

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 3 – Sexual Offences Etc.

Section 19 – Amendments in relation to certain serious and sexual offences

85. **Section 19** amends the Civic Government (Scotland) Act 1982, the Criminal Law (Consolidation) (Scotland) Act 1995 and the Crime and Punishment (Scotland) Act 1997.
86. **Section 19(1)(a)** and (b) respectively amend sections 52 (the taking, showing or distribution of indecent photographs of a children) and 52A (the possession of indecent photographs of children) of the Civic Government (Scotland) Act 1982. The amendment to section 52 will increase the period of imprisonment for conviction on indictment from three years to ten years. The amendment to section 52A will allow the prosecution of these offences on indictment, with penalties of imprisonment for up to a period of five years or a fine or both.
87. **Section 19(2)(a)** repeals sections 8(1) and (2) of the Criminal Law (Consolidation) (Scotland) Act 1995. Section 8(1) of that Act creates an offence of removing an unmarried girl from and against the will of her parents with the intent that she has unlawful sexual intercourse. Section 8(2) provides a defence that the accused had reasonable cause to believe the girl was 18 years of age or over. Repealing this provision will not affect the law on abduction or the prohibitions on intercourse with a girl under 13.
88. **Section 19(2)(b)** repeals section 15 of the Criminal Law (Consolidation) (Scotland) Act 1995 which provides a legal defence to a charge of indecent assault against a girl under 16 on the grounds that her assailant had reasonable cause to believe that the girl was his wife.
89. **Section 19(2)(c)** amends section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995. The amendment will enable sex offences defined in that section and committed abroad by a British citizen or resident of the United Kingdom (and recognised by the relevant country as offences) to be tried in the sheriff court district in which the accused is apprehended or in custody or in such sheriff court district as the Lord Advocate may determine. Currently such offences may only be tried in the High Court.
90. **Section 19(3)** repeals section 1 of the Crime and Punishment (Scotland) Act 1997, which added a new section (section 205A) to the Criminal Procedure (Scotland) Act 1995. Section 205A makes provision for an automatic life sentence in circumstances where a person is convicted of two or more specified serious offences, but has never been brought into force.

Section 20 – Extended sentences

91. **Section 20** inserts a new section 210AA into the Criminal Procedure (Scotland) Act 1995. The effect is that, where an accused is convicted on indictment of abduction, other than abduction of a woman or girl with intent to rape or ravish, that conviction is to be treated in the same fashion as a conviction for a violent offence as defined in section 210A of the 1995 Act. As a result, an extended sentence may be passed on an accused convicted on indictment of such an offence of abduction.
92. “Extended sentence” is defined in section 210A of the 1995 Act as a sentence of imprisonment which combines the term of imprisonment (“the custodial term”) which the court imposes on the offender and a further period (“the extension period”) for which the offender is to be subject to a licence.
93. A court may impose an extended sentence on a person convicted on indictment of a sexual or violent offence if it considers that the period (if any) which the offender would have otherwise been subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender. Extended sentences are available to the court for a sexual offence (as defined in section 210A(10)) for which a determinate sentence of imprisonment has been imposed or for a violent offence (as defined in section 210A(10)) for which a sentence of at least 4 years’ imprisonment has been imposed. The duration of an extended sentence is determined by the court’s opinion of the need to protect the public from serious harm from the offender, and can be up to 5 years for a violent offence and up to 10 years for a sexual offence.

Section 21 – Sexual and certain other offences: reports

94. **Section 21** makes various changes to court procedures in relation to sexual offences (as defined in section 210A(10) of the Criminal Procedure (Scotland) Act 1995) and to offences which, in the opinion of the court, disclose a significant sexual aspect to the accused’s behaviour. These are based on recommendations from the Expert Panel on Sex Offending chaired by Lady Cosgrove, which produced the report *Reducing the Risk: Improving the response to sex offending* in June 2001. Section 21(1)(a) makes provision for section 21 to apply to cases where an accused is convicted of a sexual offence, as defined in section 210A(10) of the 1995 Act (full definition provided at paragraph 7 of these notes).
95. **Section 21(1)(b)** applies the provisions of section 21 to a case where a person is convicted of an offence the nature and circumstances of which disclose, in the opinion of the court, that there was a significant sexual aspect to the person’s behaviour in committing it.
96. **Section 21(2)** makes provision that in a case, which falls within section 21(1) the court must before passing sentence obtain a report from the local authority on the offender’s circumstances and character, and also any information concerning the offender’s physical and mental condition before passing sentence. Additionally, section 21(2)(b) provides that where the qualifying case concerns a conviction on indictment, the court must obtain an assessment by a suitably qualified psychologist on the offender. Section 21(3) makes provision that, where a case proceeds to trial the trial judge, in a qualifying case under section 21(1), must prepare a report in writing as to the facts established by the evidence heard at the trial. The report must be prepared as soon as is reasonably practicable and the form of such a report will be prescribed by Act of Adjournal.
97. **Section 21(5)** provides that where a plea or partial plea of guilty is tendered and accepted by the prosecutor in a qualifying case under section 21(1), the narration of the facts given to the court by the prosecutor and anything said by or on behalf of the offender, when the plea of guilty is tendered, is to be recorded by shorthand notes or mechanical device.

98. **Section 21(-87)** provides that any report under section 21(2) or any record under section 21(5) is to be sent to a local authority officer and psychologist from whom a report is requested under sections 21(2)(a) and (b) respectively.
99. **Section 21(6)** provides that records under section 21(5) are to be treated in a similar fashion to a record of proceedings in solemn matters under section 93(1) of the 1995 Act and that the provisions of section 93(2) to (4) of the 1995 Act will apply to such records. Section 93(1) of the 1995 Act specifies that solemn proceedings shall be recorded by shorthand notes or mechanical means. Section 93(2) provides that a shorthand writer shall retain and sign his or her notes and certify the notes complete and correct. Section 93(3) provides that a person using mechanical means to record proceedings shall certify that the record is true and complete, identify the proceedings and retain the record. Section 93(4) provides for the payment by the Scottish Parliament of making such a record.
100. **Section 21(7)** provides that the Scottish Ministers may by subordinate legislation amend sections 21(5) and (6) to provide for a record to be made by such other means as they think fit. This would allow for recording in the future by means of new technology.
101. **Section 21(9)** amends the provisions of section 201(3) of the 1995 Act. Section 201 provides that a court may adjourn a case prior to imposing a sentence for the purpose of enabling enquiries or determining the most suitable method of dealing with a case. The period that the court may adjourn for this purpose is limited by section 201(3) to three weeks where the accused is in custody and four weeks where the accused is at liberty, and eight weeks on cause shown. The amendment made by section 20(9) of the Act extends the first two of these periods from three and four weeks to six weeks in each case. This is to allow reporters more time to prepare the reports that are required under this section.

Section 22 – Traffic in prostitution

102. **Section 22** creates new offences of trafficking for the purposes of sexual exploitation. Scots law already contains a range of provisions – in statute and common law – to protect women and men from exploitation and abuse. The new offences have been created to implement the terms of the European Council Framework Decision (FD) on Trafficking in Human Beings which *inter alia* requires the harmonisation of Member States' criminal law and penalties on trafficking.
103. The provisions outlaw the practice of trafficking people for use in the sex industry. It will be an offence to engage in trafficking for the purpose of sexual exploitation (control over an individual for prostitution or involvement in the making or production of obscene or indecent material). The offences apply both cross border (in to and out of the UK) and within the UK. The offences do not have to involve arrival into or departure from the UK (see subsection (4)). The offences will also cover behaviour outwith the UK by British citizens (and others specified in subsection (6)). In that event, proceedings may be brought anywhere in Scotland.
104. The maximum sentence where the case is prosecuted on indictment is 14 years and on summary conviction, imprisonment not exceeding 6 months, a fine or both (subsection (3)).
105. The new offence does not require the Crown to demonstrate that the person who arranged or facilitated the trafficking of an individual for the purpose of involving that individual in prostitution did so for gain because the new offence is directed at trafficking per se. Any consideration of gain will be taken into account in sentencing.
106. Subsection (7) defines material with reference to section 51 of the Civic Government (Scotland) Act 1982. This means that material includes any book, magazine, bill, paper, print, film, tape, disc or other kind of recording (whether of sound or visual images or both), photograph, drawing, painting, representation, model or figure and a photograph

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

includes the negative as well as the positive version. Subsection (7) also defines material as including a pseudo-photograph with reference to section 52 of the 1982 Act and any data capable of conversion into a photograph or pseudo-photograph. This catches a copy of an indecent pseudo-photograph and data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.