisations; or

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- (b) contribute, by way of financial assistance, grant or otherwise, to—
      - (i) the provision and maintenance of facilities and services; or
      - (ii) the establishment and maintenance of institutions and organisations,by others,where he considers that to do so is necessary or expedient for promoting the efficiency or effectiveness of the police.
  - (2) The Secretary of State may by regulations make provision for requiring all police forces in Scotland to use specified facilities or services, or facilities or services of a specified description (whether or not provided under subsection (1) above), if he considers that it would be in the interests of the efficiency or effectiveness of the police for them to do so.
  - (3) The Secretary of State may recover from police authorities and joint police boards the whole or any part of any expenditure which he incurs under subsection (1) above and, for that purpose, he may—
    - (a) fix charges to be paid to him in respect of the use by police forces of any facilities or services such as are mentioned in subsection (1) above; and
    - (b) determine amounts to be paid to him by police authorities and joint police boards, and he may determine different amounts in respect of different police authorities and joint police boards.
  - (4) Before exercising the powers conferred by any of subsections (1) to (3) above the Secretary of State shall consult the Joint Central Committee and such bodies or associations as appear to him to be representative of police authorities or of chief constables or superintendents.
  - (5) Any sum due by a police authority or joint police board to the Secretary of State under this section—
    - (a) may be deducted by him from the amount of police grant payable to that authority or board under section 32 of this Act; or
    - (b) failing such deduction, shall be defrayed in like manner as other expenses incurred for the purposes of this Act by that authority or board.”.
- (2) In section 38(5) of that Act (central service on police duties), for the definition of “central service” there shall be substituted the following definition—
- ““central service” means temporary service under the Crown, with the consent of the appropriate authority, in connection with—
- (a) facilities and services provided and maintained by the Secretary of State under section 36(1)(a)(i) of this Act;
  - (b) facilities and services provided by organisations or institutions established and maintained by the Secretary of State under section 36(1)(a)(ii) of this Act; and
  - (c) research or other services connected with the police provided by the Secretary of State,
- and temporary service under section 34 of this Act.”.
- (3) Section 36, and the definition of “central services” in section 38(5), of the Police (Scotland) Act 1967, as substituted respectively by subsections (1) and (2) above, shall

come into force or, if this section comes into force after that date, be deemed to have come into force, on 1st April 1997.

- (4) The first determination made by the Secretary of State under section 36(3) of that Act, as so substituted, for the recovery of any expenditure incurred by him under that section—
- (a) may be applied by him in relation to any expenditure so incurred during the period beginning on 1st April 1997 and ending on the date on which the determination is made; and
  - (b) subject to subsection (5) below, shall take effect in place of any provision for such recovery made in an order under the said section 36 as it had effect prior to the coming into force of this section.
- (5) Nothing in subsection (4) above shall entitle the Secretary of State to recover a higher proportion of his expenditure in relation to the period mentioned in that subsection than he would have been entitled to recover in relation to that period under any such order.

#### *Collection and use of records*

### **47 Record of evidence taken from external parts of body**

- (1) In section 18 of the 1995 Act (prints and samples in criminal investigations)—
- (a) in subsection (2)—
    - (i) for the words from “fingerprints” to “body” there shall be substituted the words “, or require the person to provide him with, such relevant physical data”; and
    - (ii) at the end there shall be inserted the words “from him or require him to provide, and the person so required shall comply with that requirement”;
  - (b) in subsection (3), for the words from “prints or impressions taken”, there shall be substituted the words “relevant physical data taken from or provided by a person”;
  - (c) subsection (7) shall cease to have effect; and
  - (d) after subsection (7) there shall be inserted the following subsections—
 

“(7A) For the purposes of this section and sections 19 to 20 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.

(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.”.
- (2) In section 19 of the 1995 Act (taking of prints etc from convicted persons)—
- (a) in subsection (1)—

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- (i) in paragraph (a), for the words “a sample, print or impression” there shall be substituted the words “taken from him, or been required to provide, any relevant physical data or had any impression or sample”; and
  - (ii) in paragraph (b), for the words from “(whether” to “taken”, in the second place where it occurs, there shall be substituted the words “at any time had—
    - (i) taken from him or been required (whether under paragraph (a) above or under section 18 or 19A of this Act or otherwise) to provide any relevant physical data; or
    - (ii) any impression or sample taken from him,which was not suitable for the means of analysis for which the data were taken or required or the impression or sample was taken”;
- (b) for paragraph (a) of subsection (2), there shall be substituted the following paragraph—
- “(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;”;
- (c) in subsection (4)(b)—
- (i) after the words “intimation that” there shall be inserted the words “the relevant physical data were or”; and
  - (ii) the words “, print or impression” shall cease to have effect.
- (3) In section 20 of the 1995 Act (use of prints etc.)—
- (a) for the word “prints”, in the place where it first occurs, there shall be substituted the words “relevant physical data”; and
  - (b) for the word “prints”, in the place where it second occurs, there shall be substituted the word “data”.
- (4) In section 284 of the 1995 Act (evidence in relation to fingerprints)—
- (a) in subsection (1)—
    - (i) for the words “two constables” there shall be substituted the words “a person authorised in that behalf by a chief constable”; and
    - (ii) for the words from “the fingerprints” to “from” there shall be substituted the words “relevant physical data (within the meaning of section 18(7A) of this Act) was taken from or provided by”;
  - (b) for subsection (2) there shall be substituted the following subsections—
    - “(2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on any other party to the proceedings a copy of the certificate, and such other party shall not be entitled to challenge the sufficiency of the evidence contained within the certificate.
    - (2A) Where the first party does not serve a copy of the certificate on any other party as mentioned in subsection (2) above, he shall not be entitled to rely on subsection (1) above as respects that party.”.

- (5) In section 285 of the 1995 Act (proof of previous convictions), after subsection (9) there shall be inserted the following subsection—

“(10) In this section “fingerprint” includes any record of the skin of a person’s finger created by a device approved by the Secretary of State under section 18(7B) of this Act.”.

#### **48 Samples etc. from persons convicted of sexual and violent offences**

- (1) In section 19 of the 1995 Act (taking of prints and samples after conviction) in subsection (1) for the word “This” there shall be substituted the words “Without prejudice to any power exercisable under section 19A of this Act, this”.
- (2) After section 19 of the 1995 Act there shall be inserted the following sections—

##### **“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; and
  - (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 (d) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample.
- (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 section 19(1)(a) of this Act or under this section unless the data so taken or required have been or, as the case may be, the sample so taken or required has been lost or destroyed.
- (4) Where this section applies by virtue of—
- (a) paragraph (a) or (b) of subsection (1) above, the powers conferred by subsection (2) above may be exercised at any time when the person is serving his sentence; and
  - (b) paragraph (c) of the said subsection (1), those powers may only be exercised within a period of three months beginning on the relevant date.

- (5) Where a person in respect of whom the power conferred by subsection (2) above may be exercised—
- (a) is no longer serving his sentence of imprisonment, subsections (3)(a), (5) and (6);
  - (b) is serving his sentence of imprisonment, subsection (3)(b),
- of section 19 of this Act shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (6) In this section—
- “conviction” includes—
- (a) an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of the person’s insanity at the time at which he committed the act constituting the relevant offence;
  - (b) a finding under section 55(2) of this Act,
- and “convicted” shall be construed accordingly;
- “relevant date” means the date on which section 48 of the 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;
  - (b) clandestine injury to women;
  - (c) abduction of a woman with intent to rape;
  - (d) assault with intent to rape or ravish;
  - (e) indecent assault;
  - (f) lewd, indecent or libidinous behaviour or practices;
  - (g) shameless indecency;
  - (h) sodomy; and
  - (i) any offence which consists of a contravention of any of the following statutory provisions—
    - (i) section 52 of the 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) section 106 of the Mental Health (Scotland) Act 1984 (protection of mentally handicapped females);
    - (iv) section 107 of that Act (protection of patients);
    - (v) section 1 of the 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);

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- (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);

“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 Explosive Substances Act 1883;
  - (ii) section 12 of the 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 Firearms Act 1968;
  - (iv) section 6 of the Child Abduction Act 1984 (taking or sending child out of the United Kingdom); and

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

- (a) a hospital 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—



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- (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.

(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); or
  - (ii) a relevant violent offence mentioned in paragraph (h),

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

### **19B Power of constable in obtaining relevant physical data etc**

A constable may use reasonable force in—

- (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;
- (b) exercising any power conferred by section 18(6), 19(2)(b) or 19A(2)(b) of this Act.”.