

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Criminal Law

Section 49 – Articles for use in fraud

245. [Section 49](#) provides for two new criminal offences relating to fraud.
246. [Section 49\(1\)](#) makes it an offence for a person to possess or have within their control an article for use in, or in connection with, the commission of fraud. It will have to be established that the accused possessed or had control of the article and that the article was to be used in the course of or in connection with fraud. [Section 49\(2\)](#) provides that an offence under subsection (1) can be tried both in summary proceedings (where the maximum penalty will be a custodial sentence not exceeding 12 months and/or a fine not exceeding the statutory maximum) and on indictment (where the maximum penalty will be a custodial sentence of up to 5 years and/or an unlimited fine).
247. [Section 49\(3\)](#) makes it an offence to make, adapt, supply or offer to supply an article knowing either that the article is designed or adapted for use in, or in connection with, the commission of fraud; or intending the article to be used in, or in connection with, the commission of fraud. [Section 49\(4\)](#) provides that an offence under subsection (3) can be tried both in summary proceedings (where the maximum penalty will be a custodial sentence not exceeding 12 months and/or a fine not exceeding the statutory maximum) and on indictment (where the maximum penalty will be a custodial sentence not exceeding 10 years and/or an unlimited fine).
248. [Section 49\(5\)](#) provides that an ‘article’ within this new section includes a program or data held in electronic form. Therefore, the definition of ‘article’ includes more than simply a physical object and could include, for example, such a thing as a list of credit card numbers held on a computer.