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

2006 asp 10

PART 2

PUBLIC ORDER ETC.

CHAPTER 3

OTHER PROVISIONS

Control of sex offenders

77 Powers to take data and samples from persons subject to notification requirements

(1) The 1995 Act is amended in accordance with subsections (2) to (5).

(2) After section 19A there is inserted—

"**19AA Samples etc. from sex offenders**

(1) This section applies where a person is subject to—

(a) the notification requirements of Part 2 of the 2003 Act;

(b) an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (a risk of sexual harm order); or

(c) an order under section 123 of the 2003 Act (which makes provision for England and Wales and Northern Ireland corresponding to section 2 of that Act of 2005).

(2) This section applies regardless of whether the person became subject to those requirements or that order before or after the commencement of this section.

Changes to legislation: *There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Section 77. (See end of Document for details)*

(3) Subject to subsections (4) to (8) 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 considers reasonably appropriate;

(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 (c) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample;

(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) Where this section applies by virtue of subsection (1)(c) above, the power conferred by subsection (3) shall not be exercised unless the constable reasonably believes that the person's sole or main residence is in Scotland.

(5) The power conferred by subsection (3) 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(2) or 19A(2) of this Act unless the data so taken or required have been or, as the case may be, the sample so taken has been, lost or destroyed.

(6) The power conferred by subsection (3) 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 that subsection unless the data so taken or required or, as the case may be, the sample so taken—

(a) have or has been lost or destroyed; or

(b) were or was not suitable for the particular means of analysis or, though suitable, were or was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis.

(7) The power conferred by subsection (3) above may be exercised only—

(a) in a police station; or

(b) where the person is in legal custody by virtue of section 295 of this Act, in the place where the person is for the time being.

(8) The power conferred by subsection (3) above may be exercised in a police station only—

(a) where the person is present in the police station in pursuance of a requirement made by a constable to attend for the purpose of the exercise of the power; or

(b) while the person is in custody in the police station following his arrest or detention under section 14(1) of this Act in connection with any offence.

(9) A requirement under subsection (8)(a) above—

(a) shall give the person at least seven days' notice of the date on which he is required to attend;

(b) may direct him to attend at a specified time of day or between specified times of day; and

(c) where this section applies by virtue of subsection (1)(b) or (c) above, shall warn the person that failure, without reasonable excuse, to comply with the requirement or, as the case may be, to allow the taking of or to provide any relevant physical data, or to provide any sample, under the power, constitutes an offence.

(10) A requirement under subsection (8)(a) above in a case where the person has previously had taken from him or been required to provide relevant physical data or any sample under subsection (3) above shall contain intimation that the relevant physical data were or the sample was unsuitable or, as the case may be, insufficient, as mentioned in subsection (6)(b) above.

(11) Before exercising the power conferred by subsection (3) above in a case to which subsection (8)(b) above applies, a constable shall inform the person of that fact.

(12) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (8)(a) above.

(13) This section does not prejudice the generality of section 18 of this Act.

(14) In this section, "the 2003 Act" means the Sexual Offences Act 2003 (c. 42).".

19AB Section 19AA: supplementary provision in risk of sexual harm order cases

(1) This section applies where section 19AA of this Act applies by virtue of subsection (1)(b) or (c) of that section.

(2) A person who fails without reasonable excuse—

(a) to comply with a requirement made of him under section 19AA(8)(a) of this Act; or

(b) to allow relevant physical data to be taken from him, to provide relevant physical data, or to allow a sample to be taken from him, under section 19AA(3) of this Act,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable on summary conviction to the following penalties—

(a) a fine not exceeding level 4 on the standard scale;

(b) imprisonment for a period—

(i) where the conviction is in the district court, not exceeding 60 days; or

(ii) where the conviction is in the sheriff court, not exceeding 3 months; or

(c) both such fine and such imprisonment.

(4) Subject to subsection (6) below, all record of any relevant physical data taken from or provided by a person under section 19AA(3) of this Act, all samples taken from a person under that subsection and all information derived from such samples shall be destroyed as soon as possible following the person ceasing to be a person subject to any risk of sexual harm orders.

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(5) For the purpose of subsection (4) above, a person does not cease to be subject to a risk of sexual harm order where the person would be subject to such an order but for an order under section 6(2) of the 2005 Act or any corresponding power of a court in England and Wales or in Northern Ireland.

(6) Subsection (4) above does not apply if before the duty to destroy imposed by that subsection would apply, the person—

(a) is convicted of an offence; or

(b) becomes subject to the notification requirements of Part 2 of the 2003 Act.

(7) In this section—

"risk of sexual harm order" means an order under—

(a) section 2 of the 2005 Act; or

(b) section 123 of the 2003 Act;

"the 2005 Act" means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9);

"the 2003 Act" has the meaning given by section 19AA(14) of this Act; and

"convicted" shall be construed in accordance with section 19A(6) of this Act.".

(3) In section 19 (further powers to take samples etc.), in subsection (1)(b)(i), for "or 19A" there is substituted " , 19A or 19AA ".

(4) In section 19A (power to take samples etc. from sexual and violent offenders), in subsection (3), for "or under this section" there is substituted " , under this section or under section 19AA(3) of this Act ".

(5) Section 19B (power of constable in obtaining samples etc.) is amended as follows—

(a) in subsection (1)—

(i) in paragraph (a), after "Act" there is inserted " , or under subsection (3)(a) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section "; and

(ii) in paragraph (b), after "Act" there is inserted " , or under subsection (3)(b) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section "; and

(b) in subsection (2), after "Act" there is inserted " , or under subsection (3)(c) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section ".

(6) The Sexual Offences Act 2003 ("the 2003 Act") is amended in accordance with subsections (7) to (9).

(7) For sections 87(4) and (5) (power to take fingerprints etc. to verify person's identity), there is substituted—

"(5A) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), do one or more of the following—

(a) allow the officer or person to photograph any part of the offender,

(b) allow the officer or person to take from the offender, or provide to the officer or person, such relevant physical data as the officer or person considers appropriate,

(c) allow the officer or person to take from the offender any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 by the means specified in that paragraph in relation to that sample,

(d) allow the officer or person to take from the offender any sample mentioned in subsection (6A) of that section by the means specified in that subsection.”.

(8) In section 88 (interpretation of section 87), after subsection (2) there is inserted—

“(2A) “Relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995.”.

(9) In section 91(1)(a) (offence of failing to complying with certain provisions of Part 2, including section 87(4)) for “87(4)” there is substituted “ 87(5A) ”.

Changes to legislation:
There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Section 77.