

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Criminal Law

Section 45 – Penalties for offences of brothel-keeping and living on the earnings of prostitution

231. This section amends sections 11 and 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”) to increase the maximum penalties for offences under sections 11(1)(a) (living on the earnings of prostitution), 11(5) (brothel-keeping) and 13(9) (living on the earnings of male prostitution).
232. Subsection (2) of this section amends section 11(1) of the 1995 Act by deleting the reference to existing penalties which apply and inserting a new subsection (1A) that increases the maximum penalty for an offence under section 11(1)(a), on conviction on indictment, to imprisonment for a period not exceeding 7 years, a fine or both. The penalty on summary conviction for this offence changes to imprisonment for a period not exceeding 12 months, a fine not exceeding the statutory maximum or both.
233. The change to the term of imprisonment for the offence under section 11(1)(b) of the 1995 Act is to conform with the provisions of section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 which increased the sentencing powers of the sheriff court from 6 months to 12 months for statutory offences triable both summarily and on indictment. While there is no specific provision for a fine to be imposed for an offence under section 11(1)(b), section 199 of the Criminal Procedure (Scotland) Act 1995 allows for a fine to be substituted instead of imprisonment.
234. Section 11(4) of the 1995 Act is amended to reflect the penalties at new subsection (1A).
235. The penalties provided for in section 11(6), for an offence under section 11(5) of the 1995 Act, are replaced by a new subsection (6) which increases the maximum penalty that applies on conviction on indictment to imprisonment for a period not exceeding 7 years, to a fine or both. The penalty on summary conviction for this offence changes to imprisonment for a period not exceeding 12 months, a fine not exceeding the statutory maximum or both. This is replicated for the maximum penalties which apply in respect of offences under section 13(9) of the 1995 Act.