



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 8

EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

Evidential matters

56 Retaining sample or relevant physical data where given voluntarily

- (1) This section applies only to a person other than is mentioned in subsection (1) of section 18 of the 1995 Act (application of that section) and does not apply where a sample is, or relevant physical data are, taken from a person—
 - (a) by virtue of any power of search;
 - (b) by virtue of any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
 - (c) under the authority of a warrant.
- (2) In the circumstances mentioned in subsection (3), a sample or relevant physical data taken from and with the consent of the person (or provided by and with the consent of the person) in connection with the investigation of an offence may be held and used in connection with the investigation and prosecution of that or any other offence as may any information derived from that sample or those data.
- (3) The circumstances are that the person consents in writing to the sample, data or information being so held and used; but in giving such consent the person may elect to confine it to consent to holding and using in connection with the investigation and prosecution of the offence in connection with which the sample was, or data were, taken or provided.
- (4) The person may at any time withdraw such written consent by—
 - (a) giving notice in writing of such withdrawal to the chief constable of the police force on whose behalf the sample was, or data were, taken or provided; or
 - (b) attending at any police station within the area of that force and giving such notice to—
 - (i) any constable of the force; or

Status: Point in time view as at 01/12/2006. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 2003, Section 56. (See end of Document for details)

- (ii) any person authorised to receive it by the officer in charge of the station,
and the chief constable, constable or as the case may be person so authorised shall, on receipt of that notice, provide the person withdrawing consent with a written acknowledgment of receipt.
- (5) The withdrawal takes effect when notice given under subsection (4) is received by the person to whom it falls to provide an acknowledgment under that subsection; and subject to subsection (6)—
 - (a) the sample, with all information derived from it, is;
 - (b) the data, with all information derived from them, are,to be destroyed as soon as possible after such receipt.
- (6) Subsections (4) and (5) are without prejudice to—
 - (a) the use of the sample, data or information derived from it or them in evidence—
 - (i) unless an election was made under subsection (3), in any prosecution; and
 - (ii) if such an election was so made, in the prosecution of the offence in connection with which the sample was, or data were, taken or provided,
where and in so far as that evidence relates to, or to circumstances connected with or arising out of, a check such as is mentioned in subsection (7);
 - (b) the admissibility of any evidence as to—
 - (i) the taking or provision of the sample or data; or
 - (ii) the giving or withdrawal of consent.
- (7) The check is one which—
 - (a) was against any other sample or relevant physical data, or against any information derived from any other sample or relevant physical data; and
 - (b) took place before the withdrawal took effect.
- (8) In this section—
 - “sample” means a sample such as is mentioned in section 18(6) or (6A) of the 1995 Act, being one taken as so mentioned; and
 - “relevant physical data” has the same meaning as it has for the purposes of section 18 of that Act.

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