



DNA Sampling and Retention
Standard Operating Procedure

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1. Purpose

- 1.1 It is recognised that Deoxyribonucleic Acid (DNA) evidence can be a powerful investigative tool and, when used alongside other evidence, can help identify suspects, provide compelling evidence to secure a conviction or help eliminate individuals from enquiries.
- 1.2 This Standard Operating Procedure (SOP) provides guidance on when DNA sampling should occur and outlines procedures to be followed when obtaining and processing samples, be they:
 - **Criminal Justice (CJ) Samples**, taken for retention on the DNA database;
 - **Evidential Samples**, taken to facilitate comparison against case related DNA material.
- 1.3 This SOP will focus on police powers and procedures relating to the acquisition and retention of DNA samples and hyperlinks have been used to facilitate access to guidance on other DNA related matters.
- 1.4 Legislation provides the police with powers for taking and retaining forensic samples, including DNA, but before any forensic evidence is allowed by a Court it is necessary to demonstrate that all legal requirements were properly met and safe handling procedures were followed and recorded.

2. Legislative Background

- 2.1 The Criminal Procedure (Scotland) Act 1995, hereinafter referred to as 'the 1995 Act' Sections 18 and 19 as amended, sets out the majority of the law relating to the taking, retention and use of forensic samples.
- 2.2 'The 1995 Act' and Criminal Justice (Scotland) Act 2016 confers powers on Constables and on Police Custody or Security Officers (PCSOs) and the guidance within this procedure will apply when investigating crime and/or processing custodies.
- 2.3 'The 1995 Act' Sections 18 and 19, as amended, allow for samples to be taken from certain categories of individuals and for the resulting DNA profiles to be retained on a DNA database.
- 2.4 Criminal Justice (Scotland) Act 2003, Section 56, facilitates the taking of DNA samples for recording on the Volunteer DNA database.
- 2.5 The investigation of crime in Scotland is covered by Common Law and Legislative Acts. Police Officers and members of Police Staff should take relevant law into account when considering the use of forensic science, particularly with regard to powers to seize and examine articles.

3. Equalities Act 2010

- 3.1 Section 149 of the Equalities Act 2010 imposes a duty on public authorities and other bodies when exercising public functions to have due regard to the need to;
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equalities Act 2010;
 - advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2 Where there is a requirement to obtain a sample and a person is a member of a protected group, then there may be additional considerations around informing that person about why the sample is being taken.
- 3.3 The following examples are not exhaustive merely illustrative e.g.:
- Where a person has a learning challenge, or
 - is not a native English speaker or
 - has an age related mental health condition.
- 3.4 However there are existing procedures that would be utilised to mitigate potential impacts such as the use of Appropriate Adults SOP, Interpreting and Translating SOP or Lay-Community Advisors SOP. It should be stressed that, where there are operational or geographical factors that precluded such additional provisions being made, it would not prevent the sample being legally obtained.

4. Criminal Justice (CJ) Sampling – (Green Admin Card - Form DNA 1)

- 4.1 Section 18 of ‘the 1995 Act’ relates to the taking of relevant physical samples, including DNA, and applies to individuals who have been arrested and are in custody.
- 4.2 Subject to the content of the detailed note in paragraph 4.5 below, a DNA CJ sample must be taken from any individual, over the age of criminal responsibility in Scotland, who has been arrested for a matter which may lead to or has already resulted in a report for the consideration of:
- a Children’s Hearing;
 - the Procurator Fiscal (PF); or
 - the matter is concluded by the issue a Police Fixed Penalty Notice (FPN).

- 4.3 The legislation provides powers for the taking of samples from individuals who are compliant and the taking of certain samples from individuals who refuse to comply.
- 4.4 Section 18(6A) of 'the 1995 Act', allows a Constable, or at a Constable's direction, a Police Custody and Security Officer (PCSO), to take from the inside of a compliant person's mouth by means of swabbing, a sample of saliva or other material.
- 4.5 Guidance on Sampling Procedures for Mouth Swabs can be found in Appendix 'D' and guidance on Sampling from Non-Compliant Individuals can be found in Appendix 'E'.

Note: It is not necessary to take a DNA CJ sample from an individual who already has a profiled 'convicted' sample on the DNA database as this sample is retained indefinitely. A check of an individual's Criminal History Record will indicate if they are recorded as DNA 'C'. Be aware that any other marker other than DNA 'C' means that any DNA profile for this individual is only temporarily held and may subsequently be deleted; therefore unless the record indicates DNA 'C', a further CJ sample must be taken if the subject has been arrested and charged. This status should have no impact on any decision to take from the subject an Evidential DNA Sample.

- 4.6 When a DNA CJ sample is obtained, the green DNA Administration Card (Form DNA1) from within the sample kit must be completed. All information should be completed on the DNA1 card, with particular attention paid to the Criminal History System (CHS) 'S' number and Case Reference Number (CRN) for which DNA was taken to ensure information held on the DNA database aligns to the correct (CHS) record and to allow the profile retention to be monitored accurately.

4.7 Samples from Convicted Person and Restricted Patients

- 4.7.1 Section 19 and 19A of 'the 1995 Act' allows officers to obtain a DNA sample from convicted persons who at no time previously in relation to that offence provided a CJ sample **or** any such sample provided in relation to that offence was not suitable or insufficient for its intended purposes.
- 4.7.2 The powers within 'the 1995 Act' will be enforced differently depending on whether the subject is imprisoned or at liberty.
- 4.7.3 Guidance on the Powers and Procedures to Obtain Samples from Convicted Persons can be found in Appendix 'G' and guidance on the Powers and Procedures to Obtain Samples from Restricted Patients can be found in Appendix 'H'.

4.8 Samples from Sex Offenders

- 4.8.1 Section 19AA and Section 19AB of the 'the 1995 Act' allows officers to obtain CJ samples from persons subject to Court Orders pertaining to Sex Offenders and Orders for prevention of offending. This applies to persons who at no time previously have provided a CJ DNA sample or any such sample provided in relation to the Registration Order or any breach was not suitable or was insufficient for its intended purposes.
- 4.8.2 Guidance and relevant legislation on Sampling from Sex Offenders can be accessed from the Sex Offender Notification Requirements SOP, Section 9 - DNA and Fingerprints – Re Sampling of Offenders.

4.9 British Transport Police Samples

- 4.9.1 Any CJ sample taken for British Transport Police (BTP) offences should be uplifted by the BTP officer when leaving the Custody Suite. These samples are processed by their own service provider rather than Scottish Police Authority (SPA) Forensic Services.

4.10 European Arrest Warrant Samples

- 4.10.1 CJ samples taken under a European Arrest Warrant can only be processed at the DNA unit if taken for a Scottish offence. If a subject is arrested in Scotland on behalf of another European Union (EU) Member State, there is no legal provision to retain the profile on either the Scottish DNA Database (SDNAD) or National DNA Database (NDNAD).

4.11 Other United Kingdom Arrest Samples

- 4.11.1 If a subject is arrested on a Scottish warrant in England, Wales or Northern Ireland, a CJ sample should be taken once they are within custody in Scotland. On the occasion that the arresting force obtain a sample, this sample should be uplifted by Scottish officers at the time of collecting the prisoner and submitted following the standard CJ delivery process. There is no provision for the arresting force to submit the sample to their Forensic Service Provider.

4.13 Persons Detained Under the Terrorism Act 2000

- 4.13.1 Similar arrangements apply in relation to obtaining DNA samples from persons detained under Schedule 7 or Section 41 of the Terrorism Act 2000, as would apply if that person had been arrested.
- 4.13.2 A Constable may take, or require to be taken, a DNA sample (or other relevant physical data) from persons detained under Section 41 of the Terrorism Act 2000:
- if the Constable reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in Section 40(1)(a) of the Terrorism Act 2000,

and

- reasonably believes that the relevant physical data will tend to confirm or disprove the involvement,
- or**
- in any case the Constable is satisfied that it is necessary in order to assist in determining whether the person falls within Section 40(1)(b) of the Terrorism Act 2000.

4.13.3 There is no requirement for samples obtained under this legislation to be destroyed even in circumstances where no criminal proceedings take place, or no conviction occurs. The samples once taken can be retained indefinitely provided the data derived therefrom is only used for the purposes of terrorist investigations.

4.13.4 Terrorism profiles are exported to the Terrorism database and thereafter removed from both the Scottish and the National DNA Databases.

4.14 Processing of Criminal Justice Samples

4.14.1 All CJ samples are transported from Primary Custody Suites. Samples are batched together with Force Form 053-007 – Submission of DNA Criminal Justice Samples and placed into a dedicated sealable bag. Each seal has a number that should be written onto the submission sheet before the bag is sealed. Bags are passed to local delivery drivers and transported, via the nearest Forensic Service laboratory if necessary, to the DNA Administration Unit, Rushton Court, Dundee.

4.14.2 The DNA Administration Unit will carry out a quality check of the details supplied on the DNA1 kit and ensure the subject has been charged and that there is no other DNA Convicted (DNAC) samples for that individual. Only one profiled sample per person is required at any given time therefore the DNA Administration Unit will arrange storage for any additional samples until required for processing by the laboratory.

4.14.3 The DNA Administration Unit will record details of the DNA on the individual's CHS record. At this stage, whilst the case against the individual is pending, the CJ profile will be held on the database and CHS will show DNA status as 'DNAT' (Temporary retained). As the status of the case changes, a further update is made. Convictions result in the sample being marked as DNAC and retained indefinitely. A prescribed set of disposals will result in the sample being marked as DNA Retained (DNAR) and retained for two or three years. All other disposals will result in the sample and associated profile being destroyed.

5. **Evidential DNA Sampling – (White Administration Card - Form DNA 2)**

- 5.1 Guidance on the taking of evidential DNA samples can be found within the Forensic Science Gateway SOP.
- 5.2 Guidance on DNA 'Match' or 'Hit' Reports can be found in Appendix 'I'.
- 5.3 Guidance on Sampling Procedures for Mouth Swabs can be found in Appendix 'D' and guidance on Sampling from Non-compliant Individuals can be found in Appendix 'E'.

6. **Additional Sampling Powers**

- 6.1 The following applies to **all** sections of 'the 1995 Act' detailed above:
- 6.2 A constable has the power to obtain other **non-intimate** physical data, including hair samples and fingernail scrapings, although the authority of an inspector or above is required to carry out this practice.
- 6.3 Appendix 'F' offers guidance in relation to Sampling Procedures for Hair Samples.
- 6.4 A constable (**NOT** a PCSO), with the authority of an inspector or above, may use reasonable force in obtaining a sample. Appendix 'E' offers guidance on Sampling from Non-compliant Individuals.

7. **Voluntary Sampling – (Pink Administration Card - Form DNA 3)**

- 7.1 The Criminal Justice (Scotland) Act 2003, Section 56, allowed for the establishment of a database of DNA profiles developed from persons who have supplied written consent to have their DNA profiles retained for specific purposes, namely the investigation and prosecution of one particular offence or more general retention which allows the volunteer's DNA profile to be examined for any other offences which may be investigated in the future.
- 7.2. There are two databases utilised in this area; the Intelligence Database and the Volunteers Database. Samples held on the Intelligence Database are held for a specific purpose for a defined period of time and only searched in relation to the matter for which the sample was taken. Samples held on the Volunteers Database are searched against all outstanding crime scenes and also exported to the National DNA Database.
- 7.3. The Intelligence and Volunteer Databases are utilised during an Intelligence Led Screen. The Volunteer Database is also used for retaining profiles from persons believed to be at risk of Honour Based Violence. Samples for insertion onto either Database should be obtained using a DNA3 Kit (Pink).

- 7.4 Volunteers may withdraw such written consent, and have their DNA profile removed from the database, at any time providing such removal will not, at the time of the request, conflict with any evidential requirement concerning the sample, data or information derived from it. A volunteer must provide written notification requesting destruction of the profile to the Chief Constable and will in return receive written acknowledgement when the relevant physical sample and/or data are destroyed.
- 7.5 A convicted CJ DNA profile will replace any voluntary profile retained.

8. Police Elimination Sampling – (Blue Administration Card - Form DNA 5)

- 8.1 A Police Elimination Database (PED) has been established containing the profiles of Scottish Police Officers which will only be used for elimination purposes in connection with the investigation of a particular crime.
- 8.2 Regulation (19) of the Police (Scotland) Regulations 2004, provides a condition of employment for all police recruits to provide mouth swabs for DNA profiling. These profiles are held on the Police Eliminations Database (PED) for the duration of the officers' service.
- 8.3 Prior to this voluntary samples were obtained from Police Officers under Section 56 of the Criminal Justice (Scotland) Act 2003.
- 8.4 Profiles held on the PED are not compared to outstanding Scenes of Crime (SOC) profiles unless requested by Senior Investigating Officers with the permission of the Lead DNA Database Scientist.
- 8.5 It is the responsibility of the force to update the DNA Database when an officer is no longer employed within the force to ensure the removal of their DNA profile. Any officer who supplied a DNA sample whilst serving a Special Constable is not required to supply further samples if confirmed as an officer in the future.
- 8.6 A voluntary request can be made of any officer not covered by the aforementioned regulation, i.e. employed prior to 2004, or any other Police staff employee, to provide a DNA sample for inclusion on the database.
- 8.7 A person, not covered by above Police (Scotland) Regulation 2004 can refuse to provide a DNA sample for the PED without the need for explanation. Also having provided a voluntary sample they may withdraw their consent and have their DNA profile removed providing, at the time of the request, removal does not conflict with any evidential requirement concerning the sample, data or information derived from it.

9. Missing Persons DNA Database

- 9.1 The Missing Persons Bureau within the National DNA Database Delivery Unit under the Home Office manages the Missing Persons DNA Database (MPDD).
- 9.2 The MPDD is separate from the NDNAD. It holds DNA profiles of missing persons, unidentified bodies or body parts and profiles obtained from exhibit/items from a crime scene where there is a link to a missing person's event. When a new DNA profile is added to the database, it is checked against the samples already held, to see if there are any matches. So, for example, when the DNA profile from an unidentified body is added, it is compared against the profiles held for missing persons. Where there are no matches, or 'hits', the DNA profile is retained on the database and will only be removed upon instruction to the Missing Persons Bureau from the investigating police force.
- 9.3 Police officers wishing to submit a DNA profile to the MPDD need to go through the Forensic Gateway.
- 9.4 The best sort of sample from which to obtain a DNA profile for a missing person is known as a Direct Reference Sample. This is from a controlled source taken directly from the individual, such as medical samples (for example cervical smears or the heel prick test taken when a child is born), or an NDNAD arrestee sample.
- 9.5 Alternatively Indirect Reference Samples can be taken. These are from objects which relate to the individual such as a toothbrush or a hairbrush. With these sort of samples, there are varying levels of success in achieving a full DNA profile, and varying levels of certainty that any profile obtained actually belong to the missing person - for example, a hairbrush may have been used by a relative or a friend. In such instances, consideration should be given to obtaining additional DNA samples from relevant family members, co-habitants, or any other likely shared users of an item, which can then be used for elimination purposes to increase confidence that it does actually belong to the missing person.
- 9.6 Where a Reference Sample is not available for the missing person, then kinship (family) samples can be collected. It must be ensured that samples are obtained from family members who are full blood relatives of the missing person such as mother, father, and full blood relative siblings. Police must be aware of the family dynamics, in order to avoid any unwanted revelations. Any relative of a missing person who provides a DNA sample will need to complete a consent form as their DNA profile will be retained on the MPDD for quality assurance purposes, and will be used to infer potential DNA profiles for a missing person. DNA profiles from family members will never be searched or loaded on to the National DNA Database.
- 9.7 For further information on the MPDD contact the Forensic Gateway.

10.0 Processing DNA 'Match' or 'Hit' Reports

- 10.1 Reports of matches against crime scenes are reported by Forensic Services to the National Forensic Gateway. Appendix 'I' - Processing DNA 'Match' or Hit Reports offers guidance on the Match Report procedure.

11.0 Weeding and Retention of DNA and Fingerprint Information

- 11.1 Guidance in relation to Weeding and Retention can be found within the Weeding and Retention of DNA and Fingerprint Information Guidance Document.

List of Associated Legislation

- Criminal Procedure (Scotland) Act 1995 (Sections 18, 19 and 20)
- Criminal Justice (Scotland) Act 2003, Section 56
- Police and Fire Reform (Scotland) Act 2012
- Terrorism Act 2000 (Schedule 7 and Section 41)
- Health and Safety at Work Act 1974
- Human Rights Act 1998
- Criminal Justice (Scotland) Act 2016

List of Associated Reference Documents

- Appropriate Adults SOP
- Forensic Science Gateway SOP
- Interpreting and Translating SOP
- Lay-Community Advisors SOP
- Police Circular 1997 No. 14 – Crime and Punishment Scotland Act 1997 – Section 48 DNA Sampling of Sexual and Violent Offenders
- Weeding and Retention of DNA and Fingerprint Information - Guidance Document
- Care and Welfare of Persons in Police Custody PSoS SOP

List of Associated Forms

- Criminal Justice (CJ) Sampling - Green Administration Card (**Form DNA 1**)
- Evidential DNA Sampling – White Administration Card (**Form DNA 2**)
- Voluntary Sampling – Pink Administration Card (**Form DNA 3**)
- Police Elimination Sampling – Blue Administration Card (**Form DNA 5**)
- (Copies of these forms are held locally)
- Force Form 053-007 – Submission of DNA Criminal Justice Samples

Sampling Procedure for Mouth Swabs

1. Ensure that the subject has not taken food, drink, chewed gum or smoked in the 20 minutes preceding the sample being taken. This will cause deterioration of the sample.
2. Open the DNA sampling kit by cutting along the dotted line and remove the contents. Use the checklist to ensure that all the contents are present. If not discard the entire kit and take a new kit.
3. Be aware of any risks involved in obtaining the sample and always wear the disposable gloves provided.
4. Take one of the mouth swabs, which is in its protective packing and peel back the polythene cover to reveal the swab.
5. Remove the mouth swab from the packaging by holding the stem end and place the swab end into the subject's mouth against the inside of the cheek. Move the swab end up and down against the inside of the cheek at least 10 – 20 times and thereafter remove from the subject's mouth.
6. Open the flip top sample container and place the swab end into the said container. Eject the swab end into the sample container by applying downward pressure on the stem end, pressing it towards the swab end.
7. Once the sample has been ejected into the sample container the flip top should be firmly secured by pressing the cap closed.
8. The process should then be repeated using the second mouth swab and the second flip top sample container.
9. Both containers should be placed into the small tamper evident bag and sealed. This should be done in the presence of the subject.
10. If a swab is dropped or comes into contact with another surface the procedure should be aborted and the sample kit destroyed. Further samples should be taken using a new kit.
11. All kits have an identifier, which is the unique bar code, to protect their integrity. Should any mistakes be made in the process, then the entire kit should be discarded and a brand new kit used. On no account should the properties from two separate kits be mixed. This will cause the sample to be rejected at the profiling stage.

Sampling Procedure for Mouth Swabs

12. Once samples have been obtained all wrappers, swab stems and plastic gloves should be disposed of into a clinical waste receptacle.
13. With regards to those persons wearing the niqab or veil, sensitivities should be borne in mind to the cultural significance attached to the wearing of the veil and removing it within the presence of males. As such two female officers should be utilized to obtain the DNA sample out with the presence of male officers.

Sampling from Non-Compliant Individuals

1. If necessary Section 19B Criminal Procedure (Scotland) Act 1995, allows a Constable (**Note:** no power for Police Custody and Security Officers (PCSO)) with the authority of an Officer no lower than an Inspector, to use reasonable force to take from the inside of a non-compliant person's mouth by means of swabbing, a sample of saliva or other material.
2. The Criminal Procedure (Scotland) Act 1995 Section 18(6)(a), (b) and (c) allows a Constable (**Note:** no power for PCSO) with the authority of an Officer no lower than an Inspector, to take the following samples and, if necessary, authorises the use of reasonable force:
 - from the hair of an external part of the body other than pubic hair, by means of, combing or plucking, a sample of hair or other material;
 - from a fingernail or toenail, or from under any such nail, a sample of nail or other material;
 - from an external part of the body, by means of swabbing or rubbing, sample of blood or other body fluid, of body tissue or of other material.
3. Guidance on hair samples can be found in Appendix 'F' - Sampling Procedure for Hair Samples.
4. Should officers have to obtain a sample through the use of reasonable force a police report must be submitted to the Procurator Fiscal under terms of Section 90(2) Police and Fire Reform (Scotland) Act 2012 - (resist/obstruct/hinder).

Sampling Procedure for Hair Samples

1. Use the green DNA1 sampling kit and ensure the 'Hair' box is ticked on the DNA1 card. Use the checklist to ensure that all the contents are present. If not discard the entire kit and take a new kit. Dispose of contents relating to buccal (mouth) swabs.
2. Be aware of any risks involved in obtaining the sample and always wear the disposable gloves provided.
3. Disposable tweezers should be available for use. To avoid contamination do not use tweezers that are not in a sealed packet.
4. Pluck at least 10 hairs from the suspect. It is important to ensure that the root sheaths are attached to the hair samples.
5. The hairs must not be touched by an un-gloved hand, or come into contact with any other surface, which may contaminate them. If this occurs then the complete kit should be discarded and further samples taken using a new kit.
6. Place the hairs obtained into the 'Samples Only' Tamper Evident Bag and seal the bag. This should be done in the presence of the subject.
7. Once samples have been obtained remove plastic gloves and dispose these and the tweezers into a clinical waste receptacle.

Powers and Procedures to Obtain Samples from Convicted Persons

Criminal Procedure (Scotland) Act 1995, Section 19 (1) (a)

Section 19 (1) (a) of the 'the 1995 Act', empowers constables within the permitted period, to take, or direct a PCSO to take, a DNA CJ sample, from a person convicted of an offence who has not, since the conviction, provided, or been required to provide a sample.

The permitted period of this sample to be taken is one month beginning on the date of Conviction and relates to all offences for which a constable is authorised to obtain a DNA CJ sample.

Notification

If the DNA Administration Unit identify a case which fits this criteria written notification will be sent to the agreed single point of contact who in turn will arrange for a sample to be taken. If the subject is imprisoned the DNA Administration Unit will also provide prison and release date information.

Criminal Procedure (Scotland) Act 1995, Section 19 (1) (b)

Section 19 (1) (b) of 'the 1995 Act', empowers constables, within the permitted period, to take, or direct a PCSO to take, a DNA CJ sample, from a person convicted of an offence whose samples was deemed unsuitable for analysis.

The permitted period of this sample to be taken is one month from the date of notification of the sample failure and relates to all offences for which a constable is authorised to obtain a DNA CJ sample.

Notification

The DNA Administration Unit will monitor the progress of the case for all sample failures and upon conviction provide written notification informing that a new sample can be taken. If the subject is imprisoned the DNA Administration Unit will also provide prison and release date information. The notification will be sent to the agreed single point of contact

Appendix 'G'

Criminal Procedure (Scotland) Act 1995, Section 19A (1) (a) and (b)

Section 19A (1)(a) and (b) of 'the 1995 Act', empowers constables, within the permitted period, to take a DNA CJ sample from a person convicted of an offence who has not, since the conviction, provided or been required to provide a sample; or whose sample was deemed unsuitable for analysis.

This section is limited to persons convicted only of a 'relevant offence' as prescribed in 19A (6) of 'the 1995 Act' who are sentenced to imprisonment. The permitted period for the sample to be taken is at any time during the subject's imprisonment.

Persons released from custody still subject to licence or other conditions are not, for the purpose of this section, serving a sentence of imprisonment.

Notification

If the DNA Administration Unit identify a case which fits this criteria they will obtain prison and release date information. Thereafter written notification will be sent to the agreed single point of contact.

Additional Powers

The following applies to **all** sections of the Criminal Procedure (Scotland) Act 1995 (the '1995' Act) detailed above:

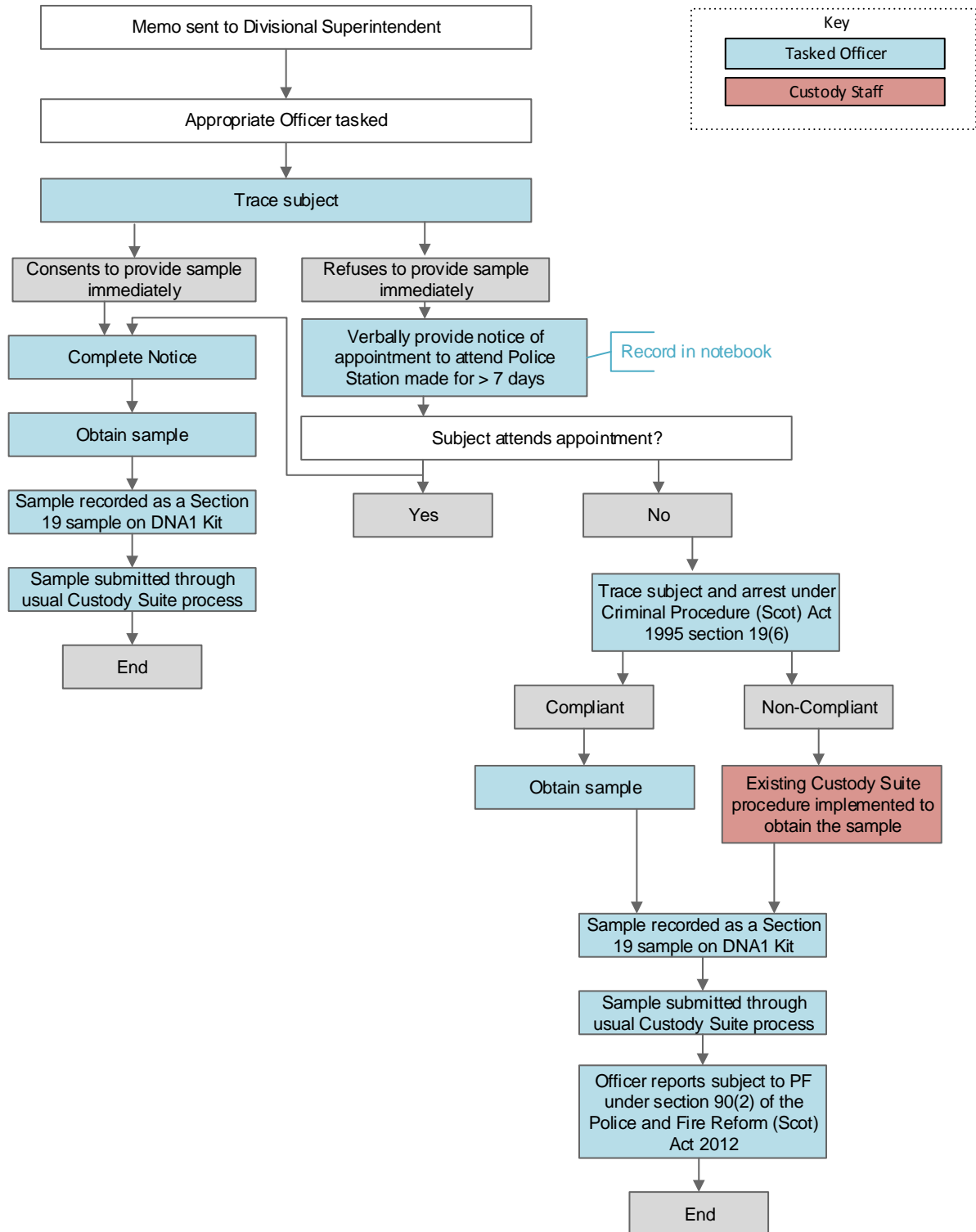
A constable has the power to obtain other **non-intimate** physical data, including hair samples and fingernail scrapings, although the authority of an inspector or above is required to carry out this practice. Appendix 'F' - Sampling Procedures for Hair Samples offers guidance on this matter.

A constable (but **not** a PCSO), with the authority of an inspector or above, may use reasonable force in obtaining a sample. Appendix 'E' – Sampling from Non-Compliant Individuals offers guidance on this matter.

The powers within the '1995 Act' will be enforced differently depending on whether the subject is imprisoned or at liberty. Process maps detailed in this appendix, provide further guidance.

Appendix 'G'

Procedure for obtaining a DNA sample under section 19 of the Criminal Procedure (Scotland) Act 1995 – Subject at liberty



**Joint SPS and Police Scotland protocol for Police requests to take DNA Samples from Prisoners:
Section 19 & 19A(1)(a) Criminal Procedure Scotland Act 1995
February 2018**

Request form from Police Scotland (PS) will be sent to Prison Head of Operations (HOPs) to inform of the requirement to take a DNA sample from a prisoner (The communication must evidence that authorisation has been granted from Inspector level or above).
Police Scotland forward a letter to be issued to the Offender informing them that they are required to provide a DNA Sample and that the Police will attend the Prison in due course to take the sample. No date should be provided to the offender. The HOPs will identify an SPS member of staff to issue the letter.

Letter is issued to prisoner and SPS staff member to advise HOPS if the prisoner is likely to co-operate in providing the sample.

Outcome communicated by HOPs back to the Reporting Officer of PS

COMPLIANT PROCESS

NON-COMPLIANT PROCESS

A date and time to take the sample, within an appropriate location of the prison, will be agreed between the HOPs and Police Scotland following risk assessment. (Prisoner will not be informed in advance of the date)

Police Scotland attend prison to take sample

Prisoner will be informed that the Police are within the establishment to take the sample.

Prisoner escorted to identified area for taking the sample and sample taken

Sample taken

Prisoner escorted back to appropriate location e.g. Hall, Workparty etc

Police Officers must provide update to appropriate area within PS.

PS reporting officer informs the Public Order Unit, West: 01355 56 6336 or East/North 01393 318796 (depending on the request) there is a requirement for DNA to be taken from a non compliant prisoner.
A Public Order Tactical Adviser will be allocated to liaise with the HOPs at the relevant prison. A local plan will be developed to carry out the task agreed by both Police Scotland and SPS. This plan will include location of the sample, access, changing area, time, date or anything deemed appropriate by both organisations.

HOPs will also arrange for the IMU to prepare a brief of the prisoner for dissemination to Public Order Team prior to the sample being taken. This will include a picture of the prisoner, their approximate weight and height, whether they have a history of violence or refusals to move in prison, and any intelligence and incident data that would be relevant for the removal.

Public Order team enter the prison in a vehicle with their equipment in code 3 Uniform (Standard uniform) to minimise the impact of their presence within the prison. They are then escorted to a location, near to where the DNA sample will be taken, they will change in to their Personal Protective Equipment (PPE) in an approved area. Police Scotland Reporting Officer should bring necessary DNA sampling kits with them.

SPS Officer orders prisoner to go to the location where DNA Sample will be taken. If they refuse and are unwilling to cooperative, they will be escorted as per the SPS Use of Force policy, The SPS Use of Video Recording Equipment during planned Control and Restraint Removals Policy will also be applied.

SPS staff will locate the prisoner within the area that has been identified as best location to take DNA sample. At this point SPS will remove themselves from the identified area and secure the prisoner within it (e.g. cell or holding area) to allow PS to carry out their process independently. Where Use of Force has been used a nurse will examine the prisoner.

PS Public Order Team will carry out their 'Five step appeal' (this is to give the prisoner an opportunity to comply) prior to taking a sample by force. This may be video recorded by PS. There should be no requirement to record SPS Staff. SPS OFFICERS CANNOT ASSIST POLICE TO TAKE THE DNA SAMPLE.

If PS staff cannot obtain a swab, they will obtain a hair sample.

Once PS have collected the sample the prisoner will be examined by a nurse. A decision will then be made, based on the behaviour of the prisoner throughout, as to whether they will be placed on report and if they will be returned to the hall or located within the Separation and Re-integration Unit. There is nothing to prohibit the prisoner from being placed on report for something which Police Scotland have also charged them with e.g. Violence against an Officer.

SPS Use of Force Documentation will be completed for any period that SPS Officers had to invoke the SPS Use of Force Policy. Where appropriate, PS Officers may be cited as witnesses.

If the prisoner wishes to make a complaint against Police Scotland they will be signposted to the Police Complaints Process. If the complaint is against SPS Staff they will be instructed to follow the agreed SPS Complaints Procedure.

If not willing to co-operate, the prisoner will not be forcibly escorted, at this point, to have the DNA sample taken. The Police will be informed that the prisoner is no longer willing to comply and arrangements will be made as per the Non-compliant Process.

NON-COMPLIANT

If at any point the prisoner becomes non-compliant and refuses to have their DNA taken, the sample will not be taken. The process will be stopped and the prisoner will be escorted back to an appropriate location within the prison. If the prisoner demonstrates violence, the SPS Use of Force Policy will be invoked and the prisoner will be escorted to the Separation and Re-integration Unit where they will be medically examined. Use of Force Documentation will also be completed and where appropriate Police Officers may be cited as witnesses.

NON-COMPLIANT

The Police will then have to contact the HOPs to make arrangements as per the Non-Compliant Process.

Verbal Notice to be Read to Prisoners

Should a sample be required under Section 19 or 19A of "the 1995 Act" where the subject is imprisoned, the following notice should be used to inform the subject of the intention to obtain a sample prior to officers attending the prison.

1. Verbal notice to be read to the prisoner by Prison Staff should they be unwilling to voluntarily provide a sample when initially informed of the appointment:

"Police Scotland are not in possession of a DNA sample from you which is suitable for analysis. Section 19 of the Criminal Procedure (Scotland) Act 1995 allows officers of Police Scotland to obtain a mouth swab sample from you. An appointment is being arranged for officers to attend and obtain a sample from you. Do you consent?"

If 'no':

"This legislation allows the officers to obtain a sample through reasonable force if required. We hereby give you notice that an appointment will be arranged after a seven day period has elapsed to obtain a sample from you."

2. Verbal notice to be read to the prisoner should they be unwilling to voluntarily provide a sample at the initial appointment when police officers attend:

"Police Scotland are not in possession of a DNA sample from you which is suitable for analysis. Section 19 of the Criminal Procedure (Scotland) Act 1995 allows us to obtain a mouth swab sample from you today. Do you consent?"

If 'no':

"This legislation allows us to obtain a sample through reasonable force if required. I hereby give you notice that we will return after a seven days period has elapsed to obtain a sample from you"

Powers and Procedures to Obtain Samples from Restricted Patients

Criminal Procedure (Scotland) Act 1995, Section 19A (1) (a) & (b)

Section 19A (1)(a) & (b) of the 'the 1995 Act' also allows officers to obtain samples from restricted patients residing within a hospital establishment if convicted of a prescribed sexual or violent offence. It also states that, for the purpose of this section, a conviction shall include a person acquitted due to insanity at bar of trial and both acquittal and non-acquittal after the examination of facts as outlined in Section 55 of 'the 1995 Act'.

For restricted patients residing in the community no powers exist to obtain physical samples unless volunteered by the person. See Voluntary Sampling ([link](#)).

Divisional Offender Management Units (OMU) must liaise with Health as the lead responsible authority for Restricted Patients to ensure consultation is undertaken with the restricted patient's Responsible Medical Officer (RMO). Although police have powers to obtain such samples, consideration must always be given to the current medical condition and needs of the patient. It may be appropriate to defer the taking of the sample until a future date. This must be subject to regular review in order to obtain a sample prior to the patients discharge. Priority should be given to obtaining a sample prior to a patient getting unescorted suspension of detention.

Patients should be approached by the RMO or a member of the clinical team and asked for their consent for a sample to be taken. Should the patient agree for a sample to be taken, an appointment should be made for a sample to be taken. Should the patient refuse to give a sample further consultation should take place with the RMO. Each case should be considered on an individual basis and whether the risk of not obtaining a sample justifies the approach.

Police Circular No.14/1997 - Crime and Punishment (Scotland) Act 1997: Section 48: DNA Sampling of Sexual and Violent Offenders contains the following guidance at paragraphs 22-26:

“22. The new powers extend to persons detained in hospitals under the Criminal Procedure (Scotland) Act 1995 or its predecessors or by virtue of a hospital order, a restriction order, a hospital direction and any order section 57(2)(a) or (b) of the 1995 Act. Particular care will need to be exercised when taking samples from mentally disordered offenders. Police forces are advised to contact hospitals where a relevant patient is detained in advance to ensure that suitable accommodation can be arranged for the taking of the sample and that a member of the clinical staff can be in attendance during the taking of the sample. Forces are asked to ensure that these arrangements cause the minimum disruption to the normal running of the hospital and to the treatment of the patient.

23. Following initial contact with the hospital, forces should ensure that the patient is given prior notification in writing, copied to his responsible medical

officer, of the intention to take a non-intimate sample under the provisions of section 19A of the 1995 Act. The practical arrangements for notification should be discussed with the hospital manager in advance. There may, for example, be some circumstances where the hospital may consider that the taking of a sample from a patient's mental condition may be such that such a move would be counter-therapeutic at that stage. In these circumstances, force are advised to make alternative arrangements with the hospital to take the sample at a later date.

24. Where a patients refuses to co-operate freely with the sample-taking procedure, either as a result of their mental condition or for any other reason, it may not be desirable for the patient's clinical team to be involved in taking the sample by force. In such cases, consideration should be given, in discussion with the hospital manager, as to whether the sample should be taken without a member of the clinical staff being present, whether a third party might be asked to be present i.e. someone akin to an appropriate adult, or whether the taking the sample should simply be deferred."

It should be noted that this issue should always be handled sensitively due to the potential vulnerabilities of some restricted patients. On occasion it may be beneficial for the RMO to ensure that the restricted patient's advocacy worker is present when a sample is being obtained.

If the above process cannot be implemented, police have powers to use reasonable force to obtain a sample and/ or obtain other non-intimate physical data, including hair samples and fingernail scrapings from restricted patients. **This should only be used in exceptional circumstances and must be justified.**

Guidance on Sampling Procedures for Mouth Swabs can be found in Appendix 'D' and guidance on Sampling from Non-compliant Individuals can be found in Appendix 'E'.

The powers within the 1995 Act will be enforced differently depending on whether the subject is imprisoned or at liberty. Process maps are included in Appendix 'G' - Powers and Procedures to obtain Samples from Convicted Persons.

Processing DNA 'Match' or Hit Reports

1. Forensic examination of a locus or items associated to the crime, perpetrator or victim can identify crime scene stains which can yield DNA profiles.
2. Once crime scene stains are profiled they are loaded onto the Scottish DNA Database and, if no match is found the National DNA Database, for comparison against existing DNA profiles. Unmatched crime scene profiles remain on both databases to be compared against future DNA profiles and other crime scene stains. Any match against an individual or another crime scene is known as a 'hit' and the respective Forces receive notification.
3. The Force will receive notification of the 'hit' from the database making the match.
4. The National Forensic Gateway will establish that the DNA CJ sample on the database that provided the match is legally held.
5. The National Forensic Gateway will then allocate the 'hit' notification for action in line with local arrangements.
6. The notification received regarding a 'hit' against an individual has to be treated as for intelligence purposes only and therefore all correspondence relating to it should be secured and managed in accordance with Government Protective Marking Scheme (GPMS) guidelines.
7. Where the hit report relates to an as yet undetected crime the enquiry officer will, immediately on receipt of the 'Hit' notification, ascertain whether the subject had legitimate access to the locus or may otherwise have innocently contaminated the forensic result or is a noteworthy suspect in the enquiry.
8. Searches should also be conducted on the Crime Management System, SID, and Police National Computer (PNC) to ascertain if the subject is suspected of any other offences to allow suitable notifications to be made.
9. The enquiry officer will thereafter update the crime report detailing the result of these lines of enquiry and detailing whether or not a SID log entry has been made. This allows the Crime Manager and DNA Administration to monitor the progress of the DNA hit notification. Once all available evidence has been researched, the suspect should be traced and interviewed.
10. Revealing knowledge of DNA as an identifying factor during interview could reveal existence of previous convictions so careful thought has to be given to the structure of interview before introducing this evidence. During interview, DNA identification should be handled in much the same way as a fingerprint identification would be covered.

Appendix 'I'

Processing DNA 'Match' or Hit Reports

11. At the conclusion of the interview, the individual must have a DNA evidential sample taken. Note: this sample can only be taken when the individual is an arrested person. **On no account should any DNA evidential sample be taken from a person whose status is voluntary.**
12. The evidential DNA sample, with a production label completed, should be lodged as a production and retained until such times as requested by the Procurator Fiscal or SPSA Forensic Services to be lodged at the laboratory.
13. If initial enquiries fail to identify the whereabouts of the suspect, then the crime report should be updated to this effect. If a locate/trace is raised the crime report must be routinely updated detailing continuous attempts made to trace the suspect. An accompanying prominent note should state that an evidential DNA sample must be obtained when suspect is traced.
14. When a hit report is received in relation to an individual who has already been reported to the Procurator Fiscal for that specific crime or offence, then the taking of any DNA evidential sample will be required to be done under warrant. The circumstances should be reported to the Procurator Fiscal and a warrant sought. The enquiry officer should ensure that the crime report is updated to this effect.