

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.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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)”.

78 Sex offender notification requirements

- (1) Section 83 of the 2003 Act (which requires certain offenders to make an initial notification of certain information) is amended in accordance with subsections (2) and (3).
- (2) In subsection (5), after paragraph (g) there is inserted—
- “(h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (5A);
 - (i) such other information, about him or his personal affairs, as the Scottish Ministers may prescribe in regulations.
- (5A) The details are—
- (a) the issuing authority;
 - (b) the number;
 - (c) the dates of issue and expiry;
 - (d) the name and date of birth given as being those of the passport holder.”.
- (3) After subsection (7), there is inserted—
- “(8) In this section, “passport” means—
- (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77);
 - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport.”.
- (4) Section 84 of the 2003 Act (which requires certain changes to notified information to be notified within 3 days) is amended in accordance with subsections (5) and (6).
- (5) In subsection (1)—

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- (a) the word “or” immediately after paragraph (c) is repealed;
 - (b) after paragraph (d) there is inserted—
 - “(e) his losing or ceasing to have a passport notified to the police under section 83(1) or this subsection,
 - (f) his receiving a passport which has not been notified to the police under section 83(1) or this subsection, or
 - (g) the occurrence, in relation to information required to be notified by virtue of regulations made under section 83(5)(i), of an event prescribed by the Scottish Ministers in regulations,”; and
 - (c) for “(as the case may be) the fact that he has been released” there is substituted “the fact that he has been released, the fact that he has lost or ceased to have the passport, the details set out in section 83(5A) in relation to the passport or (as the case may be) such information as the Scottish Ministers prescribe in regulations”.
- (6) After subsection (1), there is inserted—
- “(1A) In subsection (1), “passport” has the same meaning as in section 83.”.
- (7) In section 87 of the 2003 Act (method of notification and related matters), after subsection (5A) (as inserted by section 77) there is inserted—
- “(5B) 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), produce each passport he has to that officer or person, for inspection by that officer or person.
- (5C) In subsection (5B), “passport” has the same meaning as in section 83.”.
- (8) In section 91(1)(a) of the 2003 Act (offences of failing to comply with certain provisions), after “(5A)” (as inserted by section 77) there is inserted “or (5B)”.
- (9) In section 138 of the 2003 Act (orders and regulations), in subsection (2), after “21,” there is inserted “83, 84,”.

79 Information about release: power to require giving of specified information

- (1) Section 96 of the 2003 Act (information about release or transfer) is amended in accordance with subsections (2) and (3).
- (2) After subsection (2) there is inserted—
- “(2A) The regulations may make provision requiring the person who is responsible for an offender, in giving notice under the regulations, to provide—
- (a) any information about the offender, or
 - (b) a photograph of any part of the offender.
- (2B) In subsection (2A), “photograph” is to be construed in accordance with section 88(2).”.
- (3) After subsection (3) there is inserted—
- “(4) The regulations may make different provision for different purposes.”

80 Police powers of entry to and examination of relevant offender's home address

After section 96 of the 2003 Act there is inserted—

“96A Entry and examination of home address

Police powers of entry to and examination of relevant offender's home address

- (1) A sheriff may, if satisfied on the application of a senior police officer of the relevant force as to the matters mentioned in subsection (2), grant a warrant authorising any constable of the relevant force to enter premises in the sheriffdom (if necessary using reasonable force) and to examine and search them, and the things in them, for the purpose mentioned in subsection (3).
- (2) Those matters are—
 - (a) that the premises are either—
 - (i) premises whose address has been notified by a relevant offender as his home address in his most recent notification of a home address under this Part; or
 - (ii) premises whose address has been notified by a relevant offender as the address of any other premises at which he regularly resides or stays, in his most recent notification under section 83(1) or 85(1) or in any notification under section 84(1) given by him since that notification;
 - (b) that the offender is not one to whom subsection (4) applies;
 - (c) that it would assist the carrying out of the purpose mentioned in subsection (3), for a constable of the relevant force to examine and search the premises and the things in them; and
 - (d) that on more than one occasion, a constable of the relevant force has attempted to examine and search the premises and the things in them for the purpose mentioned in subsection (3) and has been unable (whether by not being able to search and examine the premises and the things in them, or by not being able to obtain entry to the premises) to do so.
- (3) That purpose is assessing the risk of the offender committing a sexual offence.
- (4) This subsection applies to the relevant offender if he is—
 - (a) remanded in or committed to custody by an order of a court;
 - (b) serving a sentence of imprisonment or a term of service detention;
 - (c) detained in a hospital; or
 - (d) outside the United Kingdom.
- (5) A sheriff is to determine an application for a warrant under subsection (1) without hearing from the relevant offender or any other person who has an interest in the premises.
- (6) A warrant under subsection (1) does not confer power to seize anything in the premises to which it relates.
- (7) A warrant under subsection (1) must be executed at a reasonable hour.
- (8) A warrant under subsection (1) continues in force until the expiry of the period of one month beginning with the date of the warrant's grant.

Status: This is the original version (as it was originally enacted).

- (9) A warrant under subsection (1) authorises entry on one occasion only.
- (10) This section does not prejudice any other power of entry, examination, search or seizure.
- (11) In this section—
- “the relevant force” means the police force maintained for the area in which the premises are situated;
 - “senior police officer” means a constable of the rank of superintendent or above; and
 - “sexual offence” means—
 - (a) an offence within any of paragraphs 36 to 59C of Schedule 3; or
 - (b) any other offence in circumstances in which it would be likely that a determination such as is mentioned in paragraph 60 of that Schedule would be made in relation to the offence.”.