

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Criminal Law

Section 37– Offensive weapons etc.

175. **Section 37** amends the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”). Section 47 of the 1995 Act sets out an offence relating to the possession of an offensive weapon in a public place; section 49 sets out an offence relating to the possession of a knife in a public place; section 49A sets out an offence relating to the possession of an offensive weapon or a knife on school premises and section 49C sets out an offence relating to the possession of an offensive weapon or a knife in certain prisons.
176. **Section 37** amends the definition of “public place” in sections 47 and 49 of the 1995 Act so that a public place means any place other than domestic premises, school premises or prisons. “Domestic premises” specifically excludes the common parts of a shared property. This means that the offences in sections 47 and 49 of the 1995 Act may be committed by possession of an offensive weapon or a knife on the common parts of shared properties such as common landings in tenement blocks of flats.
177. Sections 47, 49, 49A and 49C of the 1995 Act do not currently provide the same defences to the offences created by those provisions. A person charged with an offence under section 47 of the 1995 Act is provided with a defence if they can prove they had “lawful authority or reasonable excuse” for carrying an offensive weapon in a public place. By contrast, someone charged with an offence under section 49 is provided with a defence if they can prove that they had “good reason or lawful authority” for carrying a knife in a public place.
178. **Section 37** amends the statutory defences available to those charged with an offence under sections 47, 49, 49A, and 49C so that the same defence is applicable to each offence. That defence is that the person is able to show that they had a reasonable excuse or lawful authority to be in possession of the offensive weapon or knife, as the case may be.
179. The penalties for offences relating to obstruction or concealment detailed in sections 48(2) and 50(4) differ. The maximum penalty under section 48(2) is a level 4 fine while the maximum penalty under section 50(4) is a level 3 fine. Section 37 increases the maximum penalty under section 50(4) of the 1995 Act to a level 4 fine in order to align that provision with the similar offence under section 48(2) of the 1995 Act.