



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 2

CRIMINAL LAW

Serious organised crime

28 Involvement in serious organised crime

- (1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.
- (2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person—
 - (a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and
 - (b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.
- (3) For the purposes of this section and sections 29 to 31—

“serious organised crime” means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,

“serious offence” means an indictable offence—

 - (a) committed with the intention of obtaining a material benefit for any person, or
 - (b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and

“material benefit” means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.
- (4) A person guilty of an offence under subsection (1) is liable—

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

Commencement Information

I1 S. 28 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

29 Offences aggravated by connection with serious organised crime

- (1) This subsection applies where it is—
 - (a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with serious organised crime, and
 - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated by a connection with serious organised crime if the person committing the offence is motivated (wholly or partly) by the objective of committing or conspiring to commit serious organised crime.
- (3) It is immaterial whether or not in committing the offence the person in fact enables the person or another person to commit serious organised crime.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with serious organised crime.
- (5) Where subsection (1) applies, the court must—
 - (a) state on conviction that the offence is aggravated by a connection with serious organised crime,
 - (b) record the conviction in a way that shows that the offence was so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.

Commencement Information

I2 S. 29 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

30 Directing serious organised crime

- (1) A person commits an offence by directing another person—
 - (a) to commit a serious offence,
 - (b) to commit an offence aggravated by a connection with serious organised crime under section 29.
- (2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (3) For the purposes of subsections (1) and (2), a person directs another person to commit an offence if the person—
 - (a) does something, or a series of things, to direct the person to commit the offence,
 - (b) intends that the thing or things done will persuade the person to commit the offence, and
 - (c) intends that the thing or things done will—
 - (i) result in a person committing serious organised crime, or
 - (ii) enable a person to commit serious organised crime.
- (4) The person directing the other person commits an offence under subsection (1) whether or not the other person in fact commits—
 - (a) a serious offence, or
 - (b) an offence aggravated by a connection with serious organised crime under section 29.
- (5) In this section “directing” a person to commit an offence includes inciting the person to commit the offence.
- (6) A person guilty of an offence under subsection (1) or (2) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

Commencement Information

I3 S. 30 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

31 Failure to report serious organised crime

- (1) This section applies where—
 - (a) a person (“the person”) knows or suspects that another person (“the other person”) has committed—
 - (i) an offence under section 28 or 30, or
 - (ii) an offence which is aggravated by a connection with serious organised crime under section 29, and
 - (b) that knowledge or suspicion originates from information obtained—
 - (i) in the course of the person's trade, profession, business or employment, or
 - (ii) as a result of a close personal relationship between the person and the other person.
- (2) In the case of knowledge or suspicion originating from information obtained by the person as a result of a close personal relationship between the person and the other person, this section applies only where the person has obtained a material benefit as a result of the commission of serious organised crime by the other person.
- (3) The person commits an offence if the person does not disclose to a constable—
 - (a) the person's knowledge or suspicion, and

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (b) the information on which that knowledge or suspicion is based.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person had a reasonable excuse for not making the disclosure.
- (5) Subsection (3) does not require disclosure by a person who is a professional legal adviser (an “adviser”) of—
 - (a) information which the adviser obtains in privileged circumstances, or
 - (b) knowledge or a suspicion based on information obtained in privileged circumstances.
- (6) For the purpose of subsection (5), information is obtained by an adviser in privileged circumstances if it comes to the adviser, otherwise than for the purposes of committing serious organised crime—
 - (a) from a client (or from a client's representative) in connection with the provision of legal advice by the adviser to that person,
 - (b) from a person seeking legal advice from the adviser (or from that person's representative), or
 - (c) from a person, for the purpose of actual or contemplated legal proceedings.
- ^{F1}(7)
- (8) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

Textual Amendments

- F1** S. 31(7) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 8 Pt. 1](#); [S.S.I. 2013/51](#), [art. 2](#) (with transitional provisions and savings in [S.S.I. 2013/121](#))

Commencement Information

- I4** S. 31 in force at 13.12.2010 by [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#)

Genocide, crimes against humanity and war crimes

32 Genocide, crimes against humanity and war crimes: UK residents

- (1) The International Criminal Court (Scotland) Act 2001 (asp 13) is amended as follows.
- (2) After section 8, insert—

“8A Meaning of “United Kingdom national” and “United Kingdom resident”

- (1) In this Part—
 - “United Kingdom national” means—
 - (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen,

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or
 - (c) a British protected person within the meaning of that Act,
- “United Kingdom resident” means a person who is resident in the United Kingdom.
- (2) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—
- (a) an individual who has indefinite leave to remain in the United Kingdom,
 - (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom,
 - (c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom,
 - (d) an individual who has made an asylum claim, or a human rights claim, which has been granted,
 - (e) any other individual who has made an asylum claim or a human rights claim (whether or not the claim has been determined) and who is in the United Kingdom,
 - (f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—
 - (i) the application or claim has been granted, or
 - (ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined),
 - (g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 (c.42) or for practical reasons,
 - (h) an individual—
 - (i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 (c.77) by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,
 - (ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and
 - (iii) who is in the United Kingdom,
 - (i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33),
 - (j) an individual who is detained in lawful custody in the United Kingdom.
- (3) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—
- (a) the periods during which the individual is, has been or intends to be in the United Kingdom,

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (b) the purposes for which the individual is, has been or intends to be in the United Kingdom,
- (c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and
- (d) whether the individual has an interest in residential property located in the United Kingdom.

(4) In this section—

“asylum claim” means—

- (a) a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom,
- (b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom,

“Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998,

“detained in lawful custody” means—

- (a) detained in pursuance of a sentence of imprisonment or detention, a sentence of custody for life or a detention and training order,
- (b) remanded in or committed to custody by an order of a court,
- (c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 (c.31) or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984 (c.47),
- (d) detained under Part 3 of the Mental Health Act 1983 (c.20) or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c.84) or section 6 or 14 of the Criminal Appeal Act 1968 (c.19) (hospital orders etc.),
- (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (c.46) (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995,
- (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 (SI 1986/595) or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

“human rights claim” means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person's Convention rights,

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention,

“serious harm” has the meaning given by article 15 of Council Directive [2004/83/EC](#) on minimum standards for the qualification and status of

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

- (5) In this section, a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.
- (6) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).”.
- (3) In section 28(1)(interpretation), the definitions of “United Kingdom national” and “United Kingdom resident” are repealed.

Commencement Information

I5 S. 32 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

33 Genocide, crimes against humanity and war crimes: retrospective application

After section 9 of the International Criminal Court (Scotland) Act 2001 (asp 13) insert—

“9A Retrospective application of certain offences

- (1) Section 1 of this Act applies to acts committed on or after 1 January 1991.
- (2) But that section does not apply to an act committed before 17 December 2001 which constitutes a crime against humanity or a war crime within article 8.2(b) or (e) unless, at the time the act was committed, it amounted in the circumstances to a criminal offence under international law.
- (3) Section 2 of this Act applies to conduct engaged in on or after 1 January 1991.
- (4) The references in subsections (1), (3) and (5) of that section to an offence include an act or conduct that would not constitute an offence but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant offence applies—
- (a) to conduct engaged in on or after 1 January 1991, and
 - (b) even if the act or conduct constituting the relevant offence would not constitute such an offence but for this section.
- (6) But section 2 of this Act, and any enactment or rule of law relating to an offence ancillary to a relevant offence, do not apply to—
- (a) conduct engaged in before 17 December 2001, or
 - (b) conduct engaged in on or after that date which was ancillary to an act or conduct that—
 - (i) was committed or engaged in before that date, and
 - (ii) would not constitute a relevant offence but for this section,unless, at the time the conduct was engaged in, it amounted in the circumstances to a criminal offence under international law.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (7) Section 5 of this Act, so far as it has effect in relation to relevant offences, applies—
- (a) to failures to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred on or after 1 January 1991, and
 - (b) even if the act or conduct constituting the relevant offence would not constitute an offence but for this section.
- (8) But section 5 of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section, “relevant offence” means an offence under section 1 or 2 of this Act or an offence ancillary to such an offence.

9B Provision supplemental to section 9A: modification of penalties

- (1) This section applies in relation to—
- (a) an offence under section 1 of this Act on account of an act committed before 17 December 2001 constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969,
 - (b) an offence under section 1 of this Act on account of an act committed before 1 September 2001 constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (c.52) (grave breaches of the Conventions),
 - (c) an offence ancillary to an offence within paragraph (a) or (b) above.
- (2) Section 3(5) of this Act has effect in relation to such an offence as if for “30 years” there were substituted “ 14 years ”.”.

Commencement Information

I6 S. 33 in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

Articles banned in prison

34 Articles banned in prison

- (1) In section 41 of the Prisons (Scotland) Act 1989 (c.45) (unlawful introduction of tobacco etc. into prison)—
- (a) for subsection (1) substitute—
 - “(1) A person commits an offence if without reasonable excuse the person—
 - (a) brings or otherwise introduces into a prison a proscribed article (or attempts to do so),

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (b) takes out of or otherwise removes from a prison a proscribed article (or attempts to do so).
- (1A) A person who commits an offence under this section—
- (a) where the proscribed article falls within paragraphs (b) to (f) of subsection (9A), is liable on summary conviction to imprisonment for a period not exceeding 30 days or to a fine not exceeding level 3 on the standard scale (or to both),
 - (b) where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), is liable to the penalties set out in section 41ZA(5).”
- (b) in subsection (2), for “the foregoing subsection” substitute “ subsection (1) (a), ”,
 - (c) in subsection (2A)—
 - (i) for “article mentioned in paragraphs (a) to (e) of subsection (1) above” substitute “ proscribed article ”, and
 - (ii) for “article mentioned in those paragraphs” substitute “ proscribed article ”,
 - (d) in subsection (2B)(c), for the words from “mentioned” to “that subsection)” substitute “ that is a proscribed article falling within paragraph (d) to (f) of subsection (9A) (but not also within paragraph (b) or (c) of that subsection), or falling within paragraph (a) of that subsection ”,
 - (e) in subsection (3), for “subsection (1) above” substitute “ this section or section 41ZA ”,
 - (f) after subsection (9) insert—

“(9A) In this section, a “proscribed article” is—

 - (a) any personal communication device,
 - (b) any drug,
 - (c) any firearm or ammunition,
 - (d) any offensive weapon,
 - (e) any article which has a blade or is sharply pointed,
 - (f) any article (or other article) which is a prohibited article within the meaning of rules made under section 39.

(9B) In this section, a “personal communication device” includes—

 - (a) a mobile telephone,
 - (b) any other portable electronic device that is capable of transmitting or receiving a communication of any kind,
 - (c) any—
 - (i) component part of a device mentioned in paragraph (a) or (b),
 - (ii) article that is designed or adapted for use with such a device.”, and
 - (g) in subsection (10), in the definition of “offensive weapon”, for “the Prevention of Crime Act 1953” substitute “ section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) ”.
- (2) After section 41 of that Act insert—

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

“41ZA Further provision for communication devices

- (1) A person commits an offence if, knowing another person to be a prisoner, the person gives a personal communication device to the prisoner while the prisoner is inside a prison.
- (2) A person commits an offence if, by means of a personal communication device, the person—
 - (a) transmits, from inside a prison, a communication of any kind, or
 - (b) intentionally receives, when inside a prison, a communication of any kind.
- (3) A person commits an offence if, while inside a prison, the person is in possession of a personal communication device.
- (4) A person who commits an offence under subsections (1) to (3) is liable to the penalties set out in subsection (5).
- (5) The penalties are—
 - (a) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine (or to both),
 - (b) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both).
- (6) In this section, “personal communication device” is to be construed in accordance with section 41(9B).

41ZB Exceptions as to communication devices

- (1) No offence—
 - (a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
 - (b) under section 41ZA(1) to (3),is committed by a person where subsection (2) applies.
- (2) This subsection applies—
 - (a) if (and in so far as) the act which constitutes the offence is done by the person at or in relation to a designated area at the prison, or
 - (b) if (and in so far as) the person is acting in circumstances to which an authorisation under subsection (8) applies.
- (3) No offence—
 - (a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
 - (b) under section 41ZA(2) or (3),is committed by a prison officer (or other prison official) where subsection (4) applies.
- (4) This subsection applies—

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (a) if the device is one supplied to the person specifically for use in the course of the person's official duties at the prison, or
 - (b) if (and in so far as) the person is acting in accordance with those duties.
- (5) No offence under section 41ZA(3) is committed by a person other than a prisoner if in the circumstances there is a reasonable excuse for the possession.
- (6) The defences mentioned in subsection (7) apply in any proceedings for an offence under—
 - (a) section 41(1), where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
 - (b) section 41ZA(1) to (3).
- (7) In relation to such an offence, it is a defence for the accused person to show that—
 - (a) the person reasonably believed that the person was acting in circumstances to which an authorisation under subsection (8) applied (even though no such authorisation did apply), or
 - (b) in the circumstances there was an overriding public interest which justified the person's actions.
- (8) An authorisation under this subsection is a written authorisation that is given—
 - (a) in favour of any person specified in the authorisation (or person of a specified description),
 - (b) for a specified purpose, and
 - (c) by—
 - (i) the governor or director of a prison in relation to activities at that prison, or
 - (ii) the Scottish Ministers in relation to activities at any specified prison.
- (9) A designated area referred to in subsection (2)(a) is any part of the prison, used solely or principally for an administrative or similar purpose, that is specified as such by a written designation given under this paragraph by the governor or director of the prison.
- (10) Prison officers (or other prison officials) who are Crown servants or agents do not benefit from Crown immunity in relation to an offence under—
 - (a) section 41, where the proscribed article falls within paragraph (a) of subsection (9A) of that section (whether or not also within paragraph (f) of that subsection), or
 - (b) section 41ZA.”.

Commencement Information

I7 S. 34 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

Crossbows, knives etc.

35 Sale and hire of crossbows to persons under 18

- (1) The Crossbows Act 1987 (c.32) is amended as follows.
- (2) In section 1 (sale and letting on hire), the words from “unless” to the end are repealed.
- (3) After that section insert—

“1A Defences

- (1) It is a defence for a person charged with an offence under section 1 (referred to in this section as “the accused”) to show that—
 - (a) the accused believed the person to whom the crossbow or part was sold or let on hire (referred to in this section as “the purchaser or hirer”) to be aged 18 or over, and
 - (b) either—
 - (i) the accused had taken reasonable steps to establish the purchaser or hirer's age, or
 - (ii) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was under the age of 18.
 - (2) For the purposes of subsection (1)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—
 - (a) the accused was shown any of the documents mentioned in subsection (3), and
 - (b) the document would have convinced a reasonable person.
 - (3) Those documents are any document bearing to be—
 - (a) a passport,
 - (b) a European Union photocard driving licence, or
 - (c) such other document, or a document of such other description, as the Scottish Ministers may by order made by statutory instrument prescribe.
 - (4) A statutory instrument containing an order under subsection (3)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (4) After section 3 insert—

“3A Test purchasing

- (1) A person under the age of 18 who buys or hires, or attempts to buy or hire, a crossbow or a part of a crossbow does not commit an offence under section 2 or 3 if the person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 1.
- (2) A chief constable may authorise a person under the age of 18 to buy or hire, or attempt to buy or hire, a crossbow or a part of a crossbow only if satisfied that all reasonable steps have been or will be taken to—
 - (a) ensure the person's safety, and

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

(b) avoid any risk to the person's welfare.”.

Commencement Information

18 S. 35 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

36 Sale and hire of knives and certain other articles to persons under 18

(1) Section 141A of the Criminal Justice Act 1988 (c.33) (sale of knives and certain articles with blade or point to persons under eighteen) is amended as follows.

(2) In subsection (1), after “sells” insert “ or lets on hire ”.

(3) In subsection (3A), after “sell” insert “ or let on hire ”.

(4) For subsection (4) substitute—

“(4) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—

(a) the accused believed the person to whom the article was sold or let on hire (referred to in this section as “the purchaser or hirer”) to be of or above the relevant age, and

(b) either—

(i) the accused had taken reasonable steps to establish the purchaser or hirer's age, or

(ii) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was aged under the relevant age.

(4A) For the purposes of subsection (4)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4B), and

(b) the document would have convinced a reasonable person.

(4B) Those documents are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as the Scottish Ministers may by order prescribe.

(4C) In subsection (4), “the relevant age” is—

(a) in the case where the article is a knife or knife blade designed for domestic use, 16 years, and

(b) in any other case, 18 years.”.

Commencement Information

19 S. 36 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

Offensive weapons etc.

37 Offensive weapons etc.

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.

(2) In section 47 (prohibition of the carrying of offensive weapons)—

- (a) in subsection (1), the words from “without” to “him,” are repealed,
- (b) after subsection (1), insert—

“(1A) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.”, and

- (c) for subsection (4), substitute—

“(4) In this section—

“offensive weapon” means any article—

- (a) made or adapted for use for causing injury to a person, or
- (b) intended, by the person having the article, for use for causing injury to a person by—
 - (i) the person having it, or
 - (ii) some other person,

“public place” means any place other than—

- (a) domestic premises,
- (b) school premises (within the meaning of section 49A(6)),
- (c) a prison (within the meaning of section 49C(7)),

“domestic premises” means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).”.

(3) In section 49 (offence of having in public place article with blade or point)—

- (a) in subsection (4), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”,
- (b) in subsection (5), for “prove” substitute “show”, and
- (c) for subsection (7), substitute—

“(7) In this section, “public place” has the same meaning as in section 47(4).”.

(4) In section 49A (offence of having article with blade or point (or offensive weapon) on school premises)—

- (a) in subsection (3), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”, and
- (b) in subsection (4), for “prove” substitute “show”.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (5) In section 49C(2) (offence of having offensive weapon etc. in prison), for the words “prove that he had good reason” substitute “ show that the person had a reasonable excuse ”.
- (6) In section 50(4) (extension of constable's power to stop, search and arrest without warrant), for “3” substitute “ 4 ”.

Commencement Information

I10 S. 37 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

Threatening or abusive behaviour

38 Threatening or abusive behaviour

- (1) A person (“A”) commits an offence if—
 - (a) A behaves in a threatening or abusive manner,
 - (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
 - (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.
- (2) It is a defence for a person charged with an offence under subsection (1) to show that the behaviour was, in the particular circumstances, reasonable.
- (3) Subsection (1) applies to—
 - (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and
 - (b) behaviour consisting of—
 - (i) a single act, or
 - (ii) a course of conduct.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

Commencement Information

I11 S. 38 in force at 6.10.2010 by S.S.I. 2010/339, art. 2

Stalking

39 Offence of stalking

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (2) For the purposes of subsection (1), A stalks B where—
- (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A's course of conduct causes B to suffer fear or alarm.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
- (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime, or
 - (c) was, in the particular circumstances, reasonable.
- (6) In this section—
- “conduct” means—
- (a) following B or any other person,
 - (b) contacting, or attempting to contact, B or any other person by any means,
 - (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
 - (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
 - (e) entering any premises,
 - (f) loitering in any place (whether public or private),
 - (g) interfering with any property in the possession of B or of any other person,
 - (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
 - (i) watching or spying on B or any other person,
 - (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and
- “course of conduct” involves conduct on at least two occasions.
- (7) A person convicted of the offence of stalking is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (8) Subsection (9) applies where, in the trial of a person (“the accused”) charged with the offence of stalking, the jury or, in summary proceedings, the court—
- (a) is not satisfied that the accused committed the offence, but
 - (b) is satisfied that the accused committed an offence under section 38(1).

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (9) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under section 38(1).

Commencement Information

I12 S. 39 in force at 13.12.2010 by [S.S.I. 2010/413](#), art. 2, [Sch.](#)

[^{F2}39A Offence of stalking committed outside the United Kingdom

- (1) If—
- (a) a person's course of conduct consists of or includes conduct in a country outside the United Kingdom,
 - (b) the course of conduct would constitute the offence of stalking if it occurred in Scotland, and
 - (c) the person is a United Kingdom national or is habitually resident in Scotland, then the person commits that offence.
- (2) If a person's course of conduct consists entirely of conduct in a country outside the United Kingdom—
- (a) the person may be prosecuted, tried and punished for an offence of stalking by virtue of this section—
 - (i) in any sheriff court district in Scotland in which the person is apprehended or is in custody, or
 - (ii) in such sheriff court district as the Lord Advocate may determine, as if the offence had been committed entirely in that district, and
 - (b) the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed entirely in that district.
- (3) In this section—
- “country” includes territory;
 - “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation);
 - “United Kingdom national” means an individual who is—
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject, or
 - (c) a British protected person within the meaning of that Act.]

Textual Amendments

F2 [S. 39A](#) inserted (29.6.2021) by [Domestic Abuse Act 2021 \(c. 17\)](#), s. 90(6), [Sch. 3 para. 6](#); [S.S.I. 2021/239](#), reg. 2

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

Sexual offences

40 Certain sexual offences by non-natural persons

- (1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) is amended as follows.
- (2) At the end of each of the following provisions insert “ or a fine or both ”
 - (a) subsections (4)(b) and (5)(b) of section 9 (paying for sexual services of a child),
 - (b) subsection (2)(b) of section 10 (causing or inciting provision by child of sexual services or child pornography),
 - (c) subsection (2)(b) of section 11 (controlling a child providing sexual services or involved in pornography), and
 - (d) subsection (2)(b) of section 12 (arranging or facilitating provision by child of sexual services or child pornography).
- (3) After section 14 insert—

“14A Offences by bodies corporate etc.

- (1) Subsection (2) applies where an offence under sections 10 to 12 committed—
 - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager, secretary or other similar officer of the body corporate, or
 - (ii) purports to act in any such capacity,
 - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner, or
 - (ii) purports to act in that capacity,
 - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association, or
 - (ii) purports to act in the capacity of a person so concerned.
- (2) The individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, this section applies in relation to acts and defaults of a member in connection with the member's function of management as if the member were a director of the body corporate.”

Commencement Information

I13 S. 40 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with art. 4)

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

41 Indecent images of children

- (1) In the 1982 Act—
- (a) in section 52 (indecent photographs etc. of children)—
 - (i) in subsection (2C)(b), for “a pseudo-photograph” substitute “an indecent pseudo-photograph”, and
 - (ii) after subsection (8) add—

“(9) In this section, references to a photograph also include a tracing or other image, whether made by electronic or other means (of whatever nature), which is not itself a photograph or pseudo-photograph but which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both).
 - (10) And subsection (2B) applies in relation to such an image as it applies in relation to a pseudo-photograph.”, and
 - (b) in section 52A (possession of indecent photographs of children), in subsection (4), for “and (8)” substitute “and (8) to (10)”.
- (2) In Schedule 1 to the 1995 Act (offences against children under the age of 17 years to which special provisions apply), in paragraph 2B, after “photograph” insert “or pseudo-photograph”.
- (3) In Schedule 3 to the Sexual Offences Act 2003 (c.42) (list of sexual offences for the purposes of Part 2)—
- (a) in paragraph 44, for the words from “the” where it third occurs to the end substitute—

“(a) the prohibited goods included indecent photographs or pseudo-photographs of persons under 16 and the offender—

 - (i) was 18 or over, or
 - (ii) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months, or

(b) in imposing sentence or otherwise disposing of the case, the court determines that it is appropriate that the offender be regarded, for the purposes of Part 2 of this Act, as a person who has committed an offence under this paragraph.”, and
 - (b) in paragraph 97(b), for “and (8)” substitute “and (8) to (10)”.

Commencement Information

I14 S. 41 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

42 Extreme pornography

- (1) In section 51 of the 1982 Act (obscene material)—
- (a) for subsection (3) substitute—

“(3) A person guilty of an offence under this section is liable—

 - (a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (b) on conviction on indictment—
 - (i) in a case where the obscene material is or includes an extreme pornographic image, to imprisonment for a period not exceeding 5 years or to a fine or to both, or
 - (ii) in any other case, to imprisonment for a period not exceeding 3 years or to a fine or to both.”, and
 - (b) in subsection (8)—
 - (i) before the definition of “material” insert—
 - ““extreme pornographic image” is to be construed in accordance with section 51A,”, and
 - (ii) the definition of “prescribed sum” is repealed.
- (2) After section 51 of that Act insert—

“51A Extreme pornography

- (1) A person who is in possession of an extreme pornographic image is guilty of an offence under this section.
- (2) An extreme pornographic image is an image which is all of the following—
 - (a) obscene,
 - (b) pornographic,
 - (c) extreme.
- (3) An image is pornographic if it is of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal.
- (4) Where (as found in the person's possession) an image forms part of a series of images, the question of whether the image is pornographic is to be determined by reference to—
 - (a) the image itself, and
 - (b) where the series of images is such as to be capable of providing a context for the image, its context within the series of images,
 and reference may also be had to any sounds accompanying the image or the series of images.
- (5) So, for example, where—
 - (a) an image forms an integral part of a narrative constituted by a series of images, and
 - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal,
 the image may, by virtue of being part of that narrative, be found not to be pornographic (even if it may have been found to be pornographic where taken by itself).
- (6) An image is extreme if it depicts, in an explicit and realistic way any of the following—
 - (a) an act which takes or threatens a person's life,
 - (b) an act which results, or is likely to result, in a person's severe injury,

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (c) rape or other non-consensual penetrative sexual activity,
 - (d) sexual activity involving (directly or indirectly) a human corpse,
 - (e) an act which involves sexual activity between a person and an animal (or the carcase of an animal).
- (7) In determining whether (as found in the person's possession) an image depicts an act mentioned in subsection (6), reference may be had to—
- (a) how the image is or was described (whether the description is part of the image itself or otherwise),
 - (b) any sounds accompanying the image,
 - (c) where the image forms an integral part of a narrative constituted by a series of images—
 - (i) any sounds accompanying the series of images,
 - (ii) the context provided by that narrative.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 3 years or to a fine or to both.
- (9) In this section, an “image” is—
- (a) a moving or still image (made by any means), or
 - (b) data (stored by any means) which is capable of conversion into such an image.

51B Extreme pornography: excluded images

- (1) An offence is not committed under section 51A if the image is an excluded image.
- (2) An “excluded image” is an image which is all or part of a classified work.
- (3) An image is not an excluded image where—
- (a) it has been extracted from a classified work, and
 - (b) it must be reasonably be assumed to have been extracted (whether with or without other images) from the work solely or principally for the purpose of sexual arousal.
- (4) In determining whether (as found in the person's possession) the image was extracted from the work for the purpose mentioned in subsection (3)(b), reference may be had to—
- (a) how the image was stored,
 - (b) how the image is or was described (whether the description is part of the image itself or otherwise),
 - (c) any sounds accompanying the image,
 - (d) where the image forms an integral part of a narrative constituted by a series of images—
 - (i) any sounds accompanying the series of images,
 - (ii) the context provided by that narrative.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

(5) In this section—

“classified work” means a video work in respect of which a classification certificate has been issued by a designated authority,
 “classification certificate” and “video work” have the same meanings as in the Video Recordings Act 1984 (c.39),
 “designated authority” means an authority which has been designated by the Secretary of State under section 4 of that Act,
 “extract” includes an extract of a single image,
 “image” is to be construed in accordance with section 51A.

51C Extreme pornography: defences

- (1) Where a person (“A”) is charged with an offence under section 51A, it is a defence for A to prove one or more of the matters mentioned in subsection (2).
- (2) The matters are—
 - (a) that A had a legitimate reason for being in possession of the image concerned,
 - (b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image,
 - (c) that A—
 - (i) was sent the image concerned without any prior request having been made by or on behalf of A, and
 - (ii) did not keep it for an unreasonable time.
- (3) Where A is charged with an offence under section 51A, it is a defence for A to prove that—
 - (a) A directly participated in the act depicted, and
 - (b) subsection (4) applies.
- (4) This subsection applies—
 - (a) in the case of an image which depicts an act described in subsection (6)(a) of that section, if the act depicted did not actually take or threaten a person's life,
 - (b) in the case of an image which depicts an act described in subsection (6)(b) of that section, if the act depicted did not actually result in (nor was it actually likely to result in) a person's severe injury,
 - (c) in the case of an image which depicts an act described in subsection (6)(c) of that section, if the act depicted did not actually involve non-consensual activity,
 - (d) in the case of an image which depicts an act described in subsection (6)(d) of that section, if what is depicted as a human corpse was not in fact a corpse,
 - (e) in the case of an image which depicts an act described in subsection (6)(e) of that section, if what is depicted as an animal (or the carcase of an animal) was not in fact an animal (or a carcase).
- (5) The defence under subsection (3) is not available if A shows, gives or offers for sale the image to any person who was not also a direct participant in the act depicted.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (6) In this section “image” and “extreme pornographic image” are to be construed in accordance with section 51A.”.
- (3) In Schedule 3 to the Sexual Offences Act 2003 (c.42) (sexual offences for the purposes of Part 2 of that Act), after paragraph 44 insert—

- “44A An offence under section 51A of the Civic Government (Scotland) Act 1982 (c.45) (possession of extreme pornography) if—
- (a) the offender—
 - (i) was 18 or over, and
 - (ii) is or has been sentenced in respect of the offence to imprisonment for a term of more than 12 months, and
 - (b) in imposing sentence, the court determines that it is appropriate that Part 2 of this Act should apply in relation to the offender.”.

Commencement Information

I15 S. 42 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

43 Voyeurism: additional forms of conduct

- (1) The Sexual Offences (Scotland) Act 2009 (asp 9) is amended as follows.

- (2) In section 9 (voyeurism)—

- (a) after subsection (4), insert—

“(4A) The fourth thing is that A—

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A—

- (a) without another person (“B”) consenting, and
- (b) without any reasonable belief that B consents,

records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.”.

- (b) in subsection (5)—

- (i) for “fourth” substitute “ sixth ”, and
- (ii) for paragraph (b), substitute—

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- “(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”, and
- (c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B) ”.
- (3) In section 10(2) (interpretation of section 9), after “section 9(3)” insert “ and (4A) ”.
- (4) In section 26 (voyeurism towards a young child)—
- (a) after subsection (4), insert—
- “(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe—
- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
- (b) the underwear covering B's genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) The fifth thing is that A records an image beneath B's clothing of—
- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
- (b) the underwear covering B's genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.”,
- (b) in subsection (5)—
- (i) for “fourth” substitute “ sixth ”, and
- (ii) for paragraph (b), substitute—
- “(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”,
- (c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B) ”, and
- (d) in subsection (8)—
- (i) after “section 9(3)” insert “, (4A) ”, and
- (ii) after “subsections (3)” insert “, (4A) ”.
- (5) In section 36 (voyeurism towards an older child)—
- (a) after subsection (4), insert—
- “(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe—
- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
- (b) the underwear covering B's genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (4B) The fifth thing is that A records an image beneath B's clothing of—
- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (b) the underwear covering B's genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.”
- (b) in subsection (5)—
- (i) for “fourth” substitute “ sixth ”, and
 - (ii) for paragraph (b), substitute—
“(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”
- (c) in subsection (7), for “and (4)” substitute “ , (4), (4A) and (4B) ”, and
- (d) in subsection (8)—
- (i) after “section 9(3)” insert “ , (4A) ”, and
 - (ii) after “subsections (3)” insert “ , (4A) ”.

Commencement Information

I16 S. 43 in force at 1.12.2010 by S.S.I. 2010/357, art. 2(b)

44 Sexual offences: defences in relation to offences against older children

In section 39 of the Sexual Offences (Scotland) Act 2009 (asp 9) (defences in relation to offences against older children), in subsection (4)(c), after “section 30(2)(d)” insert “ or (e) ”.

Commencement Information

I17 S. 44 in force at 1.12.2010 by S.S.I. 2010/357, art. 2(b)

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

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.
- (2) In section 11 (trading in prostitution and brothel-keeping)—
- (a) in subsection (1), for the words from “liable” to the end substitute “ guilty of an offence and liable to the penalties set out in subsection (1A) ”,
 - (b) after that subsection insert—
“(1A) A person—
 - (a) guilty of the offence set out in subsection (1)(a) is liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (ii) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,
 - (b) guilty of the offence set out in subsection (1)(b) is liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding two years,
 - (ii) on summary conviction, to imprisonment for a term not exceeding 12 months.”,
 - (c) in subsection (4), for “subsection (1)” substitute “ subsection (1A)(a) ”, and
 - (d) for subsection (6) substitute—
 - “(6) A person guilty of an offence under subsection (5) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.
- (3) In section 13(9) (living on earnings of another from male prostitution), for paragraphs (a) and (b) substitute—
 - “(a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.

Commencement Information

I18 S. 45 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

People trafficking

46 People trafficking

- (1) In section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.)—
 - (a) in subsection (1)(a)—
 - (i) after “arrival in” insert “ or the entry into ”, and
 - (ii) after “such arrival” insert “ or entry ”,
 - (b) after subsection (1) insert—
 - “(1A) A person to whom subsection (6) applies commits an offence if the person arranges or facilitates—
 - (a) the arrival in or the entry into a country (other than the United Kingdom), or travel there (whether or not following such arrival or entry) by, an individual and—
 - (i) intends to exercise control over prostitution by the individual or to involve the individual in the making or production of obscene or indecent material; or

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (ii) believes that another person is likely to exercise such control or so to involve the individual, there or elsewhere; or
 - (b) the departure from a country (other than the United Kingdom) of an individual and—
 - (i) intends to exercise such control or so to involve the individual; or
 - (ii) believes that another person is likely to exercise such control or so to involve the individual, outwith the country.”,
 - (c) in subsection (2), for “subsection (1)” substitute “ subsections (1) and (1A) ”,
 - (d) for subsection (4) substitute—
 - “(4) Subsections (1) and (1A) apply to anything done in or outwith the United Kingdom.”,
 - (e) for subsection (5) substitute—
 - “(5) A person may be prosecuted, tried and punished for any offence to which this section applies—
 - (a) in any sheriff court district in which the person is apprehended or is in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine,as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).”,
 - and
 - (f) in subsection (6)—
 - (i) the word “and” immediately following paragraph (e) is repealed, and
 - (ii) after paragraph (f) insert—
 - “(g) a person who at the time of the offence was habitually resident in Scotland, and
 - (h) a body incorporated under the law of a part of the United Kingdom.”.
- (2) In section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation)—
 - (a) in subsection (1), after “arrival in” insert “ or the entry into ”,
 - (b) in subsection (2), the words from “in” where it first occurs to “committed” are repealed,
 - (c) after subsection (3) insert—
 - “(3A) A person to whom section 5(2) applies commits an offence if—
 - (a) in relation to an individual (the “passenger”), he arranges or facilitates—
 - (i) the arrival in or the entry into a country other than the United Kingdom of the passenger,
 - (ii) travel by the passenger within a country other than the United Kingdom,

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (iii) the departure of the passenger from a country other than the United Kingdom, and
 - (b) he—
 - (i) intends to exploit the passenger, or
 - (ii) believes that another person is likely to exploit the passenger,
 (wherever the exploitation is to occur).”, and
 - (d) in subsection (4)—
 - (i) in paragraph (b), the words from “as a result” to “Act 2004,” become sub-paragraph (i),
 - (ii) immediately following that sub-paragraph insert “or
 - (ii) which, were it done in Scotland, would constitute an offence mentioned in sub-paragraph (i),”,
 - (iii) after paragraph (b) insert—
 - “(ba) he is encouraged, required or expected to do anything in connection with the removal of any part of a human body—
 - (i) as a result of which he or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (b)(i)), or
 - (ii) which, were it done in Scotland, would constitute such an offence.”, and
 - (iv) for paragraph (d) substitute—
 - “(d) another person uses or attempts to use him for any purpose within sub-paragraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose on the grounds that—
 - (i) he is mentally or physically ill or disabled, he is young, or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.”.
- (3) In section 5 of that Act—
 - (a) in subsection (1), for the words from “(3)” to the end substitute “ (3A) of section 4 apply to anything done in or outwith the United Kingdom. ”,
 - (b) in subsection (2)—
 - (i) the word “and” immediately following paragraph (e) is repealed, and
 - (ii) after paragraph (f) insert—
 - “(g) a person who at the time of the offence was habitually resident in Scotland, and
 - (h) a body incorporated under the law of a part of the United Kingdom.”, and
 - (c) after subsection (2) insert—

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

“(2A) A person may be prosecuted, tried and punished for any offence to which section 4 applies—

- (a) in any sheriff court district in which the person is apprehended or is in custody, or
- (b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).

(2B) In subsection (2A), “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (interpretation).”.

Commencement Information

I19 S. 46 in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#) (with [Sch.](#))

Slavery, servitude and forced or compulsory labour

F3 47 **Slavery, servitude and forced or compulsory labour**

.....

Textual Amendments

F3 S. 47 repealed (17.12.2016) by [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) (asp 12), s. 45(2), [sch. para. 5](#) (with s. 44); [S.S.I. 2016/385](#), reg. 2 (with reg. 3)

Fraud and embezzlement

48 **Alternative charges for fraud and embezzlement**

In Schedule 3 to the 1995 Act (indictments and complaints), after paragraph 8(3) insert—

“(3A) Under an indictment or a complaint for breach of trust and embezzlement, an accused may be convicted of falsehood, fraud and wilful imposition.

(3B) Under an indictment or a complaint for falsehood, fraud and wilful imposition, an accused may be convicted of breach of trust and embezzlement.”.

Commencement Information

I20 S. 48 in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#) (with [Sch.](#))

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

49 Articles for use in fraud

- (1) A person (“A”) commits an offence if A has in A's possession or under A's control an article for use in, or in connection with, the commission of fraud.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.
- (3) A person commits an offence if the person makes, adapts, supplies or offers to supply an article—
 - (a) knowing that the article is designed or adapted for use in, or in connection with, the commission of fraud, or
 - (b) intending the article to be used in, or in connection with, the commission of fraud.
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.
- (5) In this section, “article” includes a program or data held in electronic form.

Commencement Information

I21 S. 49 in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

Conspiracy

50 Conspiracy to commit offences outwith Scotland

- (1) The title of section 11A of the 1995 Act becomes “Conspiracy to commit offences outwith Scotland”.
- (2) In that section—
 - (a) in subsection (1), for “in a country or territory outside the United Kingdom” substitute “outwith Scotland”,
 - (b) in subsection (3)—
 - (i) for “the law in force in the country or territory where the act or other event was intended to take place” substitute “the relevant law”, and
 - (ii) for “the law in force in the country or territory” where it second occurs substitute “that law”, and
 - (c) after subsection (3) insert—

“(3A) In subsection (3) above, “the relevant law” is—

 - (a) if the act or event was intended to take place in another part of the United Kingdom, the law in force in that part,

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2. (See end of Document for details)

- (b) if the act or event was intended to take place in a country or territory outwith the United Kingdom, the law in force in that country or territory.”.

Commencement Information

I22 S. 50 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

Abolition of offences of sedition and leasing-making

51 Abolition of offences of sedition and leasing-making

The following offences under the common law of Scotland are abolished—

- (a) the offence of sedition,
(b) the offence of leasing-making.

Commencement Information

I23 S. 51 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 2.