



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART II

POLICE FUNCTIONS

Prints and samples

[^{F1}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 [^{F2}subsection (3), (4) or (5) applies.]

[^{F3}(2)

[^{F4}(3) This subsection applies where—

- (a) in relation to a children's hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed an offence mentioned in subsection (6) (a "relevant offence"),
- (b) the ground is accepted by the child and each relevant person in relation to the child under section 91(1) or 105(1) of that Act, and
- (c) no application to the sheriff under section 93(2)(a) or 94(2)(a) of that Act is made in relation to that ground.

(4) This subsection applies where—

- (a) in relation to a children's hearing arranged in relation to the child under section 69(2) of the 2011 Act, a section 67 ground is that the child has committed a relevant offence,
- (b) the sheriff, on an application under section 93(2)(a) or 94(2)(a) of that Act, determines under section 108 of that Act that the ground is established, and

Status: Point in time view as at 12/12/2014.

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- (c) no application to the sheriff under section 110(2) of that Act is made in relation to the ground.
- (5) This subsection applies where, on an application under section 110(2) of the 2011 Act in relation to the child—
- (a) the sheriff is satisfied under section 114(2) or 115(1)(b) of that Act that a section 67 ground which constitutes a relevant offence is established or accepted by the child and each relevant person in relation to the child, or
 - (b) the sheriff determines under section 117(2)(a) of that Act that—
 - (i) a section 67 ground which was not stated in the statement of grounds which gave rise to the grounds determination is established, and
 - (ii) the 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—
 - [^{F5}(i) where subsection (3) applies, the date on which the section 67 ground was accepted as mentioned in that subsection,
 - (ii) where subsection (4) applies, the date on which the section 67 ground was established as mentioned in that subsection,
 - (iii) where the section 67 ground is established as mentioned in paragraph (a) of subsection (5), the date on which that ground was established under section 108 of the 2011 Act or, as the case may be, accepted under section 91(1) or 105(1) of that Act, or
 - (iv) where the section 67 ground is established as mentioned in paragraph (b) of subsection (5), the date on which that ground was established as mentioned in that paragraph,]
 - (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—
- [^{F6}“the 2011 Act” means the Children’s Hearings (Scotland) Act 2011 ([asp 1](#)),
 - “grounds determination” has the meaning given by section 110(1) of the 2011 Act;]
 - “relevant person ” has the same meaning as in section [^{F7}200(1) of the 2011 Act except that it includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that 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.

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[^{F8}“section 67 ground” has the meaning given by section 67(1) of the 2011 Act;
“statement of grounds” has the meaning given by section 89(3) of the 2011 Act.]

(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 [^{F9}section 67 ground] relating to the offence that there was a sexual aspect to the behaviour of the child;”.]

Textual Amendments

- F1** 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)
- F2** Words in s. 18E(1) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(a)**
- F3** S. 18E(2) repealed (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(b)**
- F4** S. 18E(3)-(5) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(c)**
- F5** S. 18E(9)(a)(i)-(iv) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(d)**
- F6** Definitions in s. 18E(11) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(e)(i)**
- F7** Words in s. 18E(11) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(e)(ii)**
- F8** Definitions in s. 18E(11) inserted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(e)(iii)**
- F9** Words in s. 18E(12) substituted (24.6.2013) by [The Childrens Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **sch. 1 para. 10(2)(f)**

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