



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART IV

#### POLICE

##### *Collection and use of records*

#### **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—

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- (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 <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;
    - (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

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- (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) section 106 of the <sup>M3</sup>Mental Health (Scotland) Act 1984 (protection of mentally handicapped females);
  - (iv) section 107 of that Act (protection of patients);
  - (v) section 1 of the <sup>M4</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);
- “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>M5</sup>Explosive Substances Act 1883;
  - (ii) section 12 of the <sup>M6</sup>Children and Young Persons (Scotland) Act 1937 (cruelty to children);

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(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>M7</sup>Firearms Act 1968;

(iv) section 6 of the <sup>M8</sup>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—

- (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;

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

**Marginal Citations**

<b>M1</b>	1997 c.48.
<b>M2</b>	1982 c.45.
<b>M3</b>	1984 c.36.
<b>M4</b>	1995 c.39.4
<b>M5</b>	1883 c.3.
<b>M6</b>	1937 c.37.
<b>M7</b>	1968 c.27.
<b>M8</b>	1984 c.37.

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