



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 3

CRIMINAL PROCEDURE

Retention and use of samples etc.

77 **Retention of samples etc.**

- (1) The 1995 Act is amended as follows.
- (2) In section 18 (prints, samples etc. in criminal investigations)—
 - (a) in subsection (3), for “section 18A” substitute “sections 18A to 18F”,
 - (b) in subsection (7A), for “sections 19 to 20” substitute “, subject to the modification in subsection (7AA), sections 18A to 19C”, and
 - (c) after subsection (7A) insert—

“(7AA) The modification is that for the purposes of section 19C as it applies in relation to relevant physical data taken from or provided by a person outwith Scotland, subsection (7A) is to be read as if in paragraph (d) the words from “created” to the end were omitted.”.
- (3) In section 18A (retention of samples)—
 - (a) for subsection (1) substitute—

“(1) This section applies to—

 - (a) relevant physical data taken or provided under section 18(2), and
 - (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A),

where the condition in subsection (2) is satisfied.”,
 - (b) in subsection (2), after “whom” insert “the relevant physical data was taken or by whom it was provided or, as the case may be, from whom”,

Status: This is the original version (as it was originally enacted).

- (c) in subsection (3), for “sample or information” substitute “relevant physical data, sample or information derived from a sample”,
- (d) after subsection (8) insert—
 - “(8A) If the sheriff principal allows an appeal against the refusal of an application under subsection (5), the sheriff principal may make an order amending, or further amending, the destruction date.
 - “(8B) An order under subsection (8A) must not specify a destruction date more than 2 years later than the previous destruction date.”,
- (e) in subsection (10), for “sample or information” substitute “relevant physical data, sample or information derived from a sample”,
- (f) in subsection (11)—
 - (i) in paragraph (a) of the definition of “the relevant chief constable”, after “who” insert “took the relevant physical data or to whom it was provided or who”, and
 - (ii) in the definition of “relevant sexual offence” and “relevant violent offence”, after “have” insert “, subject to the modification in subsection (12),”, and
- (g) after subsection (11) insert—
 - “(12) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—
 - “(g) public indecency if it is apparent from the offence as charged in the indictment or complaint that there was a sexual aspect to the behaviour of the person charged;”