



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 3

### CRIMINAL PROCEDURE

#### *Retention and use of samples etc.*

#### **80 Retention of samples etc. from children referred to children's hearings**

After section 18D of the 1995 Act insert—

##### **“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.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 80. (See end of Document for details)*

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- (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
  - (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—

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“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;”.

### **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

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(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.

(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).”.

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**Commencement Information**

**I1** S. 80 in force at 13.12.2010 for specified purposes by S.S.I. 2010/413, art. 2, **Sch.**

**I2** S. 80 in force at 15.4.2011 in so far as not already in force by S.S.I. 2011/178, art. 2, **Sch.** (with art. 7)

**Changes to legislation:**

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