



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART II

#### POLICE FUNCTIONS

##### *Lord Advocate's instructions*

#### 12 Instructions by Lord Advocate as to reporting of offences.

The Lord Advocate may, from time to time, issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

##### *Detention and questioning*

#### 13 Powers relating to suspects and potential witnesses.

(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence at any place, he may require—

- (a) that person, if the constable finds him at that place or at any place where the constable is entitled to be, to give [<sup>F1</sup>the information mentioned in subsection (1A) below] and may ask him for an explanation of the circumstances which have given rise to the constable's suspicion;
- (b) any other person whom the constable finds at that place or at any place where the constable is entitled to be and who the constable believes has information relating to the offence, to give [<sup>F2</sup>the information mentioned in subsection (1A) below] .

[<sup>F3</sup>(1A) That information is—

- (a) the person's name;
- (b) the person's address;

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- (c) the person's date of birth;
  - (d) the person's place of birth (in such detail as the constable considers necessary or expedient for the purpose of establishing the person's identity); and
  - (e) the person's nationality.]
- (2) The constable may require the person mentioned in paragraph (a) of subsection (1) above to remain with him while he (either or both)—
- (a) subject to subsection (3) below, verifies any [<sup>F4</sup>information mentioned in subsection (1A) above] given by the person;
  - (b) notes any explanation proffered by the person.
- (3) The constable shall exercise his power under paragraph (a) of subsection (2) above only where it appears to him that such verification can be obtained quickly.
- (4) A constable may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with him.
- (5) A constable shall inform a person, when making a requirement of that person under—
- (a) paragraph (a) of subsection (1) above, of his suspicion and of the general nature of the offence which he suspects that the person has committed or is committing;
  - (b) paragraph (b) of subsection (1) above, of his suspicion, of the general nature of the offence which he suspects has been or is being committed and that the reason for the requirement is that he believes the person has information relating to the offence;
  - (c) subsection (2) above, why the person is being required to remain with him;
  - (d) either of the said subsections, that failure to comply with the requirement may constitute an offence.
- (6) A person mentioned in—
- (a) paragraph (a) of subsection (1) above who having been required—
    - (i) under that subsection to give [<sup>F5</sup>the information mentioned in subsection (1A) above] ; or
    - (ii) under subsection (2) above to remain with a constable,
 fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale;
  - (b) paragraph (b) of the said subsection (1) who having been required under that subsection to give [<sup>F6</sup>the information mentioned in subsection (1A) above] fails, without reasonable excuse, to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7) A constable may arrest without warrant any person who he has reasonable grounds for suspecting has committed an offence under subsection (6) above.

#### Textual Amendments

- F1** Words in s. 13(1)(a)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(2)**, 104; [S.S.I. 2006/432](#), **art. 2(e)**
- F2** Words in s. 13(1)(a)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(2)**, 104; [S.S.I. 2006/432](#), **art. 2(e)**

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- F3** S. 13(1A) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(3)**, 104; [S.S.I. 2006/432](#), **art. 2(e)**
- F4** Words in s. 13(2)(a) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(4)**, 104; [S.S.I. 2006/432](#), **art. 2(e)**
- F5** Words in s. 13(6)(a)(i)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(5)**, 104; [S.S.I. 2006/432](#), **art. 2(e)**
- F6** Words in s. 13(6)(a)(i)(b) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(5)**, 104; [S.S.I. 2006/432](#), **art. 2(e)**

## 14 Detention and questioning at police station.

- (1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable may, for the purpose of facilitating the carrying out of investigations—
  - (a) into the offence; and
  - (b) as to whether criminal proceedings should be instigated against the person, detain that person and take him as quickly as is reasonably practicable to a police station or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the police station or, as the case may be, the other premises or place.
- (2) [<sup>F7</sup>Subject to section 14A, detention] under subsection (1) above shall be terminated not more than [<sup>F8</sup>12] hours after it begins or (if earlier)—
  - (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment; or
  - (c) where there are no longer such grounds as are mentioned in the said subsection (1),
 and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (3) Where a person has been released at the termination of a period of detention under subsection (1) above he shall not thereafter be detained, under that subsection, on the same grounds or on any grounds arising out of the same circumstances.
- (4) Subject to subsection (5) below, where a person has previously been detained in pursuance of any other enactment, and is detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention, the period of [<sup>F8</sup>12] hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.
- (5) Subsection (4) above shall not apply in relation to detention under section 41(3) of the <sup>M1</sup>Prisons (Scotland) Act 1989 (detention in relation to introduction etc. into prison of prohibited article), but where a person was detained under section 41(3) immediately prior to his detention under subsection (1) above the period of [<sup>F8</sup>12] hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.
- (6) At the time when a constable detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—

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- (a) the place where detention begins and the police station or other premises to which the person is taken;
  - (b) any other place to which the person is, during the detention, thereafter taken;
  - (c) the general nature of the suspected offence;
  - (d) the time when detention under subsection (1) above begins and the time of the person's arrival at the police station or other premises;
  - (e) the time when the person is informed of his rights in terms of subsection (9) below and of [F9 sections 15(1)(b) and 15A(2) and (3)] of this Act and the identity of the constable so informing him;
  - (f) where the person requests such intimation to be sent as is specified in section 15(1)(b) [F10 or 15A(2)] of this Act, the time when such request is—
    - (i) made;
    - (ii) complied with; and
  - (g) the time of the person's release from detention or, where instead of being released he is arrested in respect of the alleged offence, the time of such arrest.
- (7) Where a person is detained under subsection (1) above, a constable may—
- (a) without prejudice to any relevant rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;
  - (b) exercise the same powers of search as are available following an arrest.
- (8) A constable may use reasonable force in exercising any power conferred by subsection (1), or by paragraph (b) of subsection (7), above.
- (9) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give [F11 the information mentioned in subsection (10) below], and a constable shall so inform him both on so detaining him and on arrival at the police station or other premises.
- [F12 (10) That information is—
- (a) the person's name;
  - (b) the person's address;
  - (c) the person's date of birth;
  - (d) the person's place of birth (in such detail as a constable considers necessary or expedient for the purpose of establishing the person's identity); and
  - (e) the person's nationality.]

#### Textual Amendments

- F7** Words in s. 14(2) substituted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 3(1)(a)**, 9 (with s. 4)
- F8** Words in s. 14(2)(4)(5) substituted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 3(1)(b)**, 9 (with s. 4)
- F9** Words in s. 14(6)(e) substituted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(2)(a)**, 9 (with s. 4)
- F10** Words in s. 14(6)(f) inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(2)(b)**, 9 (with s. 4)
- F11** Words in s. 14(9) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(6)(a)**, 104; S.S.I. 2006/432, **art. 2(e)**

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**F12** S. 14(10) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 81(6)(b), 104**; [S.S.I. 2006/432](#), **art. 2(e)**

#### Modifications etc. (not altering text)

**C1** S. 14(2)-(10) applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), Sch. 2 para. 2(3)(4) (with art. 6(2)))

#### Marginal Citations

**M1** [1989 c.45](#).

### [<sup>F13</sup> 14A Extension of period of detention under section 14

- (1) This section applies in relation to a person who is being detained under section 14 of this Act (“the detained person”).
- (2) Before the expiry of the period of 12 hours mentioned in section 14(2), a custody review officer may, subject to subsection (4), authorise that period to be extended in relation to the detained person by a further period of 12 hours.
- (3) The further period of 12 hours starts from the time when the period of detention would have expired but for the authorisation.
- (4) A custody review officer may authorise the extension under subsection (2) in relation to the detained person only if the officer is satisfied that—
  - (a) the continued detention of the detained person is necessary to secure, obtain or preserve evidence (whether by questioning the person or otherwise) relating to an offence in connection with which the person is being detained,
  - (b) an offence in connection with which the detained person is being detained is one that is an indictable offence, and
  - (c) the investigation is being conducted diligently and expeditiously.
- (5) Where subsection (4) or (5) of section 14 applies in relation to the detained person, the references in subsection (2) of this section to the period of 12 hours mentioned in section 14(2) are to be read as references to that period as reduced in accordance with subsection (4) or, as the case may be, (5) of section 14.
- (6) Where a custody review officer authorises the extension under subsection (2), section 14 has effect in relation to the detained person as if the references in it to the period of 12 hours were references to that period as extended by virtue of the authorisation.
- (7) In this section and section 14B, “custody review officer” means a constable—
  - (a) of the rank of inspector or above, and
  - (b) who has not been involved in the investigation in connection with which the person is detained.

#### Textual Amendments

**F13** Ss. 14A, 14B inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 3(2), 9** (with s. 4)

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#### Modifications etc. (not altering text)

- C2** Ss. 14A, 14B applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), Sch. 2 para. 2(3)(4) (with art. 6(2)))

### 14B Extension under section 14A: procedure

- (1) This section applies where a custody review officer is considering whether to authorise the extension under section 14A(2) of this Act in relation to a person who is being detained under section 14 of this Act (“the detained person”).
- (2) Before deciding whether to authorise the extension, the custody review officer must give either of the following persons an opportunity to make representations—
  - (a) the detained person, or
  - (b) any solicitor representing the detained person who is available at the time the officer is considering whether to authorise the extension.
- (3) Representations may be oral or written.
- (4) The custody review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the person's condition or behaviour.
- (5) Where the custody review officer decides to authorise the extension, the officer must ensure that the following persons are informed of the decision and of the grounds on which the extension is authorised—
  - (a) the detained person, and
  - (b) any solicitor representing the detained person who is available at the time the decision is made.
- (6) Subsection (7) applies where—
  - (a) the custody review officer decides to authorise the extension, and
  - (b) at the time of the decision, the detained person has not exercised rights under section 15 or 15A.
- (7) The custody review officer must—
  - (a) ensure that the detained person is informed of the person's rights under section 15 or 15A which the person has not yet exercised, and
  - (b) decide whether there are any grounds, under section 15(1) or section 15A(7) (b) or (8) (as the case may be), for delaying the exercise of any of the rights.
- (8) The custody review officer must make a written record of—
  - (a) the officer's decision on whether to authorise the extension, and
  - (b) any of the following which apply—
    - (i) the grounds on which the extension is authorised,
    - (ii) the fact that the detained person and a solicitor have been informed as required under subsection (5),
    - (iii) the fact that the detained person has been informed as required under subsection (7)(a),

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- (iv) the officer's decision on the matter referred to in subsection (7)(b) and, if the decision is to delay the exercise of a right, the grounds for the decision.]

#### Textual Amendments

**F13** Ss. 14A, 14B inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 3(2)**, 9 (with s. 4)

#### Modifications etc. (not altering text)

**C2** Ss. 14A, 14B applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), Sch. 2 para. 2(3)(4) (with art. 6(2)))

### 15 **[<sup>F14</sup>Right of persons arrested or detained to have intimation sent to another person]**

- (1) Without prejudice to [<sup>F15</sup>sections 15A and 17] of this Act, a person who, not being a person in respect of whose custody or detention subsection (4) below applies—
- has been arrested and is in custody in a police station or other premises, shall be entitled to have intimation of his custody and of the place where he is being held sent to a person reasonably named by him;
  - is being detained under section 14 of this Act and has been taken to a police station or other premises or place, shall be entitled to have intimation of his detention and of the police station or other premises or place sent to a <sup>F16</sup> . . . person reasonably named by him,
- without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary.
- (2) A person shall be informed of his entitlement under subsection (1) above—
- on arrival at the police station or other premises; or
  - where he is not arrested, or as the case may be detained, until after such arrival, on such arrest or detention.
- (3) Where the person mentioned in paragraph (a) of subsection (1) above requests such intimation to be sent as is specified in that paragraph there shall be recorded the time when such request is—
- made;
  - complied with.
- (4) Without prejudice to the said [<sup>F17</sup>sections 15A and 17], a constable shall, where a person who has been arrested and is in such custody as is mentioned in paragraph (a) of subsection (1) above or who is being detained as is mentioned in paragraph (b) of that subsection appears to him to be a child, send without delay such intimation as is mentioned in the said paragraph (a), or as the case may be paragraph (b), to that person's parent if known; and the parent—
- in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been arrested or detained, may; and



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- (b) in any other case shall,  
be permitted access to the person.
- (5) The nature and extent of any access permitted under subsection (4) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (6) In subsection (4) above —
  - (a) “child” means a person under 16 years of age; and
  - (b) “parent” includes guardian and any person who has the <sup>F18</sup>care of a child.

#### Textual Amendments

- F14** Words in s. 15 title substituted (30.10.2010) by virtue of [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(3)(c)**, 9 (with s. 4)
- F15** Words in s. 15(1) substituted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(3)(a)(i)**, 9 (with s. 4)
- F16** Words in s. 15(1)(b) repealed (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(3)(a)(ii)**, 9 (with s. 4)
- F17** Words in s. 15(4) substituted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(3)(b)**, 9 (with s. 4)
- F18** Word in s. 15(6)(b) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(2)**; S.I. 1997/1712, **art. 3**, **Sch.** (subject to **arts. 4, 5**)

#### Modifications etc. (not altering text)

- C3** S. 15 applied (with modifications) by 1994 c. 33, s. 138(1A) (as inserted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), **art. 1(2)**, **Sch. 2 para. 2(2)** (with **art. 6(2)**))
- C4** S. 15(1)-(3) applied (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 116(4)**, 263; S.S.I. 2005/604, **art. 2** (subject to **arts. 3, 4**)
- C5** S. 15(1)(2) applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), **art. 1(2)**, **Sch. 2 para. 2(3)(4)** (with **art. 6(2)**))
- C6** S. 15(4) applied (19.2.2001) by 2000 c. 11, ss. 41, 53, **Sch. 7 para. 6**, **Sch. 8 para. 18(2)(b)**; S.I. 2001/421, **art. 2**
- C7** S. 15(4)-(6) applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), **art. 1(2)**, **Sch. 2 para. 2(3)(4)** (with **art. 6(2)**))

### <sup>F19</sup> 15A Right of suspects to have access to a solicitor

- (1) This section applies to a person (“the suspect”) who—
  - (a) is detained under section 14 of this Act,
  - (b) attends voluntarily at a police station or other premises or place for the purpose of being questioned by a constable on suspicion of having committed an offence, or
  - (c) is—
    - (i) arrested (but not charged) in connection with an offence, and



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- (ii) being detained at a police station or other premises or place for the purpose of being questioned by a constable in connection with the offence.
- (2) The suspect has the right to have intimation sent to a solicitor of any or all of the following—
  - (a) the fact of the suspect's—
    - (i) detention,
    - (ii) attendance at the police station or other premises or place, or
    - (iii) arrest,
 (as the case may be),
  - (b) the police station or other premises or place where the suspect is being detained or is attending, and
  - (c) that the solicitor's professional assistance is required by the suspect.
- (3) The suspect also has the right to have a private consultation with a solicitor—
  - (a) before any questioning of the suspect by a constable begins, and
  - (b) at any other time during such questioning.
- (4) Subsection (3) is subject to subsections (8) and (9).
- (5) In subsection (3), “consultation” means consultation by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone.
- (6) The suspect must be informed of the rights under subsections (2) and (3)—
  - (a) on arrival at the police station or other premises or place, and
  - (b) in the case where the suspect is detained as mentioned in subsection (1)(a), or arrested as mentioned in subsection (1)(c), after such arrival, on detention or arrest (whether or not, in either case, the suspect has previously been informed of the rights by virtue of this subsection).
- (7) Where the suspect wishes to exercise a right to have intimation sent under subsection (2), the intimation must be sent by a constable—
  - (a) without delay, or
  - (b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.
- (8) In exceptional circumstances, a constable may delay the suspect's exercise of the right under subsection (3) so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by a constable begins or continues without the suspect having had a private consultation with a solicitor.
- (9) Subsection (3) does not apply in relation to the questioning of the suspect by a constable for the purpose of obtaining the information mentioned in section 14(10) of this Act.]

#### Textual Amendments

- F19** S. 15A inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 1(4)**, 9 (with s. 4)

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#### Modifications etc. (not altering text)

- C8** S. 15A(2)-(9) applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), Sch. 2 para. 2(3)(4) (with art. 6(2)))
- C9** S. 15A(2)-(9) applied (with modifications) by 1994 c. 33, s. 138(1B) (as inserted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), **Sch. 2 para. 2(2)** (with art. 6(2)))

### 16 Drunken persons: power to take to designated place.

- (1) Where a constable has power to arrest a person without a warrant for any offence and the constable has reasonable grounds for suspecting that that person is drunk, the constable may, if he thinks fit, take him to any place designated by the Secretary of State for the purposes of this section as a place suitable for the care of drunken persons.
- (2) A person shall not by virtue of this section be liable to be detained in any such place as is mentioned in subsection (1) above, but the exercise in his case of the power conferred by this section shall not preclude his being charged with any offence.

*Arrest: access to solicitor*

### 17 Right of accused to have access to solicitor.

- (1) Where an accused has been arrested on any criminal charge, he shall be entitled immediately upon such arrest —
  - (a) to have intimation sent to a solicitor that his professional assistance is required by the accused, and informing the solicitor—
    - (i) of the place where the person is being detained;
    - (ii) whether the person is to be liberated; and
    - (iii) if the person is not to be liberated, the court to which he is to be taken and the date when he is to be so taken; and
  - (b) to be told what rights there are under—
    - (i) paragraph (a) above;
    - (ii) subsection (2) below; and
    - (iii) section 35(1) and (2) of this Act.
- (2) The accused and the solicitor shall be entitled to have a private interview before the examination or, as the case may be, first appearance.

### [<sup>F20</sup>17A Right of person accused of sexual offence to be told about restriction on conduct of defence: arrest

- (1) An accused arrested on a charge of committing a sexual offence to which section 288C of this Act applies by virtue of subsection (2) of that section shall be entitled to be told, immediately upon his arrest—
  - [<sup>F21</sup>(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,]

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- (b) that it is, therefore, in his interests to get the professional assistance of a solicitor; and
  - (c) that if he does not engage a solicitor for the purposes of [F22the conduct of his case at or for the purposes of the][F23hearing], the court will do so.
- (2) A failure to comply with subsection (1) above does not affect the validity or lawfulness of the arrest of the accused or any other element of any consequent proceedings against him.]

#### Textual Amendments

- F20** S. 17A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 2](#); S.S.I. 2002/443, [art. 3](#) (with [art. 4\(3\)](#))
- F21** S. 17A(1)(a) substituted for s. 17A(1)(za)(a) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 29\(a\)](#); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F22** Words in s. 17A(1)(c) inserted (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 3\(b\)](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (subject to arts. 3, 4)
- F23** Word in s. 17A(1)(c) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 29\(b\)](#); S.S.I. 2011/178, [art. 2](#), [sch.](#)

### Prints and samples

## 18 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 14(1) of this Act.
- (2) A constable may take from the person [F24, or require the person to provide him with, such relevant physical data] 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 [F25from him or require him to provide, and the person so required shall comply with that requirement].
- [F26(3) Subject to subsection (4) below [F27and [F28sections 18A to 18F] of this Act], all record of any relevant physical data taken from or provided by a person under subsection (2) above, all samples taken under subsection (6) [F29or (6A)] below and all information derived from such samples shall be destroyed as soon as possible 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 246(3) of this Act.]
- (4) The duty under subsection (3) above to destroy samples taken under subsection (6) [F30or (6A)] below and information derived from such samples shall not apply—
- (a) 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; or
  - (b) 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.
- (5) No sample, or information derived from a sample, retained by virtue of subsection (4) above shall be used—

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- (a) in evidence against the person from whom the sample was taken; or
  - (b) for the purposes of the investigation of any offence.
- (6) 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 other than pubic hair, by means of cutting, combing or plucking, a sample of hair or other material;
  - (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;
  - (d) <sup>F31</sup> .....
- [<sup>F32</sup>(6A) A constable, or at a constable's direction a police custody and security officer, may take from the inside of the person's mouth, by means of swabbing, a sample of saliva or other material.]
- <sup>F33</sup>(7) .....
- [<sup>F34</sup>(7A) For the purposes of this section and sections 19 to 20 of this Act “ relevant physical data ” means any—
- (a) fingerprint;
  - (b) palm print;
  - (c) print or impression other than those mentioned in paragraph (a) and (b) above, of an external part of the body;
  - (d) record of a person's skin on an external part of the body created by a device approved by the Secretary of State.
- (7B) The Secretary of State by order made by statutory instrument may approve a device for the purpose of creating such records as are mentioned in paragraph (d) of subsection (7A) above.]
- (8) 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 [<sup>F35</sup>relevant physical data] or samples under the authority of a warrant.

#### Textual Amendments

- F24** Words in s. 18(2) substituted (1.8.1997) by 1997 c. 48, s. 47(1)(a)(i); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F25** Words in s. 18(2) inserted (1.8.1997) by 1997 c. 48, s. 47(1)(a)(ii); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F26** S. 18(3) substituted (*retrospective* to 1.8.1997) by 1998 c. 37, ss. 119, 121(2), Sch. 8 para. 117(2)
- F27** Words in s. 18(3) inserted (1.1.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 83(1), 104; S.S.I. 2006/607, art. 3, Sch.
- F28** Words in s. 18(3) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 77(2)(a), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 4)
- F29** Words in s. 18(3) inserted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, Sch. 6 para. 4(2); S.S.I. 2006/432, art. 2(g)(h)

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- F30** Words in s. 18(4) inserted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, **Sch. 6 para. 4(2)**; S.S.I. 2006/432, **art. 2(g)(h)**
- F31** S. 18(6)(d) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(2)(a)}, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F32** S. 18(6A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(2)(b)}, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F33** S. 18(7) repealed (17.11.1997) by 1997 c. 48, ss. 47(1)(c), 62(2), **Sch. 3**; S.I. 1997/2694, **art. 2(2)(a)(d)**
- F34** S. 18(7A)(7B) inserted (1.8.1997) by 1997 c. 48, s. 47(1)(d); S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F35** Words in s. 18(8)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 30**; S.S.I. 2011/178, art. 2, sch.

#### Modifications etc. (not altering text)

- C10** S. 18 applied (with modifications) (19.2.2001) by 2000 c. 11, ss. 41, 53, **Sch. 7 para. 6**, **Sch. 8 para. 20(1)**; S.I. 2001/421, **art. 2**
- C11** S. 18 applied (with modifications) by 1994 c. 33, s. 138(2)(2A)(6)-(9) (as substituted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 2 para. 2(3)(4)** (with art. 6(2)))
- C12** S. 18(3)-(5) applied (17.12.2001) by 2001 asp 13, s. 17, **Sch. 4 para. 7** (with s. 29); S.S.I. 2001/456, **art. 2**

### [<sup>F36</sup>18A Retention of samples etc. : prosecutions for sexual and violent offences

[<sup>F37</sup>(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.]

- (2) That condition is that criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom [<sup>F38</sup>the relevant physical data was taken or by whom it was provided or, as the case may be, from whom] the sample was taken but those proceedings concluded otherwise than with a conviction or an order under section 246(3) of this Act.
- (3) Subject to subsections (9) and (10) below, the [<sup>F39</sup>relevant physical data, sample or information derived from a sample] shall be destroyed no later than the destruction date.
- (4) The destruction date is—
  - (a) the date of expiry of the period of 3 years following the conclusion of the proceedings; or
  - (b) such later date as an order under subsection (5) below may specify.
- (5) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (6) An application under subsection (5) above may be made to any sheriff—
  - (a) in whose sheriffdom the person referred to in subsection (2) above resides;

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- (b) in whose sheriffdom that person is believed by the applicant to be; or
  - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (7) An order under subsection (5) above shall not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The decision of the sheriff on an application under subsection (5) above may be appealed to the sheriff principal within 21 days of the decision; and the sheriff principal's decision on any such appeal is final.
- [ If the sheriff principal allows an appeal against the refusal of an application under
- <sup>F40</sup>(8A) 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.]
- (9) Subsection (3) above does not apply where—
  - (a) an application under subsection (5) above has been made but has not been determined;
  - (b) the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
  - (a) the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant; or
  - (c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,
 the [<sup>F41</sup>relevant physical data, sample or information derived from a sample] shall be destroyed as soon as possible thereafter.
- (11) In this section—
  - “ the relevant chief constable ” means—
    - (a) the chief constable of the police force of which the constable who [<sup>F42</sup>took the relevant physical data or to whom it was provided or who] took or directed the taking of the sample was a member;
    - (b) the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or
    - (c) a chief constable who believes that that person is or is intending to come to the area of the chief constable's police force; and
  - “ relevant sexual offence ” and “ relevant violent offence ” have<sup>F43</sup>, subject to the modification in subsection (12),] the same meanings as in section 19A(6) of this Act and include any attempt, conspiracy or incitement to commit such an offence. ]
- <sup>F44</sup>(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—

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- “(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;”]

#### Textual Amendments

- F36** S. 18A inserted (1.1.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [ss. 83\(2\)](#), 104; [S.S.I. 2006/607](#), [art. 3](#), Sch.
- F37** S. 18A(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(a\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F38** Words in s. 18A(2) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(b\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F39** Words in s. 18A(3) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(c\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F40** S. 18A(8A)(8B) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(d\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F41** Words in s. 18A(10) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(e\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F42** Words in s. 18A(11) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(f\)\(i\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F43** Words in s. 18A(11) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(f\)\(ii\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)
- F44** S. 18A(12) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 77\(3\)\(g\)](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), sch. (with art. 4)

#### [<sup>F45</sup>18B Retention of samples etc. where offer under sections 302 to 303ZA accepted

- (1) This section applies to—
- relevant physical data taken from or provided by a person under section 18(2), and
  - any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),
- where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
- the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with the offence or offences in relation to which a relevant offer is issued to the person, and
  - the person—
    - accepts a relevant offer, or
    - in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.
- (3) In this section “relevant offer” means—
- a conditional offer under section 302,
  - a compensation offer under section 302A,
  - a combined offer under section 302B, or
  - a work offer under section 303ZA.



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- (4) Subject to subsections (6) and (7) and section 18C(9) and (10), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.
- (5) In subsection (4), “destruction date” means—
  - (a) in relation to a relevant offer that relates only to—
    - (i) a relevant sexual offence,
    - (ii) a relevant violent offence, or
    - (iii) both a relevant sexual offence and a relevant violent offence, the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,
  - (b) in relation to a relevant offer that relates to—
    - (i) an offence or offences falling within paragraph (a), and
    - (ii) any other offence,
 the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,
  - (c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.
- (6) If a relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after—
  - (a) the prosecutor decides not to issue a further relevant offer to the person,
  - (b) the prosecutor decides not to institute criminal proceedings against the person, or
  - (c) the prosecutor institutes criminal proceedings against the person and those proceedings conclude otherwise than with a conviction or an order under section 246(3).
- (7) If a relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after the setting aside.
- (8) In this section, “relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.
- (9) 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 relevant offer (as defined in section 18B(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;”.]

#### Textual Amendments

**F45** Ss. 18B-18C inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 78, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 5)

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## **[<sup>F45</sup>18C Section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences**

- (1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18B(5)(a) or (b).
- (2) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date, the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (3) An application under subsection (2) may be made to any sheriff—
  - (a) in whose sheriffdom the appropriate person resides,
  - (b) in whose sheriffdom that person is believed by the applicant to be, or
  - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.
- (5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.
- (6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.
- (7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The sheriff principal's decision on an appeal under subsection (5) is final.
- (9) Section 18B(4) does not apply where—
  - (a) an application under subsection (2) has been made but has not been determined,
  - (b) the period within which an appeal may be brought under subsection (5) against a decision to refuse an application has not elapsed, or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
  - (a) the period within which an appeal referred to in subsection (9)(b) may be brought has elapsed without such an appeal being brought,
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant, or
  - (c) an appeal brought under subsection (5) against a decision to grant an application is determined in favour of the appellant,
 the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.
- (11) In this section—
 

“appropriate person” means the person from whom the relevant physical data was taken or by whom it was provided or from whom the sample was taken,

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“destruction date” has the meaning given by section 18B(5),  
 “the relevant chief constable” has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the appropriate person.]

#### Textual Amendments

**F45** Ss. 18B-18C inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 78, 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 5)

### [<sup>F46</sup>18D Retention of samples etc. taken or provided in connection with certain fixed penalty offences

- (1) This section applies to—
  - (a) relevant physical data taken from or provided by a person under section 18(2), and
  - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),
 where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
  - (a) the person was arrested or detained in connection with a fixed penalty offence,
  - (b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,
  - (c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—
    - (i) a fixed penalty notice in respect of that offence (the “main FPN”), or
    - (ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and
  - (d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—
    - (i) pays the fixed penalty, or
    - (ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.
- (3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—
  - (a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,
  - (b) where subsection (2)(c)(ii) applies and—
    - (i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,
    - (ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.
- (4) Where—
  - (a) subsection (2)(c)(i) applies, and

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(b) the main FPN is revoked under section 133(1) of the 2004 Act, the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.

(5) Where—

(a) subsection (2)(c)(ii) applies, and

(b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.

(6) In this section—

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

“fixed penalty notice” has the meaning given by section 129(2) of the 2004 Act,

“fixed penalty offence” has the meaning given by section 128(1) of the 2004 Act.]

#### Textual Amendments

**F46** S. 18D inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 79, 206(1); [S.S.I. 2011/178](#), art. 2, sch. (with art. 6)

### [<sup>F47</sup>18E Retention of samples etc.: children referred to children's hearings

(1) This section applies to—

(a) relevant physical data taken from or provided by a child under section 18(2); and

(b) any sample, or any information derived from a sample, taken from a child under section 18(6) or (6A),

where the first condition, and the second, third or fourth condition, are satisfied.

(2) The first condition is that the child's case has been referred to a children's hearing under section 65(1) of the Children (Scotland) Act 1995 (c.36) (the “Children Act”).

(3) The second condition is that—

(a) a ground of the referral is that the child has committed an offence mentioned in subsection (6) (a “relevant offence”);

(b) both the child and the relevant person in relation to the child accept, under section 65(5) or (6) of the Children Act, the ground of referral; and

(c) no application to the sheriff under section 65(7) or (9) of that Act is made in relation to that ground.

(4) The third condition is that—

(a) a ground of the referral is that the child has committed a relevant offence;

(b) the sheriff, on an application under section 65(7) or (9) of the Children Act—

(i) deems, under section 68(8) of the Children Act; or

(ii) finds, under section 68(10) of that Act,

the ground of referral to be established; and

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- (c) no application to the sheriff under section 85(1) of that Act is made in relation to that ground.
- (5) The fourth condition is that the sheriff, on an application under section 85(1) of the Children Act—
  - (a) is satisfied, under section 85(6)(b) of that Act, that a ground of referral which constitutes a relevant offence is established; or
  - (b) finds, under section 85(7)(b) of that Act, that—
    - (i) a ground of referral, which was not stated in the original application under section 65(7) or (9) of that Act, is established; and
    - (ii) that ground constitutes a relevant offence.
- (6) A relevant offence is such relevant sexual offence or relevant violent offence as the Scottish Ministers may by order made by statutory instrument prescribe.
- (7) An order under subsection (6) may prescribe a relevant violent offence by reference to a particular degree of seriousness.
- (8) Subject to section 18F(8) and (9), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.
- (9) The destruction date is—
  - (a) the date of expiry of the period of 3 years following—
    - (i) where the second condition is satisfied, the date on which the ground of referral was accepted as mentioned in that condition;
    - (ii) where the third condition is satisfied, the date on which the ground of referral was established as mentioned in that condition;
    - (iii) where the ground of referral is established as mentioned in paragraph (a) of the fourth condition, the date on which that ground was established under section 68(8) or, as the case may be, (10) of the Children Act; or
    - (iv) where the ground of referral is established as mentioned in paragraph (b) of the fourth condition, the date on which that ground was established as mentioned in that paragraph; or
  - (b) such later date as an order under section 18F(1) may specify.
- (10) No statutory instrument containing an order under subsection (6) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (11) In this section—
  - “relevant person” has the same meaning as in section 93(2) of the Children Act;
  - “relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (12), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.
- (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 ground of referral relating to the offence that there was a sexual aspect to the behaviour of the child;””.

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### Textual Amendments

**F47** Ss. 18E, 18F inserted (13.12.2010 for the insertion of s. 18E(6)(7)(10), 15.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 80**, 206(1); [S.S.I. 2010/413](#), art. 2, sch.; [S.S.I. 2011/178](#), art. 2, sch. (with art. 7)

## 18F Retention of samples etc. relating to children: appeals

- (1) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (2) An application under subsection (1) may be made to any sheriff—
  - (a) in whose sheriffdom the child mentioned in section 18E(1) resides;
  - (b) in whose sheriffdom that child is believed by the applicant to be; or
  - (c) to whose sheriffdom that child is believed by the applicant to be intending to come.
- (3) An order under subsection (1) must not specify a destruction date more than 2 years later than the previous destruction date.
- (4) The decision of the sheriff on an application under subsection (1) may be appealed to the sheriff principal within 21 days of the decision.
- (5) If the sheriff principal allows an appeal against the refusal of an application under subsection (1), the sheriff principal may make an order amending, or further amending, the destruction date.
- (6) An order under subsection (5) must not specify a destruction date more than 2 years later than the previous destruction date.
- (7) The sheriff principal's decision on an appeal under subsection (4) is final.
- (8) Section 18E(8) does not apply where—
  - (a) an application under subsection (1) has been made but has not been determined;
  - (b) the period within which an appeal may be brought under subsection (4) against a decision to refuse an application has not elapsed; or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (9) Where—
  - (a) the period within which an appeal referred to in subsection (8)(b) may be brought has elapsed without such an appeal being brought;
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant; or
  - (c) an appeal brought under subsection (4) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed or, as the case may be, the appeal is withdrawn or determined.

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(10) In this section—

“destruction date” has the meaning given by section 18E(9); and

“relevant chief constable” has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in section 18E(1).]

#### Textual Amendments

**F47** Ss. 18E, 18F inserted (13.12.2010 for the insertion of s. 18E(6)(7)(10), 15.4.2011 in so far as not already in force) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 80**, 206(1); [S.S.I. 2010/413](#), **art. 2**, **sch.**; [S.S.I. 2011/178](#), **art. 2**, **sch.** (with **art. 7**)

### 19 Prints, samples etc. in criminal investigations: supplementary provisions.

(1) [<sup>F48</sup>Without prejudice to any power exercisable under section 19A of this Act, this] section applies where a person convicted of an offence—

(a) has not, since the conviction, had [<sup>F49</sup>taken from him, or been required to provide, any relevant physical data or had any impression or sample] taken from him; or

(b) has [<sup>F50</sup>at any time had—

(i) taken from him or been required (whether under paragraph (a) above or under section 18 [<sup>F51</sup>, 19A or 19AA] of this Act or otherwise) to provide any relevant physical data; or

(ii) any <sup>F52</sup>... sample taken from him,

which was not suitable for the means of analysis for which the data were taken or required or the <sup>F52</sup>... sample 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—

[<sup>F53</sup>(a) take from or require the convicted person to provide him with such relevant physical data as he reasonably considers it appropriate to take or, as the case may be, require the provision of]; <sup>F54</sup>...

(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 [<sup>F55</sup>(c)] of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample[<sup>F56</sup> and]

[<sup>F57</sup>(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.]

(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 by virtue of section 295 of this 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—



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- (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 <sup>F58</sup>the relevant physical data were or]the sample, <sup>F59</sup>... 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

- F48** Words in s. 19(1) substituted (17.11.1997) by 1997 c. 48, s. 48(1); S.I. 1997/2694, art. 2(2)(b)
- F49** Words in s. 19(1)(a) substituted (1.8.1997) by 1997 c. 48, s. 47(2)(a)(i); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F50** Words and s. 19(1)(b)(i)(ii) substituted (1.8.1997) for words in s. 19(1)(b) by 1997 c. 48, s. 47(2)(a)(ii); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F51** Words in s. 19(1)(b)(i) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 77(3), 104; S.S.I. 2006/432, art. 2(d)
- F52** Words in s. 19(1)(b) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 7 para. 31; S.S.I. 2011/178, art. 2, sch.
- F53** S. 19(2)(a) substituted (1.8.1997) by 1997 c. 48, s. 47(2)(b); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F54** Word in s. 19(2) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(a)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F55** Word in s. 19(2)(b) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(b)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F56** S. 19(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F57** S. 19(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3)(c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F58** Words in s. 19(4)(b) inserted (1.8.1997) by 1997 c. 48, s. 47(2)(c)(i); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F59** Words in s. 19(4)(b) repealed (1.8.1997) by 1997 c. 48, ss. 47(2)(c)(ii), 62(2), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

#### <sup>F60</sup>19A Samples etc. from persons convicted of sexual and violent offences.

- (1) This section applies where a person—
- (a) is convicted on or after the relevant date of a relevant offence and is sentenced to imprisonment;
  - (b) was convicted before the relevant date of a relevant offence, was sentenced to imprisonment and is serving that sentence on or after the relevant date;

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- (c) was convicted before the relevant date of a specified relevant offence, was sentenced to imprisonment, is not serving that sentence on that date or at any time after that date but was serving it at any time during the period of five years ending with the day before that date.
- (2) Subject to subsections (3) and (4) 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 reasonably considers appropriate; <sup>F61</sup> . . .
  - (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 [<sup>F62</sup>(c)] of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample [<sup>F63</sup> and]
  - <sup>F64</sup> [ 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.]
- (3) The power conferred by subsection (2) 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 [<sup>F65</sup>subsection (2) of section 19 of this Act in a case where the power conferred by that subsection was exercised by virtue of subsection (1)(a) of that section][<sup>F66</sup>, under this section or under section 19AA(3) of this Act] unless the data so taken or required have been or, as the case may be, the sample so taken or required has been lost or destroyed.
- (4) Where this section applies by virtue of—
- (a) paragraph (a) or (b) of subsection (1) above, the powers conferred by subsection (2) above may be exercised at any time when the person is serving his sentence; and
  - (b) paragraph (c) of the said subsection (1), those powers may only be exercised within a period of three months beginning on the relevant date.
- (5) Where a person in respect of whom the power conferred by subsection (2) above may be exercised—
- (a) is no longer serving his sentence of imprisonment, subsections (3)(a), (5) and (6);
  - (b) is serving his sentence of imprisonment, subsection (3)(b),
- of section 19 of this Act shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (6) In this section—
- “conviction” includes—
  - (a) an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of the person’s insanity at the time at which he committed the act constituting the relevant offence;
  - (b) a finding under section 55(2) of this Act,
- and “convicted” shall be construed accordingly;
- “relevant date” means the date on which section 48 of the <sup>M2</sup> Crime and Punishment (Scotland) Act 1997 is commenced;
- “relevant offence” means any relevant sexual offence or any relevant violent offence;
- “relevant sexual offence” means any of the following offences—

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- (a) rape [<sup>F67</sup>at common law];
- (b) clandestine injury to women;
- (c) abduction of a woman with intent to rape;
- (ca) [<sup>F68</sup>abduction with intent to commit the statutory offence of rape;]
- (d) assault with intent to rape or ravish;
- (da) [<sup>F69</sup>assault with intent to commit the statutory offence of rape;]
- (e) indecent assault;
- (f) lewd, indecent or libidinous behaviour or practices;
- (g) [<sup>F70</sup>public indecency if the court, in imposing sentence or otherwise disposing of the case, determined for the purposes of paragraph 60 of Schedule 3 to the Sexual Offences Act 2003 (c.42) that there was a significant sexual aspect to the offender's behaviour in committing the offence;]
- (h) sodomy; <sup>F71</sup> . . .
- (i) any offence which consists of a contravention of any of the following statutory provisions—
  - (i) section 52 of the <sup>M3</sup> Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
  - (ii) section 52A of that Act (possession of indecent images of children);
  - (iii) [<sup>F72</sup>section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non consensual sexual acts);]
  - (iv) [<sup>F73</sup>section 313 of that Act (persons providing care services: sexual offences);]
  - (v) section 1 of the <sup>M4</sup> Criminal Law (Consolidation)(Scotland) Act 1995 (incest);
  - (vi) section 2 of that Act (intercourse with step-child);
  - (vii) section 3 of that Act (intercourse with child under 16 years by person in position of trust);
  - (viii) section 5(1) or (2) of that Act (unlawful intercourse with girl under 13 years);
  - (ix) section 5(3) of that Act (unlawful intercourse with girl aged between 13 and 16 years);
  - (x) section 6 of that Act (indecent behaviour towards girl between 12 and 16 years);
  - (xi) section 7 of that Act (procuring);
  - (xii) section 8 of that Act (abduction and unlawful detention of women and girls);
  - (xiii) section 9 of that Act (permitting use of premises for unlawful sexual intercourse);
  - (xiv) section 10 of that Act (liability of parents etc in respect of offences against girls under 16 years);
  - (xv) section 11(1)(b) of that Act (soliciting for immoral purpose);
  - (xvi) section 13(5)(b) and (c) of that Act (homosexual offences); [<sup>F74</sup> and
- (j) any offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—
  - (i) section 1 (rape),

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- (ii) section 2 (sexual assault by penetration),
- (iii) section 3 (sexual assault),
- (iv) section 4 (sexual coercion),
- (v) section 5 (coercing a person into being present during a sexual activity),
- (vi) section 6 (coercing a person into looking at a sexual image),
- (vii) section 7(1) (communicating indecently),
- (viii) section 7(2) (causing a person to see or hear an indecent communication),
- (ix) section 8 (sexual exposure),
- (x) section 9 (voyeurism),
- (xi) section 18 (rape of a young child),
- (xii) section 19 (sexual assault on a young child by penetration),
- (xiii) section 20 (sexual assault on a young child),
- (xiv) section 21 (causing a young child to participate in a sexual activity),
- (xv) section 22 (causing a young child to be present during a sexual activity),
- (xvi) section 23 (causing a young child to look at a sexual image),
- (xvii) section 24(1) (communicating indecently with a young child),
- (xviii) section 24(2) (causing a young child to see or hear an indecent communication),
- (xix) section 25 (sexual exposure to a young child),
- (xx) section 26 (voyeurism towards a young child),
- (xxi) section 28 (having intercourse with an older child),
- (xxii) section 29 (engaging in penetrative sexual activity with or towards an older child),
- (xxiii) section 30 (engaging in sexual activity with or towards an older child),
- (xxiv) section 31 (causing an older child to participate in a sexual activity),
- (xxv) section 32 (causing an older child to be present during a sexual activity),
- (xxvi) section 33 (causing an older child to look at a sexual image),
- (xxvii) section 34(1) (communicating indecently with an older child),
- (xxviii) section 34(2) (causing an older child to see or hear an indecent communication),
- (xxix) section 35 (sexual exposure to an older child),
- (xxx) section 36 (voyeurism towards an older child),
- (xxxi) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
- (xxxii) section 37(4) (engaging while an older child in consensual sexual conduct with another older child),
- (xxxiii) section 42 (sexual abuse of trust) but only if the condition set out in section 43(6) of that Act is fulfilled,
- (xxxiv) section 46 (sexual abuse of trust of a mentally disordered person);]

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“relevant violent offence” means any of the following offences—

- (a) murder or culpable homicide;
- (b) uttering a threat to the life of another person;
- (c) perverting the course of justice in connection with an offence of murder;
- (d) fire raising;
- (e) assault;
- (f) reckless conduct causing actual injury;
- (g) abduction; and
- (h) any offence which consists of a contravention of any of the following statutory provisions—
  - (i) sections 2 (causing explosion likely to endanger life) or 3 (attempting to cause such an explosion) of the <sup>M5</sup> Explosive Substances Act 1883;
  - (ii) section 12 of the <sup>M6</sup> Children and Young Persons (Scotland) Act 1937 (cruelty to children);
  - (iii) sections 16 (possession of firearm with intent to endanger life or cause serious injury), 17 (use of firearm to resist arrest) or 18 (having a firearm for purpose of committing an offence listed in Schedule 2) of the <sup>M7</sup> Firearms Act 1968;
  - (iv) section 6 of the <sup>M8</sup> Child Abduction Act 1984 (taking or sending child out of the United Kingdom); and
  - (v) [F75section 47(1) (possession of offensive weapon in public place), 49(1) (possession of article with blade or point in public place), 49A(1) or (2) (possession of article with blade or point or offensive weapon on school premises) or 49C(1) (possession of offensive weapon or article with blade or point in prison) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39);]

“sentence of imprisonment” means the sentence imposed in respect of the relevant offence and includes—

- (a) a [F76compulsion] order, a restriction order, a hospital direction and any order under section 57(2)(a) or (b) of this Act; and
- (b) a sentence of detention imposed under section 207 or 208 of this Act,

and “sentenced to imprisonment” shall be construed accordingly; and any reference to a person serving his sentence shall be construed as a reference to the person being detained in a prison, hospital or other place in pursuance of a sentence of imprisonment; and

“specified relevant offence” means—

- (a) any relevant sexual offence mentioned in paragraphs (a), (b), (f) and (i)(viii) of the definition of that expression and any such offence as is mentioned in paragraph (h) of that definition where the person against whom the offence was committed did not consent; and
- (b) any relevant violent offence mentioned in paragraph (a) or (g) of the definition of that expression and any such offence as is mentioned in paragraph (e) of that definition where the assault is to the victim’s severe injury,

but, notwithstanding subsection (7) below, does not include—

- (i) conspiracy or incitement to commit; and
- (ii) aiding and abetting, counselling or procuring the commission of,

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any of those offences.

[ In subsection (6)—

- <sup>F77</sup>(6A) (a) the references to “rape” in paragraphs (c) and (d) of the definition of “relevant sexual offence” are to the offence of rape at common law; and
- (b) the references in paragraphs (ca) and (da) of that subsection to “the statutory offence of rape” are (as the case may be) to?
- (i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or
- (ii) the offence of rape of a young child under section 18 of that Act.]

(7) In this section—

- (a) any reference to a relevant offence includes a reference to any attempt, conspiracy or incitement to commit such an offence; and
- (b) any reference to—
- (i) a relevant sexual offence mentioned in paragraph (i) [<sup>F78</sup>or (j)]; or
- (ii) a relevant violent offence mentioned in paragraph (h),
- of the definition of those expressions in subsection (6) above includes a reference to aiding and abetting, counselling or procuring the commission of such an offence.]

#### Textual Amendments

- F60** S. 19A inserted (17.11.1997) by 1997 c. 48, s. 48(2); S.I. 1997/2694, art. 2(2)(b)
- F61** Word in s. 19A(2) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (a)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F62** Word in s. 19A(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (b)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F63** S. 19A(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F64** S. 19A(2)(c) and word added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {55(3) (c)}, 89; S.S.I. 2003/288, art. 2, Sch.
- F65** Words in s. 19A(3) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 101, 104, Sch. 6 para. 4(3); S.S.I. 2006/432, art. 2(g)(h)
- F66** Words in s. 19A(3) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 77(4), 104; S.S.I. 2006/432, art. 2(d)
- F67** Words in s. 19A(6)(a) inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), Sch. 5 para. 2(4)(a)(i); S.S.I. 2010/413, art. 2, Sch.
- F68** S. 19A(6): words in definition of “relevant sexual offence” inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provision) Order 2010 (S.S.I. 2010/421), art. 2, Sch. para. 1(2)(a)(i)
- F69** S. 19A(6): words in definition of “relevant sexual offence” inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provision) Order 2010 (S.S.I. 2010/421), art. 2, Sch. para. 1(2)(a)(ii)
- F70** Words in s. 19A(6) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 81(a), 206(1); S.S.I. 2011/178, art. 2, sch. (with art. 8)
- F71** Word in s. 19A(6) repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), Sch. 5 para. 2(4)(a)(ii); S.S.I. 2010/413, art. 2, Sch.
- F72** S. 19A(6)(i): words in the definition of “relevant sexual offence” substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, Sch. 1 para. 27(2)(a)(i)

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- F73** S. 19A(6)(i): words in the definition of "relevant sexual offence" substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, **Sch. 1 para. 27(2)(a)(ii)**
- F74** S. 19A(6)(j) and word inserted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61, 62(2), {Sch. 5 para. 2 (4)(a)(iii)}; [S.S.I. 2010/413](#), art. 2, **Sch.**
- F75** Words in s. 19A(6) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. **81(b)**, 206(1); [S.S.I. 2011/178](#), art. 2, **sch.** (with art. 8)
- F76** S. 19A(6)(i): word in the definition of "sentence of imprisonment" substituted and the word "hospital" omitted (27.9.2005) by virtue of [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, **Sch. 1 para. 27(2)(b)**
- F77** S. 19A(6A) inserted (1.12.2010) by [The Sexual Offences \(Scotland\) Act 2009 \(Supplemental and Consequential Provision\) Order 2010 \(S.S.I. 2010/421\)](#), art. 2, **Sch. para. 1(2)(b)**
- F78** Words in s. 19A(7)(b)(i) inserted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61, 62(2), **Sch. 5 para. 4(b)**; [S.S.I. 2010/413](#), art. 2, **Sch.**

#### Marginal Citations

- M2** 1997 c.48.  
**M3** 1982 c.45.  
**M4** 1995 c.39.  
**M5** 1883 c.3.  
**M6** 1937 c.37.  
**M7** 1968 c.27.  
**M8** 1984 c.37.

#### [<sup>F79</sup>19AASamples 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.
- (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.



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- (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).”.

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### Textual Amendments

**F79** Ss. 19AA, 19AB inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(2\), 104](#); [S.S.I. 2006/432](#), [art. 2\(d\)](#)

## 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.
- (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

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

#### Textual Amendments

**F79** Ss. 19AA, 19AB inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(2\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)

### [<sup>F80</sup>19B Power of constable in obtaining relevant physical data etc.

[ A constable may use reasonable force in—

- <sup>F81</sup>(1)] (a) taking any relevant physical data from a person or securing a person’s compliance with a requirement made under section 18(2), 19(2)(a) or 19A(2)(a) of this Act [<sup>F82</sup>, or under subsection (3)(a) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section] ;
- (b) exercising any power conferred by section 18(6), 19(2)(b) or 19A(2)(b) of this Act [<sup>F83</sup>, or under subsection (3)(b) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section] .

[ A constable may, with the authority of an officer of a rank no lower than inspector, <sup>F84</sup>(2) use reasonable force in (himself) exercising any power conferred by section 18(6A), 19(2)(c) or 19A(2)(c) of this Act [<sup>F85</sup>, or under subsection (3)(c) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section] .]]

#### Textual Amendments

- F80** S. 19(B) inserted (17.11.1997) by [1997 c. 48, s. 48\(2\)](#); S.I. 1997/2694, [art. 2\(2\)\(b\)](#)
- F81** S. 19B renumbered as s. 19B(1) (27.6.2003) by virtue of [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), [ss. 55\(4\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F82** Words in s. 19B(1)(a) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(5\)\(a\)\(i\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F83** Words in s. 19B(1)(b) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(5\)\(a\)\(ii\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)
- F84** S. 19B(2) added (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), [ss. 55\(4\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F85** Words in s. 19B(2) inserted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (asp 10), [ss. 77\(5\)\(b\)](#), 104; S.S.I. 2006/432, [art. 2\(d\)](#)

VALID FROM 01/08/2011

### [<sup>F86</sup>19C Sections 18 and 19 to 19AA: use of samples etc.

(1) Subsection (2) applies to—

- (a) relevant physical data taken or provided under section 18(2), 19(2)(a), 19A(2)(a) or 19AA(3)(a),
- (b) a sample, or any information derived from a sample, taken under section 18(6) or (6A), 19(2)(b) or (c), 19A(2)(b) or (c) or 19AA(3)(b) or (c),
- (c) relevant physical data or a sample taken from a person—
- (i) by virtue of any power of search,

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- (ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or
  - (iii) under the authority of a warrant,
- (d) information derived from a sample falling within paragraph (c), and
- (e) relevant physical data, a sample or information derived from a sample taken from, or provided by, a person outwith Scotland which is given by any person to—
  - (i) a police force,
  - (ii) the Scottish Police Services Authority, or
  - (iii) a person acting on behalf of a police force.
- (2) The relevant physical data, sample or information derived from a sample may be used—
  - (a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (b) for the identification of a deceased person or a person from whom the relevant physical data or sample came.
- (3) Subsections (4) and (5) apply to relevant physical data, a sample or information derived from a sample falling within any of paragraphs (a) to (d) of subsection (1) (“relevant material”).
- (4) If the relevant material is held by a police force, the Scottish Police Services Authority or a person acting on behalf of a police force, the police force or, as the case may be, the Authority or person may give the relevant material to another person for use by that person in accordance with subsection (2).
- (5) A police force, the Scottish Police Services Authority or a person acting on behalf of a police force may, in using the relevant material in accordance with subsection (2), check it against other relevant physical data, samples and information derived from samples received from another person.
- (6) In subsection (2)—
  - (a) the reference to crime includes a reference to—
    - (i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or
    - (ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,
  - (b) the reference to an investigation includes a reference to an investigation outside Scotland of a crime or suspected crime, and
  - (c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside Scotland.
- (7) This section is without prejudice to any other power relating to the use of relevant physical data, samples or information derived from a sample.]

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#### Textual Amendments

- F86** S. 19C inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 82(1), 206(1)**

## 20 Use of prints, samples etc.

Without prejudice to any power to do so apart from this section, [<sup>F87</sup>relevant physical data], 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 [<sup>F87</sup>data], impressions, samples and information.

#### Textual Amendments

- F87** Words in s. 20 substituted (1.8.1997) by [1997 c. 48, s. 47\(3\)\(a\)](#); [S.I. 1997/1712, art. 3, Sch.](#) (subject to [arts. 4, 5](#))  
Words in s. 20 substituted (1.8.1997) by [1997 c. 48, s. 47\(3\)\(b\)](#); [S.I. 1997/1712, art. 3, Sch.](#) (subject to [arts. 4, 5](#))

#### Modifications etc. (not altering text)

- C13** S. 20 applied (with modifications) (prosp.) by the [Terrorism Act 2002 \(c. 11\)](#), [Sch. 8 para. 21](#) (as inserted by [Counter-Terrorism Act 2008 \(c. 28\)](#), **ss. 17(3), 91, 100**) (with s. 101(2))

### *[<sup>F88</sup>Testing for Class A drugs]*

#### Textual Amendments

- F88** **Ss. 20A, 20B** and preceding cross-heading inserted (1.1.2007 for certain purposes, 25.2.2007 in regard to the inserted s. 20B(3), and otherwise in force at 12.6.2007) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 84, 104**; [S.S.I. 2006/607, art. 3, Sch.](#); [S.S.I. 2007/84, {art. 3\(1\)\(a\)\(4\)\(a\)}](#)

## 20A Arrested persons: testing for certain Class A drugs

- (1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—
  - (a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or
  - (b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,
 which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person's body.
- (2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.
- (3) This subsection applies where—

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- (a) the person is of 16 years of age or more;
  - (b) the period in custody in the police station has not exceeded 6 hours;
  - (c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and
  - (d) either—
    - (i) the person's arrest was on suspicion of committing or having committed a relevant offence; or
    - (ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.
- (4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—
  - (a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and
  - (b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.
- (5) Where—
  - (a) a person has been required to provide or has had taken a sample under subsection (1) above;
  - (b) any of the following is the case—
    - (i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person's body;
    - (ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or
    - (iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and
  - (c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.
- (6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.
- (7) A person who fails without reasonable excuse—
  - (a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or
  - (b) to allow a sample to be taken from him under subsection (1)(b) or (5) above,shall be guilty of an offence.
- (8) In this section—
  - “appropriate grounds” means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;
  - “appropriate officer” means—

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- (a) a constable; or
  - (b) a police custody and security officer acting on the direction of a constable;
- “misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);
- “relevant Class A drug” means any of the following substances, preparations and products—
- (a) cocaine or its salts;
  - (b) any preparation or other product containing cocaine or its salts;
  - (c) diamorphine or its salts;
  - (d) any preparation or other product containing diamorphine or its salts;
- “relevant offence” means any of the following offences—
- (a) theft;
  - (b) assault;
  - (c) robbery;
  - (d) fraud;
  - (e) reset;
  - (f) uttering a forged document;
  - (g) embezzlement;
  - (h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);
  - (i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;
  - (j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;
  - (k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;
- “senior police officer” means a police officer of a rank no lower than inspector.

## **20B Section 20A: supplementary**

- (1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.
- (2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—
  - (a) about the carrying out of the function; or
  - (b) about matters connected to the carrying out of the function.
- (3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.
- (5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.



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- (6) A person guilty of an offence under section 20A of this Act 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 conviction is in the district court, not exceeding 60 days; or
    - (ii) where conviction is in the sheriff court, not exceeding 3 months; or
  - (c) both such fine and imprisonment.
- (7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.
- (8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person's body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—
  - (a) the sample may not be used, or supplied, for any other purpose; and
  - (b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.
- (9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—
  - (a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);
  - (b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;
  - (c) for the purpose of informing any decision of a children's hearing arranged to consider the person's case;
  - (d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;
  - (e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.
- (10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—
  - (a) for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of “relevant offence”;
  - (b) for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of “relevant Class A drug”.
- (11) An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).
- (12) An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.]

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### *Schedule 1 offences*

## **21 Schedule 1 offences: power of constable to take offender into custody.**

- (1) Without prejudice to any other powers of arrest, a constable may take into custody without warrant—
- (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
  - (b) any person who has committed, or whom he had reason to believe to have committed, any of the offences mentioned in that Schedule, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (2) <sup>F89</sup> .....
- (3) <sup>F89</sup> .....
- (4) <sup>F89</sup> .....
- (5) <sup>F89</sup> .....

#### **Textual Amendments**

**F89** S. 21(2)-(5) repealed (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 7(1), 84; S.S.I. 2008/42, art. 3, Sch. (subject to art. 4)

### *Police liberation*

## **22 Liberation by police.**

- (1) Where a person has been <sup>F90</sup>... charged with an offence which may be tried summarily, [<sup>F91</sup>the officer who charged the person or (if different)] the officer in charge of a police station may—
- (a) liberate him upon a written undertaking, signed by him and certified by the officer, in [<sup>F92</sup>the terms mentioned in subsection (1C) below] ; or
  - (b) liberate him without any such undertaking; or
  - (c) refuse to liberate him.
- [<sup>F93</sup>(1A) Where a person has been arrested under section 21 of this Act, the arresting officer or (if different) the officer in charge of a police station may—
- (a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below;
  - (b) liberate him without any such undertaking; or
  - (c) refuse to liberate him.
- (1B) Where a person has been apprehended under a summary warrant as mentioned in section 135(3) of this Act, the apprehending officer or (if different) the officer in charge of a police station may—
- (a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below; or

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(b) refuse to liberate him.

(1C) For the purposes of subsections (1) to (1B) above, the terms are that the person undertakes (subject to any modification made to those terms under subsection (1F)(b) below)—

- (a) to appear at a specified court on a specified day at a specified time; and
- (b) in addition, to comply with any conditions imposed under subsection (1D) below.

(1D) The conditions which may be imposed under this subsection are—

- (a) conditions in the same terms as the standard conditions mentioned in section 24(5)(b), (c) and (ca) of this Act (but as if any reference there to bail were reference to the undertaking);
- (b) such further conditions as the officer who is certifying the undertaking considers are necessary to secure that the conditions referred to in paragraph (a) above are observed.

(1E) For the imposition of conditions under subsection (1D)(b) above, the authority of an officer of a rank no lower than inspector is required.

(1F) The procurator fiscal may by notice effected in the same manner as citation under section 141 of this Act—

- (a) rescind an undertaking given under subsection (1) or (1A) above (whether or not the person is to be prosecuted in connection with the matters to which the undertaking relates);
- (b) in relation to an undertaking given under this section—
  - (i) revise the court, day or time specified under subsection (1C)(a) above;
  - (ii) revoke or relax any conditions imposed under subsection (1D) above.

(1G) An undertaking given under this section—

- (a) if rescinded under subsection (1F)(a) above, expires at the end of the day on which the notice is sent;
- (b) otherwise—
  - (i) subject to sub-paragraph (ii) below, expires at the end of the day on which the person who gave the undertaking is required to appear at court in accordance with the undertaking;
  - (ii) if that person breaches the undertaking by reason of failing to appear at court, and a warrant is granted in relation to the breach, expires, so far as relating to conditions, at the end of the day on which the person is brought before the court in pursuance of the warrant.

<sup>F94</sup>( 1H ) . . . . .]

<sup>F95</sup>(2) . . . . .

(3) The refusal of [<sup>F96</sup>an officer] to liberate a person under [<sup>F97</sup>this section] and the detention of that person until his case is [<sup>F98</sup>heard] in the usual form shall not subject the officer to any claim whatsoever.

<sup>F99</sup>(4) . . . . .

<sup>F100</sup>[<sup>F101</sup>( 4A ) . . . . .]

<sup>F102</sup>(5) . . . . .

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### Textual Amendments

- F90** Words in s. 22(1) repealed (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(a\)\(i\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F91** Words in s. 22(1) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(a\)\(ii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F92** Words in s. 22(1) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(a\)\(iii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F93** S. 22(1A)-(1H) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(b\)](#), 84 (as amended by The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Supplemental Provisions) Order (S.S.I. 2008/109, {art. 3}); S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F94** S. 22(1H) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F95** S. 22(2) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F96** Words in s. 22(3) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(d\)\(i\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F97** Words in s. 22(3) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(d\)\(ii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F98** Word in s. 22(3) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(d\)\(iii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F99** S. 22(4) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F100** S. 22(4A) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F101** S. 22(4A) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(e\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F102** S. 22(5) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.

### Modifications etc. (not altering text)

- C14** S. 22(1) excluded (19.2.2001) by [2000 c. 11](#), ss. 41, 53, Sch. 7 para. 6, [Sch. 8 para. 27\(5\)](#); S.I. 2001/421, [art. 2](#)

## [<sup>F103</sup>22ZA] Offences where undertaking breached

- (1) A person who without reasonable excuse breaches an undertaking given by the person under section 22—
  - (a) by reason of failing to appear at court as required under subsection (1C)(a) of section 22, or
  - (b) by reason of failing to comply with a condition imposed under subsection (1D) of that section,
 is guilty of an offence.
- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 3 on the standard scale, and
  - (b) imprisonment for a period—
    - (i) where conviction is in the JP court, not exceeding 60 days,

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- (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (3) Despite subsection (1)(b), where (and to the extent that) the person breaches the undertaking by reason of committing an offence while subject to the undertaking—
  - (a) the person is not guilty of an offence under that subsection, and
  - (b) subsection (4) applies instead.
- (4) The court, in determining the sentence for the subsequent offence, must have regard to—
  - (a) the fact that the subsequent offence was committed in breach of the undertaking,
  - (b) the number of undertakings to which the person was subject when that offence was committed,
  - (c) any previous conviction of the person of an offence under subsection (1)(b),
  - (d) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.
- (5) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).
- (6) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (5), as references to any provision that is equivalent to subsection (4).
- (7) Any issue of equivalence arising in pursuance of subsection (5) or (6) is for the court to determine.
- (8) Subsections (3)(b) and (4) apply only if the fact that the subsequent offence was committed while the person was subject to an undertaking is specified in the complaint or indictment.
- (9) In this section and section 22ZB, “the subsequent offence” is the offence committed by a person while the person is subject to an undertaking.

#### Textual Amendments

**F103** Ss. 22ZA, 22ZB inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 55, 206(1); S.S.I. 2011/178, art. 2, sch.

## 22ZB Evidential and procedural provision

- (1) In any proceedings in relation to an offence under section 22ZA(1), the fact that a person—
  - (a) breached an undertaking given by the person under section 22 by reason of failing to appear at court as required under subsection (1C)(a) of that section, or
  - (b) was subject to any particular condition imposed under subsection (1D) of that section,

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is, unless challenged by preliminary objection before the person's plea is recorded, to be held as admitted.

- (2) In any proceedings in relation to an offence under section 22ZA(1) or (as the case may be) the subsequent offence—
  - (a) something in writing, purporting to be an undertaking given by a person under section 22 (and bearing to be signed and certified), is sufficient evidence of the terms of the undertaking so given,
  - (b) a document purporting to be a notice (or copy of a notice) effected under subsection (1F) of that section is sufficient evidence of the terms of the notice,
  - (c) an undertaking whose terms are modified under paragraph (b) of that subsection is to be regarded as if given in the terms as so modified.
- (3) The fact that the subsequent offence was committed while the person was subject to an undertaking is to be held as admitted, unless challenged—
  - (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
  - (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act.
- (4) Where the maximum penalty in respect of the subsequent offence is specified by (or by virtue of) any enactment, that maximum penalty is, for the purposes of the court's determination of the appropriate sentence or disposal in respect of that offence, increased—
  - (a) where it is a fine, by the amount equivalent to level 3 on the standard scale, and
  - (b) where it is a period of imprisonment—
    - (i) as respects conviction in the JP court, by 60 days,
    - (ii) as respects conviction in the sheriff court or the High Court, by 6 months,

even if the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) A penalty under section 22ZA(2) may be imposed in addition to any other penalty which it is competent for the court to impose even if the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (6) The reference in subsection (5) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
  - (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
  - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
- (7) Subsection (6)(b) is subject to section 204A of this Act.
- (8) The court must state—
  - (a) where the sentence or disposal in respect of the subsequent offence is different from that which the court would have imposed but for section 22ZA(4), the extent of and the reasons for that difference, or

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- (b) otherwise, the reasons for there being no such difference.
- (9) A court which finds a person guilty of an offence under section 22ZA(1) may remit that person for sentence in respect of that offence to any court which is considering the original offence.
- (10) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under section 22ZA(1).
- (11) In this section, “the original offence” is the offence in relation to which an undertaking is given.]

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#### Textual Amendments

**F103** Ss. 22ZA, 22ZB inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 55](#), 206(1); [S.S.I. 2011/178](#), [art. 2](#), [sch.](#)



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