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Prisoners and Criminal Proceedings (Scotland) Act 1993

1993 CHAPTER 9

PART II

CRIMINAL PROCEEDINGS

Evidence

VALID FROM 01/10/1993

28 Prints, samples etc. in criminal investigations.

- (1) This section applies where a person has been arrested and is in custody, or is detained under section 2(1) of the ^{M1}Criminal Justice (Scotland) Act 1980 (detention and questioning).
- (2) A constable may take from the person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable may, having regard to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take.
- (3) All record of any prints or impressions taken under subsection (2) above shall be destroyed immediately following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 383 (absolute discharge) or 384(1) (probation) of the 1975 Act.
- (4) A constable may, with the authority of an officer of a rank no lower than inspector, take from the person—
 - (a) from the hair of an external part of the body, by means of cutting or combing, a sample of hair or other material;

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- (b) from a fingernail or toenail or from under any such nail, a sample of nail or other material;
 - (c) from an external part of the body, by means of swabbing or rubbing, a sample of blood or other body fluid, of body tissue or of other material.
- (5) A constable may use reasonable force in exercising any power conferred by subsection (2) or (4) above.
- (6) Nothing in this section shall prejudice—
- (a) any power of search;
 - (b) any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
 - (c) any power to take prints, impressions or samples under the authority of a warrant.

Modifications etc. (not altering text)

C1 S. 28 applied (with modifications) (3.2.1995) by 1994 c. 33, s. 138(2); S.I. 1995/127, art. 2(1), Sch. 1

Marginal Citations

M1 1980 c. 62.

VALID FROM 31/03/1996

[^{F1}28A Prints, samples etc. in criminal investigations: supplementary provisions.

- (1) This section applies where a person convicted of an offence—
- (a) has not, since the conviction, had a sample, print or impression taken from him; or
 - (b) has (whether before or after the conviction) had a sample, print or impression taken from him but it was not suitable for the means of analysis for which it was taken or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.
- (2) Where this section applies, a constable may, within the permitted period—
- (a) take from the convicted person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable reasonably considers it appropriate to take; 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 (4) of section 28 of this Act by the means specified in that paragraph in relation to that sample.
- (3) A constable—
- (a) may require the convicted person to attend a police station for the purposes of subsection (2) above;
 - (b) may, where the convicted person is in legal custody within the meaning of the 1975 Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.

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- (4) In subsection (2) above, “the permitted period” means—
- (a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;
 - (b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that the sample, print or impression was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.
- (5) A requirement under subsection (3)(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.
- (6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.]

Textual Amendments

- F1** Ss. 28A, 28B inserted (31.3.1996) by 1995 c. 20, s. 58(5); S.I. 1996/517, art. 3(1) (which insertion fell (1.4.1996) by reason of the repeal (S.) of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

VALID FROM 31/03/1996

[^{F2}28B Use of prints, samples etc.

Without prejudice to any power to do so apart from this section, prints, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such prints, impressions, samples and information.]

Textual Amendments

- F2** Ss. 28A, 28B inserted (31.3.1996) by 1995 c. 20, s. 58(5); S.I. 1996/517, art. 3(1) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

VALID FROM 01/10/1993

29 Evidence from documents.

Schedule 3 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

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VALID FROM 01/01/1994

30 Admissibility of audio and video records.

- (1) Section 32 of the 1980 Act (evidence by letter of request or on commission) shall be amended as follows.
- (2) After subsection (3) there shall be inserted the following subsection—
- “(3A) Where any such record as is mentioned in paragraph (b) of subsection (2) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (3) above unless it is accompanied by a transcript of its contents.”.
- (3) After subsection (5) there shall be inserted the following subsection—
- “(5A) In subsections (2) and (3) above, “record” includes, in addition to a document in writing—
- (a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
 - (b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.”.

31 Transcript of customs interview sufficient evidence.

In section 60(1) of the ^{M2}Criminal Justice (Scotland) Act 1987 (which provides that certain transcripts of interviews between police officers and accused persons shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy), after the words “accused person” there shall be inserted the words “ , or between a person commissioned, appointed or authorised under section 6(3) of the Customs and Excise Management Act 1979 and an accused person, ”.

Marginal Citations

M2 1987 c. 41.

VALID FROM 01/10/1993

32 Evidence from abroad through television links in solemn proceedings.

After section 32 of the 1980 Act there shall be inserted the following section—

“32A Evidence from abroad through television links in solemn proceedings.

- (1) In any solemn proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—

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- (a) the witness is outside the United Kingdom;
 - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
 - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—
- (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
 - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,
- requesting assistance in facilitating the giving of evidence by that witness through a live television link.
- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) the granting of the application—
 - (i) is in the interests of justice; and
 - (ii) in the case of an application by the prosecutor, is not unfair to the accused.
- (4) The power of the High Court to make Acts of Adjournal under the 1975 Act shall include power to make such provision as it considers necessary or expedient for the purposes of this section.”.

VALID FROM 01/01/1994

33 Evidence of children on commission.

- (1) Without prejudice to section 32 of the 1980 Act (evidence by letter of request or on commission where witness is out with United Kingdom or is ill or infirm) and subject to section 35 of this Act, where a child has been cited to give evidence in a trial the court may appoint a commissioner to take the evidence of the child if—
- (a) in solemn proceedings, at any time before the oath is administered to the jury;
 - (b) in summary proceedings, at any time before the first witness is sworn; or
 - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,
- application is made to the court in that regard; but to be so appointed a person must be, and for a period of at least five years have been, a member of the Faculty of Advocates or a solicitor.

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- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.

VALID FROM 01/01/1994

34 Concealment by screen of accused from child giving evidence.

Subject to section 35 of this Act, where a child has been cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of the child while the child is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the child.

VALID FROM 01/01/1994

35 Circumstances in which application under section 33 or 34 may be granted or on transfer be deemed granted, etc.

Subsections (2) and (3) of section 56 (restrictions on power of court to grant application for child's evidence to be given by means of live television link) and sections 57 (transfer of case where accommodation or equipment is lacking) and 58 (identification of accused by child whose evidence is given by such link) of the ^{M3}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 shall apply in respect of an application under section 33(1) or 34 of this Act as those provisions of that Act apply in respect of an application under subsection (1) of the said section 56; and in sections 33 and 34 of this Act "child", "court" and "trial" have the same meanings as in the said sections 56 to 58.

Marginal Citations

M3 1990 c.40.

36 Evidence as to taking or destruction of eggs.

After section 19 of the ^{M4}Wildlife and Countryside Act 1981 there shall be inserted the following section—

“19A Evidence in Scotland as to taking or destruction of eggs.

In any proceedings in Scotland for an offence under section 1(1)(c) of, or by virtue of section 3(1)(a)(iii) of, this Act, the accused may be convicted on the evidence of one witness.”.

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M4 1981 c. 69.

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37 Evidence by certificate.

Schedule 1 to the 1980 Act (certain certificates to be sufficient evidence in relation to statutory offences) shall have effect subject to the amendments specified in Schedule 4 to this Act.

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