

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Criminal Procedure

Section 52 – Prosecution of children

253. [Section 52](#) implements in part the Scottish Law Commission’s Report on Age of Criminal Responsibility, published in 2002.
254. This section implements Recommendation 2 of the Scottish Law Commission’s Report by inserting a new section 41A into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) prohibiting the prosecution of any child under the age of 12. The age limit applies at the commencement of the prosecution. In addition to the SLC’s recommendation, subsection (2) prevents persons over the age of 12 being prosecuted for an offence they committed under that age.
255. The prosecution of children between 12 and 16 would remain subject to the existing statutory provisions, requirements of the European Convention on Human Rights, and the current practices and directions of the Lord Advocate and the Crown Office. The main statutory provision limiting prosecution of children under 16 is section 42(1). This provides that no child under 16 is to be prosecuted except on the instructions of the Lord Advocate or at his instance and that any prosecution is to take place in the High Court or a sheriff court. Subsection (3) makes consequential amendments to section 42 so that it will apply to children aged between 12 and 16.
256. Subsection (4) makes a consequential amendment to section 234AA(2)(b), which provides that the criminal courts can make an Antisocial Behaviour Order only where at the time when he committed the offence, the offender was at least 12 years of age. In light of the limit on prosecution established by section 41A, this provision is no longer necessary and is repealed.
257. The existing rule in section 41 of the 1995 Act that it shall be conclusively presumed that no child under the age of eight years can be guilty of any offence is retained.