



# Criminal Justice (Scotland) Act 1995

## 1995 CHAPTER 20

### PART I

#### THE COURSE OF JUSTICE

##### *Miscellaneous*

#### **58 Prints, samples etc. in criminal investigations**

- (1) Section 28 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (prints, samples etc. in criminal investigations) shall be amended in accordance with subsections (2) to (4) below.
- (2) In subsection (3)—
  - (a) at the beginning there shall be inserted the words “Subject to subsection (3A) below,”;
  - (b) after the words “subsection (2) above” there shall be inserted “, all samples taken under subsection (4) below and all information derived from such samples”; and
  - (c) for the word “immediately” there shall be substituted “as soon as possible”.
- (3) After subsection (3) there shall be inserted the following subsections—
  - “(3A) The duty under subsection (3) above to destroy samples taken under subsection (4) below and information derived from such samples shall not apply where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken.
  - (3B) No sample, or information derived from a sample, retained by virtue of subsection (3A) above shall be used—
    - (a) in evidence against the person from whom the sample was taken; or
    - (b) for the purposes of the investigation of any offence.

- (3C) The duty under subsection (3) above shall not apply where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.”.
- (4) In subsection (4)—
- (a) in paragraph (a)—
    - (i) after the word “body” there shall be inserted “, other than pubic hair,”; and
    - (ii) for the words “or combing” there shall be substituted “, combing or plucking”; and
  - (b) at the end there shall be inserted the following paragraph—
    - “(d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material”.
- (5) After section 28 of that Act of 1993 there shall be inserted the following sections—

**“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.
- (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.

### **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.”.