



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

2006 asp 10

PART 3

CRIMINAL JUSTICE

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

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- (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.

- (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—
- in whose sheriffdom the person referred to in subsection (2) above resides;
 - in whose sheriffdom that person is believed by the applicant to be; or
 - 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—
- an application under subsection (5) above has been made but has not been determined;
 - the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or
 - such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
- the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;
 - such an appeal is brought and is withdrawn or finally determined against the appellant; or
 - 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—
- the chief constable of the police force of which the constable who took or directed the taking of the sample was a member;
 - the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or
 - 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.”