



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART II

POLICE FUNCTIONS

Prints and samples

[^{F1}19A Samples etc. from persons convicted of sexual and violent offences.

- (1) This section applies where a person—
- is convicted on or after the relevant date of a relevant offence and is sentenced to imprisonment;
 - 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;
 - 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—
- take from the person or require the person to provide him with such relevant physical data as the constable reasonably considers appropriate; ^{F2} . . .
 - 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 [^{F3}(c)] of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample [^{F4} and]
 - [^{F5}(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) 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 [^{F6}subsection (2) of section 19 of this Act in a case where the

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power conferred by that subsection was exercised by virtue of subsection (1)(a) of that section][^{F7}, 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 [^{F8}by reason of the special defence set out in section 51A of this Act;]
- (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 ^{M1} 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—

- (a) rape [^{F9}at common law];
- (b) clandestine injury to women;
- (c) abduction of a woman with intent to rape;
- (ca) [^{F10}abduction with intent to commit the statutory offence of rape;]
- (d) assault with intent to rape or ravish;
- (da) [^{F11}assault with intent to commit the statutory offence of rape;]
- (e) indecent assault;
- (f) lewd, indecent or libidinous behaviour or practices;
- (g) [^{F12}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; ^{F13} . . .
- (i) any offence which consists of a contravention of any of the following statutory provisions—
 - (i) section 52 of the ^{M2} Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);

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- (ii) section 52A of that Act (possession of indecent images of children);
 - (iii) [^{F14}section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (non consensual sexual acts);]
 - (iv) [^{F15}section 313 of that Act (persons providing care services: sexual offences);]
 - (v) section 1 of the ^{M3} 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); [^{F16} 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),
 - (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),

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- (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);]

“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 ^{M4} Explosive Substances Act 1883;
 - (ii) section 12 of the ^{M5} 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 ^{M6} Firearms Act 1968;

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- (iv) section 6 of the ^{M7} Child Abduction Act 1984 (taking or sending child out of the United Kingdom); and
- (v) [^{F17}section 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 [^{F18}compulsion] 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,

any of those offences.

[In subsection (6)—

- ^{F19}(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) [^{F20}or (j)]; or
 - (ii) a relevant violent offence mentioned in paragraph (h),

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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

- F1 S. 19A inserted (17.11.1997) by 1997 c. 48, s. 48(2); S.I. 1997/2694, art. 2(2)(b)
- F2 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.
- F3 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.
- F4 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.
- F5 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.
- F6 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)
- F7 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)
- F8 Words in s. 19A(6) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 7 para. 32; S.S.I. 2012/160, art. 3, sch.
- F9 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.
- F10 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)
- F11 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)
- F12 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)
- F13 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.
- F14 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)
- F15 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)
- F16 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.
- F17 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)
- F18 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)
- F19 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)
- F20 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.

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Marginal Citations

M1 1997 c.48.

M2 1982 c.45.

M3 1995 c.39.

M4 1883 c.3.

M5 1937 c.37.

M6 1968 c.27.

M7 1984 c.37.

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