



# Criminal Law (Consolidation) (Scotland) Act 1995

## 1995 CHAPTER 39

An Act to consolidate for Scotland certain enactments creating offences and relating to criminal law there. [8th November 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1 Act extended (1.4.1996) by 1995 c. 40, ss. 1, 2(2), 7(2)  
C2 Act modified (1.4.1996) by 1995 c. 46, ss. 46(3), 309(2) (with ss. 24(2), 307)

## PART I

### SEXUAL OFFENCES

#### *Incest and related offences*

#### 1 Incest.

- (1) Any male person who has sexual intercourse with a person related to him in a degree specified in column 1 of the Table set out at the end of this subsection, or any female person who has sexual intercourse with a person related to her in a degree specified in column 2 of that Table, shall be guilty of incest, unless the accused proves that he or she—
- (a) did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was related in a degree so specified; or

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- (b) did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
- (c) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

Table

## DEGREES OF RELATIONSHIP

Column 1	Column 2
<b>1. Relationships by consanguinity</b>	
Mother	Father
Daughter	Son
Grandmother	Grandfather
Grand-daughter	Grandson
Sister	Brother
Aunt	Uncle
Niece	Nephew
Great grandmother	Great grandfather
Great grand-daughter	Great grandson
<b>2. Relationships by adoption</b>	
Adoptive mother or former adoptive mother.	Adoptive father or former adoptive father.
Adopted daughter or former adopted daughter.	Adopted son or former adopted son.

- (2) For the purpose of this section, a degree of relationship exists in the case of a degree specified in paragraph 1 of the Table—
  - (a) whether it is of the full blood or the half blood; and
  - (b) even where traced through or to any person whose parents are not or have not been married to one another.
- (3) For the avoidance of doubt sexual intercourse between persons who are not related to each other in a degree referred to in subsection (1) above is not incest.

## 2 Intercourse with step-child.

Any step-parent or former step-parent who has sexual intercourse with his or her step-child or former step-child shall be guilty of an offence if that step-child is either under the age of 21 years or has at any time before attaining the age of 18 years lived in the same household and been treated as a child of his or her family, unless the accused proves that he or she—

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- (a) did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was a step-child or former step-child; or
- (b) believed on reasonable grounds that that person was of or over the age of 21 years; or
- (c) did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
- (d) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

### **3 Intercourse of person in position of trust with child under 16.**

- (1) Any person of or over the age of 16 years who—
- (a) has sexual intercourse with a child under the age of 16 years;
  - (b) is a member of the same household as that child; and
  - (c) is in a position of trust or authority in relation to that child,
- shall be guilty of an offence, unless the accused proves that subsection (2) below applies in his or her case.
- (2) This subsection applies where the accused—
- (a) believed on reasonable grounds that the person with whom he or she had sexual intercourse was of or over the age of 16 years; or
  - (b) did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
  - (c) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

### **4 Proceedings and penalties for offences under sections 1 to 3.**

- (1) Proceedings in respect of an offence under section 1, 2 or 3 of this Act may be brought on indictment or, if the Lord Advocate so directs, on a summary complaint before the sheriff.
- (2) Summary proceedings in pursuance of this section may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.
- (3) Subsection (3) of section 136 of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) shall have effect for the purposes of subsection (2) above as it has effect for the purposes of that section.
- (4) For the purposes of subsection (2) above, a certificate of the Lord Advocate as to the date on which the evidence in question came to his knowledge is conclusive evidence of the date on which it did so.
- (5) Subject to subsection (6) below, a person guilty of an offence under section 1, 2 or 3 of this Act shall be liable—
- (a) on conviction on indictment, to imprisonment for any term of imprisonment up to and including life imprisonment; and
  - (b) on summary conviction, to imprisonment for a term not exceeding 3 months.

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- (6) Before passing sentence on a person convicted of any such offence, the court shall—
- (a) obtain information about that person’s circumstances from an officer of a local authority or otherwise and consider that information; and
  - (b) take into account any information before it which is relevant to his character and to his physical and mental condition.
- (7) In subsection (6) above, “local authority” has the meaning assigned to it by section 1(2) of the <sup>M2</sup>Social Work (Scotland) Act 1968.

**Modifications etc. (not altering text)**

- C3** S. 4(2)-(4) applied (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 319, 333](#); [S.S.I. 2005/161](#), [art. 3](#) (as amended by [S.S.I. 2005/375](#), [art. 2](#))

**Marginal Citations**

**M1** 1995 c.46.

**M2** 1968 c.49.

*Offences against children*

**5 Intercourse with girl under 16.**

- (1) Any person who has unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for life.
- (2) Any person who attempts to have unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for a term not exceeding [<sup>F1</sup>ten years] or on summary conviction to imprisonment for a term not exceeding three months.
- (3) Without prejudice to sections 1 to 4 of this Act, any person who has, or attempts to have, unlawful sexual intercourse with any girl of or over the age of 13 years and under the age of 16 years shall be liable on conviction on indictment to imprisonment for a term not exceeding [<sup>F1</sup>ten years] or on summary conviction to imprisonment for a term not exceeding three months.
- (4) No prosecution shall be commenced for an offence under subsection (3) above more than one year after the commission of the offence.
- (5) It shall be a defence to a charge under subsection (3) above that the person so charged—
  - (a) had reasonable cause to believe that the girl was his wife; or
  - (b) being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or over the age of 16 years.
- (6) In subsection (5) above, “a like offence” means an offence under—
  - (a) subsection (3) above; or
  - (b) section 4(1) or 10(1) of the <sup>M3</sup>Sexual Offences (Scotland) Act 1976 or section 5 or 6 of the <sup>M4</sup>Criminal Law Amendment Act 1885 (the enactments formerly creating the offences mentioned in subsection (3) above and [<sup>F2</sup>section 9(1) of this Act]); or

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- (c) section 6 of the <sup>M5</sup>Sexual Offences Act 1956 (the provision for England and Wales corresponding to subsection (3) above), or with an attempt to commit such an offence; or
- (d) section 9(1) of this Act.

(7) For the purposes of subsection (4) above, a prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

#### Textual Amendments

- F1** Words in s. 5(2)(3) substituted (1.8.1997) by 1997 c. 48, s. 14(1)(a)(b); S.I. 1997/1712, art. 3, Sch.
- F2** Words in s. 5(6) substituted (1.8.1997) by 1997 c. 48, s. 62(1), Sch. 1 para. 18(2)(b); S.I. 1997/1712, art. 3, Sch.

#### Marginal Citations

- M3** 1976 c.67.
- M4** 1885 c.69.
- M5** 1956 c.69.

## 6 Indecent behaviour towards girl between 12 and 16.

Any person who uses towards a girl of or over the age of 12 years and under the age of 16 years any lewd, indecent or libidinous practice or behaviour which, if used towards a girl under the age of 12 years, would have constituted an offence at common law shall, whether the girl consented to such practice or behaviour or not, be liable on conviction on indictment to imprisonment for a term not exceeding [<sup>F3</sup>ten years] or on summary conviction to imprisonment for a term not exceeding three months.

#### Textual Amendments

- F3** Words in s. 6 substituted (1.8.1997) by 1997 c. 48, s. 14(2); S.I. 1997/1712, art. 3, Sch.

*Procuring, prostitution etc.*

## 7 Procuring.

- (1) Any person who procures or attempts to procure—
- (a) any woman under 21 years of age or girl to have unlawful sexual intercourse with any other person or persons in any part of the world; or
  - (b) any woman or girl to become a common prostitute in any part of the world; or
  - (c) any woman or girl to leave the United Kingdom, with intent that she may become an inmate of or frequent a brothel elsewhere; or
  - (d) any woman or girl to leave her usual place of abode in the United Kingdom, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel in any part of the world,
- shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

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- (2) Any person who—
- (a) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful sexual intercourse in any part of the world; or
  - (b) by false pretences or false representations procures any woman or girl to have any unlawful sexual intercourse in any part of the world; or
  - (c) applies or administers to, or causes to be taken by, any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful sexual intercourse with such woman or girl,
- shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (3) A man who induces a married woman to permit him to have sexual intercourse with [F<sup>4</sup>her] by impersonating her husband shall be deemed to be guilty of rape.
- (4) A constable may arrest without a warrant any person whom he has good cause to suspect of having committed, or of attempting to commit, any offence under subsection (1) above.

#### Textual Amendments

- F4** Word in s. 7(3) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 18(3)**; S.I. 1997/1712, art. 3, **Sch.**

## 8 Abduction and unlawful detention.

- (1) Any person who, with intent that any unmarried girl under the age of 18 years should have unlawful sexual intercourse with men or with a particular man, takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (2) It shall be a defence to any charge under subsection (1) above that the person so charged had reasonable cause to believe that the girl was of or over the age of 18 years.
- (3) Any person who detains any woman or girl against her will—
- (a) in or upon any premises with intent that she may have unlawful sexual intercourse with men or with a particular man; or
  - (b) in any brothel,
- shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (4) Where a woman or girl is in or upon any premises for the purpose of having unlawful sexual intercourse, or is in a brothel, a person shall be deemed to detain such woman or girl in or upon such premises or brothel if, with intent to compel or induce her to remain in or upon the premises or brothel, he withholds from her any wearing apparel or other property belonging to her or, where wearing apparel has been lent or otherwise supplied to the woman or girl by or by the direction of such person, he threatens the

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woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

- (5) No legal proceedings, whether civil or criminal, shall be taken against a woman or girl mentioned in subsection (4) above for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel mentioned in that subsection.

## 9 Permitting girl to use premises for intercourse.

- (1) Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly suffers any girl of such age as is mentioned in this subsection to resort to or be in or upon such premises for the purpose of having unlawful sexual intercourse with men or with a particular man—
- (a) if such girl is under the age of 13 years, shall be liable on conviction on indictment to imprisonment for life; and
  - (b) if such girl is of or over the age of 13 years and under the age of 16 years, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (2) It shall be a defence to a charge under this section that the person so charged, being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or over the age of 16 years.
- (3) In subsection (2) above, “a like offence” means an offence under—
- (a) subsection (1) above; or
  - (b) section 5(3) of this Act; or
  - (c) section 4(1) or 10(1) of the <sup>M6</sup>Sexual Offences (Scotland) Act 1976 or section 5 or 6 of the <sup>M7</sup>Criminal Law Amendment Act 1885 (the enactments formerly creating the offences mentioned in paragraphs (a) and (b) above).

### Marginal Citations

**M6** 1976 c.67.

**M7** 1885 c.69.

## 10 Seduction, prostitution, etc., of girl under 16.

- (1) If any person having parental responsibilities (within the meaning of section 1(3) of the <sup>M8</sup>Children (Scotland) Act 1995), in relation to, or having charge or care of a girl under the age of 16 years causes or encourages—
- (a) the seduction or prostitution of;
  - (b) unlawful sexual intercourse with; or
  - (c) the commission of an indecent assault upon,
- her he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

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- (2) For the purposes of this section, a person shall be deemed to have caused or encouraged the matters mentioned in paragraphs (a) to (c) of subsection (1) above upon a girl who has been seduced or indecently assaulted, or who has had unlawful sexual intercourse or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.
- (3) Subsections (1) and (2) above shall apply to a contravention of section 6 of this Act in like manner as they apply to an indecent assault, and any reference to the commission of such an assault or to being indecently assaulted shall be construed accordingly.
- (4) Where on the trial of any offence under this Part of this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl under the age of 16 years has been caused, encouraged or favoured by her father, mother or guardian it shall be in the power of the court to divest such person of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of 21 years, or such lower age as the court may direct.
- (5) The High Court of Justiciary shall have the power from time to time to rescind or vary an order under subsection (4) above by the appointment of any other person or persons as such guardian, or in any other respect.

#### Marginal Citations

M8 1995 c.36.

## 11 Trading in prostitution and brothel-keeping.

- (1) Every male person who—
  - (a) knowingly lives wholly or in part on the earnings of prostitution; or
  - (b) in any public place persistently solicits or importunes for immoral purposes,
 shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding six months.
- (2) If it is made to appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the court may issue a warrant authorising a constable to enter and search the house and to arrest that male person.
- (3) Where a male person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.
- (4) Every female who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any other person, or generally, shall be liable to the penalties set out in subsection (1) above.



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- (5) Any person who—
- (a) keeps or manages or acts or assists in the management of a brothel; or
  - (b) being the tenant, lessee, occupier or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution; or
  - (c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,
- shall be guilty of an offence.
- (6) A person convicted of an offence under subsection (5) above shall be liable—
- (a) in the sheriff court to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding six months; and
  - (b) in the district court to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months,
- or, in either case, to both such fine and imprisonment.

## 12 Allowing child to be in brothel.

- (1) If any person having parental responsibilities (within the meaning of section 1(3) of the <sup>M9</sup>Children (Scotland) Act 1995), in relation to, or having charge or care of a child who has attained the age of four years and is under the age of 16 years, allows that child to reside in or to frequent a brothel, he shall be liable on conviction on indictment, or on summary conviction, to a fine not exceeding level 2 on the standard scale or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for a term not exceeding six months.
- (2) Nothing in this section shall affect the liability of a person to be indicted under section 9 of this Act, but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

### Marginal Citations

M9 1995 c.36.

VALID FROM 01/12/2010

### [<sup>F5</sup>12A Sections 11(5) and 12: further provision

- (1) Premises shall be treated for the purposes of sections 11(5) and 12 of this Act as a brothel if people resort to them for the purposes of homosexual acts in circumstances in which resort to them for heterosexual practices would have led to the premises being treated as a brothel for the purposes of those sections.
- (2) For the purposes of this section, a homosexual act is an act of engaging in sexual activity by one male person with another male person; and an activity is sexual in

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any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.]

#### Textual Amendments

**F5** S. 12A inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), sch. 5 para. 1(6); S.S.I. 2010/357, art. 2(a)

### *Homosexual offences*

#### 13 Homosexual offences.

- (1) Subject to the provisions of this section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of [<sup>F6</sup>sixteen] years.
- (2) An act which would otherwise be treated for the purpose of this Act as being done in private shall not be so treated if done—
  - <sup>F7</sup>(a) .....
  - (b) in a lavatory to which the public have, or are permitted to have, access whether on payment or otherwise.
- (3) A male person who is suffering from mental deficiency which is of such a nature or degree that he is incapable of living an independent life or of guarding himself against serious exploitation cannot in law give any consent which, by virtue of subsection (1) above, would prevent a homosexual act from being an offence; but a person shall not be convicted on account of the incapacity of such a male person to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that male person to be suffering from such mental deficiency.
- (4) In this section, “a homosexual act” means sodomy or an act of gross indecency or shameless indecency by one male person with another male person.
- (5) Subject to subsection (3) above, it shall be an offence to commit or to be party to the commission of, or to procure or attempt to procure the commission of a homosexual act—
  - (a) otherwise than in private;
  - (b) without the consent of [<sup>F8</sup>the] parties to the act; or
  - (c) with a person under the age of [<sup>F6</sup>sixteen] years.
- (6) It shall be an offence to procure or attempt to procure the commission of a homosexual act between two other male persons.
- (7) A person who commits or is party to the commission of an offence under subsection (5) or subsection (6) above shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both and on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the <sup>M10</sup>Criminal Procedure (Scotland) Act 1995).
- (8) It shall be a defence to a charge of committing a homosexual act under subsection (5) (c) above that the person so charged being under the age of 24 years who had not

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previously been charged with a like offence, had reasonable cause to believe that the other person was of or over the age of [<sup>F6</sup>sixteen] years.

[<sup>F9</sup>(8A) A person under the age of sixteen years does not commit an offence under subsection (5)(a) or (c) above if he commits or is party to the commission of a homosexual act with a person who has attained that age.]

(9) A person who knowingly lives wholly or in part on the earnings of another from male prostitution or who solicits or importunes any male person for the purpose of procuring the commission of a homosexual act within the meaning of subsection (4) above shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years.

(10) Premises shall be treated for the purposes of sections 11(1) and 12 of this Act as a brothel if people resort to it for the purposes of homosexual acts within the meaning of subsection (4) above in circumstances in which resort thereto for heterosexual practices would have led to its being treated as a brothel for the purposes of those sections.

(11) No proceedings for—

- (a) the offences mentioned in subsections (5) and (6) above; and
- (b) any offence under subsection (9) above which consists of soliciting or importuning any male person for the purpose of procuring the commission of a homosexual act,

shall be commenced after the expiration of twelve months from the date on which that offence was committed.

#### Textual Amendments

- F6** Words in s. 13(1)(5)(c)(8) substituted (8.1.2001) by 2000 c. 44, s. 1(3)(a)(b); S.S.I. 2000/452, art. 2(a); and that same substitution of words commenced (11.8.2003) by S.S.I. 2003/378, art. 2(a) (which latter S.S.I. (along with S.I. 2003/1935) was made as a consequence of doubts expressed by the Subordinate Legislation Committee about the legal effect of S.S.I. 2000/452)
- F7** S. 13(2)(a) and the word “or” immediately following it repealed (6.7.2001) by 2001 asp 7, ss. 10(a), 15(3)
- F8** Word in s. 13(5)(b) substituted (6.7.2001) by 2001 asp 7, ss. 10(b), 15(3)
- F9** S. 13(8A) inserted (8.1.2001) by 2000 c. 44, s. 2(4); S.S.I. 2000/452, art. 2(b); and that same insertion of s. 13(8A) commenced (11.8.2003) by S.S.I. 2003/378, art. 2(a) (which latter S.S.I. (along with S.I. 2003/1935) was made as a consequence of doubts expressed by the Subordinate Legislation Committee about the legal effect of S.S.I. 2000/452)

#### Marginal Citations

- M10** 1995 c.46.

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### Miscellaneous

#### 14 Power, on indictment for rape, etc., to convict of other offences.

If, in the trial of an indictment for rape or an offence under section 5(1) of this Act, the jury—

- (a) are not satisfied that the accused is guilty of the charge or of an attempt to commit the charge; but
- (b) are satisfied that the accused is guilty of an offence under section 5(2) or (3) or 7(2) or (3) of this Act, or of an indecent assault,

the jury may acquit the accused of the charge mentioned in paragraph (a) above, and find him guilty of such offence as is mentioned in paragraph (b) or of an indecent assault, and the accused shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such offence or for indecent assault.

#### 15 Defence to charge of indecent assault.

It shall be a defence to a charge of indecent assault committed against a girl under the age of 16 years that the person so charged has reasonable cause to believe that the girl was his wife.

#### 16 Power of search.

- (1) If it appears to a justice on information on oath by any parent, relative or guardian of any woman or girl, or any other person who, in the opinion of the justice, *is bona fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of the justice, he may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety, such woman or girl until she can be brought before a justice, and the justice before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.
- (2) The justice issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.
- (3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of having unlawful sexual intercourse with men or with a particular man, and she—
  - (a) is under the age of 16 years; or
  - (b) if of or over the age of 16 years and under the age of 18 years, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her; or
  - (c) if of or over the age of 18 years, is so detained against her will.
- (4) Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the woman or girl therefrom.
- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the parent, relative, or guardian or other

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person giving the information, if that person so desires, unless the justice directs otherwise.

- (6) In this section, “justice” has the same meaning as in section 307 of the <sup>M11</sup>Criminal Procedure (Scotland) Act 1995.

**Marginal Citations**

**M11** 1995 c.46.

**[<sup>F10</sup>16A Conspiracy or incitement to commit certain sexual acts outside the United Kingdom.**

- (1) This section applies to any act done by a person in Scotland which would amount to the offence of <sup>F11</sup> . . . incitement to commit a listed sexual offence but for the fact that <sup>F11</sup> . . . what he had in view is intended to occur in a country or territory outside the United Kingdom.
- (2) Where a person does an act to which this section applies, <sup>F12</sup> . . . what he had in view shall be treated as the listed sexual offence mentioned in subsection (1) above and he shall, accordingly, be guilty of <sup>F12</sup> . . . , as the case may be, incitement to commit the listed sexual offence.
- (3) A person is guilty of an offence by virtue of this section only if—  
<sup>F13</sup>(a) . . . . .  
<sup>F14</sup> . . . , what he had in view would involve the commission of an offence under the law in force in the country or territory where the whole or any part of it was intended to take place,  
and conduct punishable under the law in force in the country or territory is an offence under that law for the purposes of this section however it is described in that law.
- (4) Subject to subsection (6) below, a condition specified in subsection (3) above shall be taken to be satisfied unless, not later than such time as the High Court may, by Act of Adjournal, prescribe, the accused serves on the prosecutor a notice—  
(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in his opinion satisfied;  
(b) setting out the grounds for his opinion; and  
(c) requiring the prosecutor to prove that the condition is satisfied.
- (5) In subsection (4) above “the relevant conduct” means—  
<sup>F15</sup>(a) . . . . .  
<sup>F16</sup>(b) . . . , what the accused had in view.
- (6) The court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition mentioned in subsection (4) above is satisfied without the prior service of a notice under that subsection.
- (7) In proceedings on indictment, the question whether a condition is satisfied shall be determined by the judge alone.
- (8) Any act of incitement by means of a message (however communicated) is to be treated as done in Scotland if the message is sent or received in Scotland.

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- (9) In this section “listed sexual offence” means any of the following—
- (a) rape of a girl under the age of 16;
  - (b) indecent assault of a person under the age of 16;
  - (c) lewd and libidinous conduct;
  - (d) shamelessly indecent conduct involving a person under the age of 16;
  - (e) sodomy with or against a boy under the age of 16;
  - (f) an offence under section 5(1) or (2) of this Act (unlawful sexual intercourse with a girl under the age of 13);
  - (g) an offence under section 5(3) of this Act (unlawful sexual intercourse with a girl under the age of 16);
  - (h) an offence under section 6 of this Act (indecent behaviour towards a girl between the age of 12 and 16);
  - (i) an offence under section 13(5) or (6) of this Act where the homosexual act involves a person under the age of 16 (prohibition on certain homosexual acts).]

#### Textual Amendments

- F10** S. 16A inserted (1.10.1996) by 1996 c. 29, s. 6; S.I. 1996/2262, art. 2
- F11** Words in s. 16A(1) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 8(a), Sch. 2 Pt. II (with s. 9(3))
- F12** Words in s. 16A(2) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 8(b), Sch. 2 Pt. II (with s. 9(3))
- F13** S. 16A(3)(a) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 8(c), Sch. 2 Pt. II (with s. 9(3))
- F14** Words in s. 16A(3) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 8(c), Sch. 2 Pt. II (with s. 9(3))
- F15** S. 16A(5)(a) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 8(d), Sch. 2 Pt. II (with s. 9(3))
- F16** Words in s. 16A(5) repealed (4.9.1998) by 1998 c. 40, s. 9(1)(2), Sch. 1 Pt. II para. 8(d), Sch. 2 Pt. II (with s. 9(3))

#### [<sup>F17</sup> 16B Commission of certain sexual acts outside the United Kingdom.

- (1) Subject to subsection (2) below, any act done by a person in a country or territory outside the United Kingdom which—
  - (a) constituted an offence under the law in force in that country or territory; and
  - (b) would constitute a listed sexual offence if it had been done in Scotland,
 shall constitute that sexual offence.
- (2) No proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently become, a British citizen or resident in the United Kingdom.
- (3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of subsection (1) above, however it is described in that law.

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- (4) Subject to subsection (5) below, the condition in subsection (1)(a) above shall be taken to be satisfied unless, not later than may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice—
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
  - (b) setting out the grounds for that opinion; and
  - (c) requiring the prosecutor to prove that it is satisfied.
- (5) The court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under subsection (4) above.
- (6) In proceedings on indictment, the question whether the condition is satisfied is to be decided by the judge alone.
- (7) Subject to subsection (8) below, in this section “listed sexual offence” means any of the following—
- (a) rape of a girl under the age of 16;
  - (b) indecent assault of a person under the age of 16;
  - (c) lewd, indecent or libidinous behaviour or practices;
  - (d) shamelessly indecent conduct involving a person under the age of 16;
  - (e) sodomy with or against a boy under the age of 16;
  - (f) an offence under section 5(1) or (2) of this Act (unlawful sexual intercourse with a girl under the age of 13);
  - (g) an offence under section 5(3) of this Act (unlawful sexual intercourse with a girl under the age of 16);
  - (h) an offence under section 6 of this Act (indecent behaviour towards a girl between the age of 12 and 16);
  - (i) an offence under section 13(5) or (6) of this Act where the homosexual act involves a person under the age of 16 (prohibition on certain homosexual acts); and
  - (j) an offence under section 52 of the <sup>M12</sup>Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children).
- (8) “Listed sexual offence” includes—
- (a) any conspiracy or incitement to commit any such offence; and
  - (b) any offence under section 293(2) of the <sup>M13</sup>Criminal Procedure (Scotland) Act 1995 (aiding and abetting etc. the commission of statutory offences) relating to any offence mentioned in subsection (7)(f) to (j) above.]

#### Textual Amendments

F17 S. 16B inserted (1.9.1997) by 1997 c. 51, s. 8 (with s. 10(3); S.I. 1997/1920, art. 2

#### Marginal Citations

M12 1982 c.45.

M13 1995 c.46.

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## 17 **Liability to other criminal proceedings.**

This Part of this Act shall not exempt any person from any proceedings for an offence which is punishable at common law, or under any enactment other than this Part, but nothing in this Part of this Act shall enable a person to be punished twice for the same offence.

## PART II

### SPORTING EVENTS: CONTROL OF ALCOHOL ETC.

## 18 **Designation of sports grounds and sporting events.**

- (1) Subject to subsection (2) below, the Secretary of State may for the purposes of this Part of this Act by order designate—
  - (a) a sports ground or a class of sports ground;
  - (b) a sporting event, or a class of sporting event, at that ground or at any of that class of ground;
  - (c) a sporting event, or a class of sporting event, taking place outside Great Britain.
- (2) An order under this section shall not apply to a sporting event at which all the participants take part without financial or material reward and to which all spectators are admitted free of charge; but this subsection is without prejudice to the order's validity as respects any other sporting event.
- (3) The power to make an order under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 19 **Alcohol on vehicles.**

- (1) Where a public service vehicle or railway passenger vehicle is being operated for the principal purpose of conveying passengers for the whole or part of a journey to or from a designated sporting event, then—
  - (a) any person in possession of alcohol on the vehicle shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale or both;
  - (b) if alcohol is being carried on the vehicle and the vehicle is on hire to a person, he shall, subject to subsection (7) below, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
  - (c) any person who is drunk on the vehicle shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) Notwithstanding section 92 of the <sup>M14</sup>Licensing (Scotland) Act 1976 (restriction on carriage of alcoholic liquor in crates on contract carriages), but subject to subsection (7) below, if the operator of a public service vehicle which is being operated as mentioned in subsection (1) above, either by himself or by his employee or agent permits alcohol to be carried on the vehicle, the operator and, as the case may be, the employee or agent shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.



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- (3) This subsection applies to a motor vehicle which is not a public service vehicle but which is adapted to carry more than 8 passengers and is being operated for the [F18 principal] purpose of conveying two or more passengers for the whole or part of a journey to or from a designated sporting event.
- (4) Any person in possession of alcohol on a vehicle to which subsection (3) above applies shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale or both.
- (5) Any person who is drunk on a vehicle to which subsection (3) above applies shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) Any person who permits alcohol to be carried on a vehicle to which subsection (3) above applies and—
- (a) is the driver of the vehicle; or
  - (b) where he is not its driver, is the keeper of the vehicle, the employee or agent of the keeper, a person to whom it is made available (by hire, loan or otherwise) by the keeper or the keeper's employee or agent, or the employee or agent of a person to whom it is so made available,
- shall, subject to subsection (7) below, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where a person is charged with an offence under subsection (1)(b), (2) or (6) above, it shall be a defence for him to prove that the alcohol was carried on the vehicle without his consent or connivance and that he did all he reasonably could to prevent such carriage.

#### Textual Amendments

**F18** Word in s. 19(3) substituted (1.8.1997) by 1997 c. 48, s. 62(1), Sch. 1 para. 18(4); S.I. 1997/1712, art. 3, Sch.

#### Marginal Citations

**M14** 1976 c.66.

## 20 Sporting events: controls.

- (1) Any person who—
- (a) is in possession of a controlled container in; or
  - (b) while in possession of a controlled container, attempts to enter,
- the relevant area of a designated sports ground at any time during the period of a designated sporting event shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or to a fine not exceeding level 3 on the standard scale or both.
- (2) Any person who—
- (a) is in possession of alcohol in; or
  - (b) while in possession of alcohol, attempts to enter,

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the relevant area of a designated sports ground at any time during the period of a designated sporting event, shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or to a fine not exceeding level 3 on the standard scale or both.

- (3) Any person who has entered the relevant area of a designated sports ground and is in possession of a controlled article or substance at any time during the period of a designated sporting event shall be guilty of an offence.
- (4) Any person who, while in possession of a controlled article or substance, attempts to enter the relevant area of a designated sports ground at any time during the period of a designated sporting event at the ground shall be guilty of an offence.
- (5) A person guilty of an offence under subsection (3) or (4) above shall be liable on summary conviction to imprisonment for a period not exceeding 60 days or to a fine not exceeding level 3 on the standard scale or both.
- (6) It shall be a defence for a person charged with an offence under subsection (3) or (4) above to show that he had lawful authority to be in possession of the controlled article or substance.
- (7) Any person who—
  - (a) is drunk in; or
  - (b) while drunk, attempts to enter,

the relevant area of a designated sports ground at any time during the period of a designated sporting event shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (8) In this section—

“controlled article or substance” means—

- (a) any article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas; and in particular it includes distress flares, fog signals, and pellets and capsules intended to be used as fumigators or for testing pipes, but not matches, cigarette lighters or heaters; and
- (b) any article which is a firework.

“controlled container” means any bottle, can or other portable container, whether open or sealed, which is, or was, in its original manufactured state, capable of containing liquid and is made from such material or is of such construction, or is so adapted, that if it were thrown at or propelled against a person it would be capable of causing some injury to that person; but the term does not include a container holding a medicinal product for a medicinal purpose.

“medicinal product” and “medicinal purpose” have the meanings assigned to those terms by section 130 of the <sup>M15</sup>Medicines Act 1968.

#### Marginal Citations

M15 1968 c.67.

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## 21 Police powers of enforcement.

For the purpose of enforcing the provisions of this Part of this Act, a constable shall have the power without warrant—

- (a) to enter a designated sports ground at any time during the period of a designated sporting event;
- (b) to search a person who he has reasonable grounds to suspect is committing or has committed an offence under this Part of this Act;
- (c) to stop and search a vehicle where he has reasonable grounds to suspect that an offence under section 19 of this Act is being or has been committed;
- (d) to arrest a person who he has reasonable grounds to suspect is committing or has committed an offence under this Part of this Act;
- (e) to seize and detain—
  - (i) with its contents (if any), a controlled container as defined in section 20(8) of this Act; or
  - (ii) with its contents, any other container if he has reasonable grounds to suspect that those contents are or include alcohol <sup>F19</sup>; or
  - (iii) a controlled article or substance as defined in section 20(8) of this Act.]

### Textual Amendments

- F19** S. 21(e)(iii) and word preceding it inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 18(5)**; S.I. 1997/1712, art. 3, **Sch.**

## 22 Presumption as to contents of container.

Section 127 of the <sup>M16</sup>Licensing (Scotland) Act 1976 (presumption as to contents of container) shall apply for the purposes of any trial in connection with an alleged contravention of any provision of this Part of this Act as it applies for the purposes of any trial in connection with an alleged contravention of any provision of that Act.

### Marginal Citations

- M16** 1976 c.66.

## 23 Interpretation of Part II.

In this Part of this Act, unless the context otherwise requires—

“advertised” means announced in any written or printed document or in any broadcast announcement;

“alcohol” means alcoholic liquor as defined in section 139 of the Licensing (Scotland) Act 1976;

“designated” means designated by the Secretary of State by order under section 18 of this Act, and “designated sporting event” includes a sporting event designated under section 9(3)(a) of the <sup>M17</sup>Sporting Events (Control of Alcohol) Etc. Act 1985;

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“keeper”, in relation to a vehicle, means the person having the duty to take out a licence for it under section 1(1) of the <sup>M18</sup>Vehicles Excise and Registration Act 1994;

[<sup>F20</sup>“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;]

“period of a designated sporting event” means the period commencing two hours before the start and ending one hour after the end of a designated sporting event, except that where the event is advertised as to start at a particular time but is delayed or postponed in includes, and where for any reason an event does not take place it means, the period commencing two hours before and ending one hour after, that particular time;

“public service vehicle” has the same meaning as in the <sup>M19</sup>Public Passenger Vehicles Act 1981 and “operator” in relation to such a vehicle means—

- (a) the driver if he owns the vehicle; and
- (b) in any other case the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do work);

“railway passenger vehicle” has the same meaning as in the Licensing (Scotland) Act 1976;

“relevant area” means any part of a sports ground—

- (a) to which spectators attending a designated sporting event are granted access on payment; or
- (b) from which a designated sporting event may be viewed directly;

“sporting event” means any physical competitive activity at a sports ground, and includes any such activity which has been advertised as to, but does not, take place; and

“sports ground” means any place whatsoever which is designed, or is capable of being adapted, for the holding of sporting events in respect of which spectators are accommodated.

#### Textual Amendments

**F20** Definition inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 18(6)**; S.I. 1997/1712, art. 3, **Sch.**

#### Marginal Citations

**M17** 1985 c.57.

**M18** 1994 c.22.

**M19** 1981 c.14.

## PART III

### DETENTION BY CUSTOMS OFFICERS

#### <sup>X1</sup>24 Detention and questioning by customs officers.

- (1) Where an officer has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment relating to an assigned matter, the officer may, for the purpose of facilitating the carrying out of investigations—
  - (a) into the offence; and

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- (b) as to whether criminal proceedings should be instigated against the person, detain that person and take him as quickly as is reasonably practicable to a customs office or other premises and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the customs office or, as the case may be, the other premises or place.
- (2) Detention under subsection (1) above shall be terminated not more than six hours after it begins or (if earlier)—
- (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
  - (c) where there are no longer such grounds as are mentioned in the said subsection (1),
- and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (3) Where a person has been detained under subsection (1) above, he shall not thereafter be detained under that subsection on the same grounds or on any grounds arising out of the same circumstances.
- (4) Where a person has previously been detained in pursuance of any other enactment or subordinate instrument, [<sup>F21</sup>and is] detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention [<sup>F22</sup>, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention].
- (5) At the time when an officer detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—
- (a) the place where detention begins and the customs office or other premises to which the person is taken;
  - (b) any other place to which the person is, during the detention, thereafter taken;
  - (c) the general nature of the suspected offence;
  - (d) the time when detention under subsection (1) above begins and the time of the person's arrival at the customs office or other premises;
  - (e) the time when the person is informed of his rights in terms of subsection (8) below and of section 25(1) of this Act and the identity of the officer so informing him;
  - (f) where the person requests such intimation to be sent as is specified in the said section 25(1), the time when such request is—
    - (i) made;
    - (ii) complied with; and
  - (g) the time of the person's release from detention or, where instead of being released he is—
    - (i) further detained under section 26 of this Act, the time of commencement of the further detention; or
    - (ii) arrested in respect of the alleged offence, the time of such arrest.
- (6) Where a person is detained under subsection (1) above, an officer may—

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- (a) without prejudice to any existing rule of law as regards the admissibility in evidence of an answer given, put questions to him in relation to the suspected offence;
  - (b) exercise the same powers of search as are available following an arrest.
- (7) An officer may use reasonable force in exercising any power conferred by subsection (1) or (6)(b) above.
- (8) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and an officer shall so inform him both on so detaining him and on arrival at the customs office or other premises.
- (9) In this section and in sections 25 and 26 of this Act “assigned matter” and “officer” have the meanings given to them by section 1 of the <sup>M20</sup>Customs and Excise Management Act 1979, and “customs office” means a place for the time being occupied by Her Majesty’s Customs and Excise.

#### Editorial Information

- X1** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F21** Words in s. 24(4) substituted (30.9.1998) by 1998 c. 37, s. 110(a); S.I. 1998/2327, art. 2(x)  
**F22** Words in s. 24(4) inserted (30.9.1998) by 1998 c. 37, s. 110(b); S.I. 1998/2327, art. 2(x)

#### Marginal Citations

- M20** 1979 c.2.

## <sup>X2</sup>25 Right to have someone informed when detained.

- (1) Without prejudice to section 17 the <sup>M21</sup>Criminal Procedure (Scotland) Act 1995 (intimation to solicitor following arrest), a person who, not being a person in respect of whose detention subsection (2) below applies, is being detained under section 24 of this Act and has been taken to a customs office or other premises or place shall be entitled to have intimation of his detention and of the customs office or other premises or place sent to a solicitor and to one other person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary; and the person shall be informed of such entitlement—
- (a) on arrival at the customs office or other premises; or
  - (b) where he is not detained until after such arrival, on such detention.
- (2) Without prejudice to the said section 17, an officer shall, where a person who is being detained as is mentioned in subsection (1) above appears to him to be a child, send without delay such intimation as is mentioned in that subsection to that person’s parent if known; and the parent—
- (a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and
  - (b) in any other case shall,

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be permitted access to the person.

- (3) The nature and extent of any access permitted under subsection (2), above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (4) In subsection (2) above—
  - (a) “child” means a person under 16 years of age; and
  - (b) “parent” includes a guardian and any person who has the care of a child.

#### Editorial Information

**X2** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Marginal Citations

**M21** 1995 c.46.

### <sup>x3</sup>26 **Detention in connection with certain drug smuggling offences.**

- (1) Where an officer has reasonable grounds for suspecting—
  - (a) that a person has committed or is committing a relevant offence; and
  - (b) that, in connection with the commission of such an offence, a controlled drug is secreted in the person’s body,a superior officer may, notwithstanding that the person has been or is being detained in pursuance of any other enactment or subordinate instrument, authorise the detention of the person at a customs office or other premises in accordance with this section.
- (2) Subject to subsection (7) below, where a person is detained under subsection (1) above or is further detained in pursuance of a warrant under subsection (4) below he shall—
  - (a) provide such specimens of blood or urine for analysis;
  - (b) submit to such intimate searches, to be carried out by a registered medical practitioner;
  - (c) submit to such other test or examinations prescribed by the Secretary of State by regulations made under this paragraph to be carried out by, or under the supervision of, a registered medical practitioner,as the officer may reasonably require; and regulations under paragraph (c) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subject to subsection (4) below, detention under subsection (1) above shall be terminated not more than 24 hours after it begins, or (if earlier)—
  - (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
  - (c) where there are no longer such grounds as are mentioned in subsection (1), and, when a person has been detained under subsection (1), he shall, unless further detained in pursuance of a warrant under subsection (4) below, be informed

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immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.

- (4) Where a person is detained under subsection (1) above and either—
- (a) he has failed or refused—
    - (i) to provide a specimen in pursuance of paragraph (a) of subsection (2) above; or
    - (ii) to submit to any search, test or examination referred to in paragraph (b) or (c) of that subsection; or
  - (b) as a result of anything done in pursuance of the said subsection (2) the officer continues to have reasonable grounds for suspecting—
    - (i) that the person has committed or is committing a relevant offence; and
    - (ii) that a controlled drug is secreted in the person's body,

the procurator fiscal may, at the request of a superior officer, apply to the sheriff for a warrant for the further detention of the person at a customs office or other premises for an additional period of not more than 7 days; and if the sheriff is satisfied that there has been such failure or refusal as is mentioned in paragraph (a) above or, as the case may be, that there are reasonable grounds as mentioned in paragraph (b) above he may grant a warrant for such further detention.
- (5) Detention in pursuance of a warrant under subsection (4) above shall be terminated at the end of the period of 7 days mentioned in that subsection or (if earlier)—
- (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
  - (c) where there are no longer such grounds as are mentioned in paragraph (b) of that subsection,
- and when a person has been detained in pursuance of a warrant under subsection (4), he shall be informed immediately on the termination of his detention in accordance with this subsection that his detention has been terminated.
- (6) Subject to subsection (7) below, the question whether it is to be a specimen of blood or a specimen of urine which is to be provided in pursuance of subsection (2) above shall be decided by the officer making the requirement.
- (7) A person may be required, in pursuance of subsection (2) above—
- (a) to provide a specimen of blood; or
  - (b) to submit to any search, test or examination,
- only if a registered medical practitioner is of the opinion that there are no medical reasons for not making such a requirement; and, if a requirement to provide a specimen of blood is made, the specimen may be taken only by a registered medical practitioner.
- (8) Subsections (3), (5), (6) and (8) of section 24 of this Act shall apply in respect of a person detained under this section as they apply in respect of a person detained under the said section 24; and, except as regards a requirement under subsection (2) above, an officer may use reasonable force in exercising any power conferred by this section.
- (9) Section 25 of this Act shall, subject to the following modifications, apply in respect of a person detained under this section as it applies to a person detained under section 24 of this Act—



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- (a) any delay in informing a solicitor and one other person of such detention as is mentioned in subsection (1) of the said section 25 shall not extend longer than the period of 24 hours from the start of the detention, and shall only be permitted on the authorisation of a superior officer;
  - (b) the person detained shall be entitled to consult a solicitor at any time without delay, and he shall be informed of such entitlement at the commencement of the detention, but, if a superior officer considers it necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, he may authorise a delay not extending longer than the period of 24 hours from the start of the detention; and
  - (c) paragraph (a) of subsection (2) of the said section 25 shall cease to apply at the end of the period of 24 hours from the start of the detention,
- but any delay authorised by virtue of this subsection shall be for no longer than is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders.
- (10) Without prejudice to section 20(2) of the <sup>M22</sup>Interpretation Act 1978, the references in section 24(5) of this Act to section 25(1) of this Act shall be construed as including references to subsection (9) above; and the requirement to record certain matters under the said section 24(5) shall include a requirement to record the time when a person detained makes a request to consult a solicitor and the time when the solicitor is contacted for the purpose of arranging a consultation.
- (11) In this section—
- “controlled drug” has the meaning assigned by section 2 of the <sup>M23</sup>Misuse of Drugs Act 1971
  - “intimate search” means a search which consists of the physical examination of a persons’s body orifices;
  - “relevant offence” means an offence involving a controlled drug under any of the following provisions of the <sup>M24</sup>Customs and Excise Management Act 1979—
    - (a) section 50(2) or (3) (importation etc. of prohibited goods);
    - (b) section 68(2) (exportation etc. of prohibited goods);
    - (c) section 170(1) (possession or dealing with prohibited goods);
    - (d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);
- [<sup>F23</sup>“superior officer” means an officer whose title is specified for the purposes of this section by the Treasury in an order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Editorial Information

- X3** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F23** Definition in s. 26(11) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 18(7)**; S.I. 1997/1712, art. 3, **Sch.**

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#### **Marginal Citations**

**M22** 1978 c.30.

**M23** 1971 c.38.

**M24** 1979 c.2.

## **PART IV**

### **INVESTIGATION OF SERIOUS OR COMPLEX FRAUD**

#### **27 Lord Advocate’s direction.**

- (1) Where it appears to the Lord Advocate—
  - (a) that a suspected offence may involve serious or complex fraud; and
  - (b) that, for the purpose of investigating the affairs or any aspect of the affairs of any person, there is good reason to do so,
 he may give a direction under this section.
- (2) The Lord Advocate may also give a direction under this section by virtue of section 4(2B) of the <sup>M25</sup>Criminal Justice (International Co-operation) Act 1990 or on a request being made to him by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this Part of this Act.
- (3) Where a direction is given under this section, this Part of this Act shall apply as regards the investigation of the offence; and any person (other than a constable) nominated by the Lord Advocate either generally or in respect of a particular case (in this Part of this Act referred to as “a nominated officer”) shall be entitled to exercise the powers and functions conferred by this Part of this Act.
- (4) A direction under this section shall be signed by the Lord Advocate.

#### **Marginal Citations**

**M25** 1990 c.5.

#### **28 Powers of investigation.**

- (1) A nominated officer may by notice in writing require the person whose affairs are to be investigated (“the person under investigation”) or any other person who he has reason to believe has relevant information to answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.
- (2) A nominated officer may by notice in writing require the person under investigation or any other person to produce at such place as may be specified in the notice and either forthwith or at such time as may be so specified any specified documents which appear to a nominated officer to relate to any matter relevant to the investigation or any documents of a specified description which appear to him so to relate; and—
  - (a) if any such documents are produced, a nominated officer may—
    - (i) take copies or extracts from them;

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- (ii) require the person producing them to provide an explanation of any of them;
  - (b) if any such documents are not produced, a nominated officer may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) Where, on a petition presented by the procurator fiscal, the sheriff is satisfied, in relation to any documents, that there are reasonable grounds for believing—
  - (a) that—
    - (i) a person has failed to comply with an obligation under this section to produce them;
    - (ii) it is not practicable to serve a notice under subsection (2) above in relation to them; or
    - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
  - (b) that they are on premises specified in the petition,he may issue such a warrant as is mentioned in subsection (4) below.
- (4) The warrant referred to in subsection (3) above is a warrant authorising a constable together with any other persons named in the warrant—
  - (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
  - (b) to take possession of any documents appearing to be documents of the description specified in the petition or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (5) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him—
  - (a) in a prosecution for an offence under section 44(2) of this Act; or
  - (b) in a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

[<sup>F24</sup>(5A) However, the statement may not be used against that person by virtue of paragraph (b) of subsection (5) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.]

- (6) A person shall not under this section be required to disclose any information or produce any document which is an item subject to legal privilege within the meaning of section 33 of this Act; except that a lawyer may be required to furnish the name and address of his client.
- (7) No person shall be bound to comply with any requirement imposed by a person exercising power by virtue of a nomination under section 27(3) of this Act unless he has, if required to do so, produced evidence of his authority.
- (8) Any evidence obtained by the Lord Advocate by virtue of section 4(2B) of the <sup>M26</sup>Criminal Justice (International Co-operation) Act 1990 shall be furnished by him to the Secretary of State for transmission to the overseas authority in compliance with whose request (in the following subsections referred to as the “relevant request”) it was so obtained.

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- (9) If, in order to comply with the relevant request, it is necessary for that evidence to be accompanied by any certificate, affidavit or other verifying document, the Lord Advocate shall also furnish for transmission such document of that nature as appears to him to be appropriate.
- (10) Where any evidence obtained by virtue of section 4(2B) of the said Act of 1990 consists of a document, the original or a copy shall be transmitted and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the relevant request.
- (11) In this section—  
 “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;  
 “evidence”, in relation to a relevant request, includes documents and other articles; and  
 “premises” has the same meaning as in section 33 of this Act.
- (12) This section and sections 27 and 29 of this Act shall apply to England and Wales and Northern Ireland; and for the purposes of such application any reference—  
 (a) to the sheriff shall be construed as a reference to a justice of the peace; and  
 (b) to a petition presented by the procurator fiscal shall be construed—  
 (i) in England and Wales as a reference to an information laid by a nominated officer;  
 (ii) in Northern Ireland as a reference to a complaint laid by a nominated officer.

#### Textual Amendments

**F24** S. 28(5A) inserted ((E.W.N.I.) 14.4.2000 and (S.) 1.1.2001) by 1999 c. 23, s. 59, **Sch. 3 para. 25** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2**; S.S.I. 2000/445, **art. 2**

#### Marginal Citations

**M26** 1990 c.5.

## 29 Offences in relation to investigations under section 28.

- (1) Where any person—  
 (a) knows or suspects that an investigation under section 28 of this Act is being carried out or is likely to be carried out; and  
 (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects or has reasonable grounds to suspect are or would be relevant to such an investigation,  
 he shall be guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—

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- (a) that he did not know or suspect that by acting as he did he was likely to prejudice the investigation; or
  - (b) that he had lawful authority or reasonable excuse for acting as he did.
- (3) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) Any person who fails to comply with a requirement imposed on him under the said section 28 shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (5) In proceedings against a person for an offence under subsection (4) above, it shall be a defence to prove that he had a reasonable excuse for acting as he did.

### **30 Disclosure of information.**

- (1) Where any information subject to an obligation of secrecy under the <sup>M27</sup>Taxes Management Act 1970 has been disclosed by the Commissioners of Inland Revenue or an officer of those Commissioners for the purposes of any prosecution of an offence relating to inland revenue, that information may be disclosed by the Lord Advocate for the purposes of any prosecution of an offence—
- (a) in respect of which a direction has been given under section 27(1)(a) of this Act; or
  - (b) relating to inland revenue, but not otherwise.
- (2) Where any information is subject to an obligation of secrecy imposed by or under any enactment other than an enactment contained in the Taxes Management Act 1970, the obligation shall not have effect to prohibit the disclosure of that information to a nominated officer but any information disclosed by virtue of this subsection may only be disclosed by the Lord Advocate for the purpose of a prosecution in Scotland or elsewhere.
- (3) Without prejudice to his power to enter into an agreement apart from this subsection, the Lord Advocate may enter into an agreement for the supply of information to or by him subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.
- (4) Subject to subsections (1) and (2) above and to any provision of an agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by a nominated officer may be disclosed—
- (a) to any government department, or any Northern Ireland Department, or other authority or body discharging its functions on behalf of the Crown (including the Crown in right of Her Majesty's Government in Northern Ireland);
  - (b) to any competent authority;
  - (c) for the purposes of any prosecution in Scotland or elsewhere; and
  - (d) for the purposes of assisting any public or other authority for the time being designated for the purpose of this paragraph by an order made by the Secretary of State to discharge any functions which are specified in the order.

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- (5) The following are competent authorities for the purposes of subsection (4) above—
- (a) an inspector appointed under Part XIV of the <sup>M28</sup>Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986;
  - (b) the Accountant in Bankruptcy;
  - (c) an Official Receiver;
  - (d) the Official Receiver for Northern Ireland;
  - [<sup>F25</sup>(e) a person appointed under—
    - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
    - (ii) section 168 of that Act (investigations in particular cases),
    - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
    - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
    - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
 to conduct an investigation;
  - (f) a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager);]
- (6) An order under subsection (4)(d) above may impose conditions subject to which, and otherwise restrict the circumstances in which, information may be disclosed under that paragraph.

#### Textual Amendments

**F25** S. 30(5)(e)(f) substituted (1.12.2001) for s. 30(5)(e)-(l) by S.I. 2001/3649, arts. 1, 234

#### Marginal Citations

**M27** 1970 c.9.

**M28** 1985 c.6.

## PART V

### DRUG TRAFFICKING

#### *Investigations and disclosure of information*

#### 31 Order to make material available.

- (1) The procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to the sheriff for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If on such an application the sheriff is satisfied that the conditions in subsection (4) below are fulfilled, he may, subject to section 35(11) of this Act, make an order that the person who appears to him to be in possession of the material to which the application relates shall—

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- (a) produce it to a constable or person commissioned by the Commissioners of Customs and Excise for him to take away; or
  - (b) give a constable or person so commissioned access to it,within such period as the order may specify.
- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are—
  - (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking;
  - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
    - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
    - (ii) does not consist of or include items subject to legal privilege; and
  - (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
    - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
    - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.
- (5) Where the sheriff makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of the procurator fiscal, order any person who appears to him to be entitled to grant entry to the premises to allow a constable or person commissioned as aforesaid to enter the premises to obtain access to the material.
- (6) Provision may be made by rules of court as to—
  - (a) the discharge and variation of orders under this section, and
  - (b) proceedings relating to such orders.
- (7) Where the material to which an application under this section relates consists of information contained in a computer—
  - (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
  - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (8) An order under subsection (2) above—
  - (a) shall not confer any right to production of, or access to, items subject to legal privilege;
  - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
  - (c) may be made in relation to material in the possession of an authorised government department.

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## 32 Authority for search.

- (1) The procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to the sheriff for a warrant under this section in relation to specified premises.
- (2) On such application the sheriff may issue a warrant authorising a constable, or person commissioned by the Commissioners of Customs and Excise, to enter and search the premises if the sheriff is satisfied—
  - (a) that an order made under section 31 of this Act in relation to material on the premises has not been complied with; or
  - (b) that the conditions in subsection (3) below are fulfilled; or
  - (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—
  - (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking; and
  - (b) that the conditions in subsection (4)(b) and (c) of section 31 of this Act are fulfilled in relation to any material on the premises; and
  - (c) that it would not be appropriate to make an order under that section in relation to the material because—
    - (i) it is not practicable to communicate with any person entitled to produce the material; or
    - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable or person commissioned as aforesaid could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
  - (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking; and
  - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
  - (c) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
    - (ii) entry to the premises will not be granted unless a warrant is produced; or
    - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable or person commissioned as aforesaid arriving at the premises could secure immediate entry to them.
- (5) Where a constable or person commissioned as aforesaid has entered premises in the execution of a warrant issued under this section, he may seize and retain any material,



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other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

### 33 Interpretation of sections 31 and 32.

In sections 31 and 32 of this Act—

“items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications; and

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation within the meaning of section 1 of the <sup>M29</sup>Mineral Workings (Offshore Installations) Act 1971; and
- (c) any tent or movable structure.

#### Marginal Citations

M29 1971 c.61.

### 34 Prosecution by order of the Commissioners of Customs and Excise.

- (1) Summary proceedings for a specified offence may be instituted by order of the Commissioners and shall, if so instituted, be commenced in the name of an officer.
- (2) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings for a specified offence were commenced, those proceedings may be continued by another officer.
- (3) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—
  - (a) whether there are grounds for believing that a specified offence has been committed; or
  - (b) whether a person should be prosecuted for a specified offence,that matter shall be treated as an assigned matter within the meaning of the <sup>M30</sup>Customs and Excise Management Act 1979.
- (4) Nothing in this section shall be taken—
  - (a) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a specified offence from doing so; or
  - (b) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a specified offence, even though the proceedings have not been instituted by an order made under subsection (1) above.
- (5) In this section—

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“the Commissioners” means the Commissioners of Customs and Excise;  
“officer” means a person commissioned by the Commissioners; and  
“specified offence” means—

- (a) an offence under section 36, 37, 38, 39 or 40 of this Act or section 14 of the <sup>M31</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking);
- (b) attempting to commit, conspiracy to commit or incitement to commit, any such offence; or
- (c) any other offence of a kind prescribed in regulations made by the Secretary of State for the purposes of this section.

- (6) Regulations under subsection (5) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

**M30** 1979 c.2.

**M31** 1990 c.5.

### 35 Disclosure of information held by government departments.

- (1) Subject to subsection (4) below, the Court of Session may on an application by the Lord Advocate order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.
- (2) The power to make an order under subsection (1) above is exercisable if—
  - (a) the powers conferred on the Court by subsection (1) of section 28 of the <sup>M32</sup>Proceeds of Crime (Scotland) Act 1995 are exercisable by virtue of subsection (2) of section 29 of that Act; or
  - (b) those powers are exercisable by virtue of subsection (3) of the said section 29 and the Court has made a restraint order (within the meaning of section 28 of that Act) which has not been recalled.
- (3) The material referred to in subsection (1) above is any material which—
  - (a) has been submitted to an officer of an authorised government department by a person who holds, or has at any time held, realisable property (within the meaning of section 4 of the said Act of 1995);
  - (b) has been made by an officer of an authorised government department in relation to such a person; or
  - (c) is correspondence which passed between an officer of an authorised government department and such a person,
 and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.
- (4) An order under subsection (1) above shall not require the production of any material unless it appears to the Court of Session that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by section 28 of the said Act of 1995 or paragraph 1 or 12 of Schedule 1 to that Act or on an administrator appointed under sub-paragraph (1) of the said paragraph 1.

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- (5) The Court may by order authorise the disclosure to such an administrator of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.
- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under the said Act of 1995 of the administrator or the High Court.
- (7) The Court of Session may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless—
  - (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court; and
  - (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.
- (8) The persons referred to in subsection (7) above are—
  - (a) a constable;
  - (b) the Lord Advocate or any procurator fiscal; and
  - (c) a person commissioned by the Commissioners of Customs and Excise.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 31(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with such order; and any such order shall be served as if the proceedings were civil proceedings against the department.
- (12) The person on whom an order under subsection (1) above is served—
  - (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and
  - (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the Court of Session,and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.

#### Marginal Citations

M32 1995 c.43.

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## Offences

### 36 Offence of prejudicing investigation.

- (1) A person who, knowing or suspecting that an investigation into drug trafficking is taking place, does anything which is likely to prejudice the investigation is guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it is a defence to prove—
  - (a) that he did not know or suspect, or have reasonable grounds to suspect, that by acting as he did he was likely to prejudice the investigation; or
  - (b) that he had lawful authority or reasonable excuse for acting as he did.
- (3) Nothing in subsection (1) above makes it an offence for a professional legal adviser to disclose any information or other matter—
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (4) Subsection (3) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

### 37 Acquisition, possession or use of proceeds of drug trafficking.

- (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.
- (2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of subsection (2) above—
  - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
  - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2) above.

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- (5) Where a person discloses to a constable or to a person commissioned by the Commissioners of Customs and Excise a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a constable or a person so commissioned any matter on which such a suspicion or belief is based—
- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in relation to the property in contravention of subsection (1) above, he does not commit an offence under this section if—
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable or person so commissioned, or
    - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.
- (6) For the purposes of this section having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this section, it is a defence to prove that—
- (a) he intended to disclose to a constable or a person so commissioned such a suspicion, belief or matter as is mentioned in subsection (5) above; but
  - (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.
- (8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable or a person so commissioned.
- (9) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.
- (10) No constable, person so commissioned or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.

### **38 Offence of assisting another to retain the proceeds of drug trafficking.**

- (1) Subject to subsection (3)(b) below, a person shall be guilty of an offence if, knowing or suspecting that another person (in this section referred to as “A”) is a person who carries on, or has carried on, or has derived financial or other rewards from, drug trafficking, he enters into, or is otherwise concerned in, an arrangement whereby—
- (a) the retention or control, by or on behalf of A, of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
  - (b) A's proceeds of drug trafficking—

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- (i) are used to secure that funds are placed at A's disposal; or
  - (ii) are used for A's benefit to acquire property by way of investment.
- (2) In this section, references to proceeds of drug trafficking shall be construed as including any property which, whether in whole or in part, directly or indirectly constitutes such proceeds.
- (3) Where a person discloses to a constable or to a person commissioned by the Commissioners of Customs and Excise a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or discloses to a constable or a person so commissioned any matter on which such a suspicion or belief is based—
  - (a) the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise on the disclosure of information; and
  - (b) if the disclosure relates to an arrangement entry into which, or concern in which, by the person would (but for this paragraph) contravene subsection (1) above, he does not commit an offence under that subsection if—
    - (i) the disclosure is made before, with the consent of the constable or as the case may be of the person so commissioned, he enters into, or becomes concerned in, that arrangement; or
    - (ii) though made after he enters into, or becomes concerned in, that arrangement, it is made on his own initiative and as soon as it is reasonable for him to do so.
- (4) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
  - (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
  - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1) above; or
  - (c) that—
    - (i) he intended to disclose to a constable or to a person commissioned as aforesaid such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement; but
    - (ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (b) of that subsection.
- (5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable or a person commissioned as aforesaid.
- (6) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

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### 39 Failure to disclose knowledge or suspicion of money laundering.

- (1) A person is guilty of an offence if—
  - (a) he knows, or suspects, that another person is engaged in drug money laundering;
  - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
  - (c) he does not disclose the information or other matter to a constable or to a person commissioned by the Commissioners of Customs and Excise as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable or a person so commissioned—
  - (a) his suspicion or belief that another person is engaged in drug money laundering; or
  - (b) any information or other matter on which that suspicion or belief is based,the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section “drug money laundering” means doing any act which constitutes an offence under—
  - (a) section 37 or 38 of this Act; or
  - (b) section 14 of the <sup>M33</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking),or, in the case of an act done otherwise than in Scotland, would constitute such an offence if done in Scotland.
- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—
  - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person—

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- (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings.
- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (11) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or to both.

#### Marginal Citations

M33 1990 c.5.

## 40 Tipping-off.

- (1) A person is guilty of an offence if—
- (a) he knows or suspects that a constable or a person commissioned by the Commissioners of Customs and Excise is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering within the meaning of subsections (7) and (8) of section 39 of this Act; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.
- (2) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure has been made to a constable, or a person so commissioned, under section 37, 38 or 39 of this Act; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure of a kind mentioned in section 37(8), 38(5) or 39(5) of this Act has been made; and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) above makes it an offence for a professional legal adviser to disclose any information or other matter—
- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.



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- (5) Subsection (4) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3) above, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.
- (7) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or to both.
- (8) No constable, person so commissioned or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.

#### **41 Offences relating to controlled drugs: fines.**

- (1) Without prejudice to section 211(7) of the <sup>M34</sup>Criminal Procedure (Scotland) Act 1995 (fines) but subject to section 10(3)(a) of the <sup>M35</sup>Proceeds of Crime (Scotland) Act 1995, where a person is convicted on indictment of an offence to which this section relates and sentenced in respect of that offence to a period of imprisonment or detention, the Court where—
  - (a) paragraph (b) below does not apply shall, unless it is satisfied that for any reason it would be inappropriate to do so, also impose a fine;
  - (b) it makes a confiscation order under section 1(1) of the Proceeds of Crime (Scotland) Act 1995 as regards the person, may also impose a fine.
- (2) In determining the amount of a fine imposed under paragraph (a) of subsection (1) above, the Court shall have regard to any profits likely to have been made by the person from the crime in respect of which he has been convicted.
- (3) This section relates to an offence which is a drug trafficking offence within the meaning of the said last mentioned Act of 1995.
- (4) Where in any proceedings a fine has been imposed by virtue of subsection (1) above as regards a person and a period of imprisonment or detention is imposed on him in default of payment of its amount (or as the case may be of an instalment thereof), that period shall run from the expiry of any other period of imprisonment or detention (not being one of life imprisonment or detention for life) imposed on him in the proceedings.
- (5) The reference in subsection (4) above to “any other period of imprisonment or detention imposed” includes (without prejudice to the generality of the expression) a reference to such a period imposed on default of payment of a fine (or instalment thereof) or of a confiscation order (or instalment thereof); but only where that default has occurred before the warrant for imprisonment is issued for the default in relation to the fine imposed by virtue of subsection (1) of this section.

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#### Marginal Citations

M34 1995 c.46.

M35 1995 c.43.

## 42 Extension of certain offences to Crown servants and exemptions for regulators etc.

- (1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, sections 36 to 40 of this Act shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.
- (2) Section 39 of this Act shall not apply to—
  - (a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or
  - (b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.
- (3) The Secretary of State may designate, for the purpose of paragraph (a) of subsection (2) above, any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person prescribed by the Secretary of State, for the purpose of paragraph (b) of subsection (2) above, shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.
- (5) In this section—
 

“the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland; and

“prescribed” means prescribed by regulations made by the Secretary of State.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument.
- (7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 43 Interpretation of Part V.

- (1) In this Part of this Act (except where the context otherwise requires)—
 

“authorised government department” means a government department which is an authorised department for the purposes of the <sup>M36</sup>Crown Proceedings Act 1947;

“confiscation order” means an order under section 1(1), 11(4), 12(3) or 13 of the <sup>M37</sup>Proceeds of Crime (Scotland) Act 1995; and

“drug trafficking” has the same meaning as in the said Act of 1995.
- (2) This Part of this Act shall (except where the context otherwise requires) be construed as one with the <sup>M38</sup>Criminal Procedure (Scotland) Act 1995.
- (3) This Part of this Act applies to property whether it is situated in Scotland or elsewhere.

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(4) References in this Part of this Act—

- (a) to offences include a reference to offences committed before the commencement of section 1 of the <sup>M39</sup>Criminal Justice (Scotland) Act 1987; but nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence to which that section relates instituted before the commencement of that section;
- (b) to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection; and
- (c) to property held by a person include a reference to property vested in the interim or permanent trustee in his sequestration or in his trustee in bankruptcy or liquidator.

**Marginal Citations**

- M36** 1947 c.44.
- M37** 1995 c.43.
- M38** 1995 c.46.
- M39** 1987 c.41.

**PART VI**

MISCELLANEOUS AND GENERAL

*False oaths etc.*

**44 False statements and declarations.**

(1) Any person who—

- (a) is required or authorised by law to make a statement on oath for any purpose; and
- (b) being lawfully sworn, wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine or to both such fine and imprisonment.

(2) Any person who knowingly and wilfully makes, otherwise than on oath, a statement false in a material particular, and the statement is made—

- (a) in a statutory declaration; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by, under or in pursuance of any public general Act of Parliament for the time being in force; or
- (c) in any oral declaration or oral answer which he is authorised or required to make by, under or in pursuance of any public general Act of Parliament for the time being in force; or
- (d) in any declaration not falling within paragraph (a), (b), or (c) above which he is required to make by an order under section 2 of the <sup>M40</sup>Evidence (Proceedings in Other Jurisdictions) Act 1975,

*Status: Point in time view as at 01/12/2001. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995 is up to date with all changes known to be in force on or before 27 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both such fine and imprisonment.

(3) Any person who—

- (a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any Act of Parliament for the time being in force of persons qualified by law to practise any vocation or calling; or
- (b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, shall be guilty of an offence and be liable on conviction to imprisonment for a term not exceeding 12 months or to a fine or to both such fine and imprisonment.

(4) Subsection (2) above applies to any oral statement made for the purpose of any entry in a register kept in pursuance of any Act of Parliament as it applies to the statements mentioned in that subsection.

#### Marginal Citations

M40 1975 c.34.

#### 45 Provisions supplementary to section 44.

- (1) Any person who aids, abets, counsels, procures or suborns another person to commit an offence against section 44 of this Act shall be liable to be proceeded against, indicted, tried and punished as if he were a [<sup>F26</sup>principal] offender
- (2) Any person who incites or attempts to procure or suborn another person to commit an offence against that section shall be guilty of an offence and be liable on conviction to imprisonment or to a fine or to both such fine and imprisonment.
- (3) Nothing in section 44 and 46(1) of this Act and subsections (1) and (2) above shall affect the common law relating to the crime of perjury or to any crime or offence involving falsehood, fraud or wilful imposition, or the liability of any person to be prosecuted for any such crime or offence, provided that no person shall be liable in respect of the same matter to be punished both at common law and under these sections.
- (4) Where the making of a false statement is not only an offence under the said sections 44 or 46(1) or under subsection (1) or (2) above, but also by virtue of some other Act is a corrupt practice or subjects the offender to any forfeiture or disqualification or to any penalty other than imprisonment or a fine, the liability of the offender under these sections shall be in addition to and not in substitution for his liability under such other Act.
- (5) Where the making of a false statement is by any other Act whether passed before or after the commencement of this Act, made punishable on summary conviction, proceedings may be taken either under such other Act or under this Act.

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### Textual Amendments

**F26** Word in s. 45(1) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 18(8)**; S.I. 1997/1712, art. 3, **Sch.**

## 46 Proceedings.

- (1) For the purposes of any proceedings at common law for perjury or of any proceedings for a contravention of section 44(1) of this Act—
  - (a) the forms and ceremonies used in administering an oath shall be immaterial if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question, and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him;
  - (b) an affirmation or declaration made in lieu of an oath shall be of the like effect in all respects as if it had been made on oath.
- (2) Where an offence against section 44 of this Act is committed in any place outside the United Kingdom, the offender may be proceeded against, tried and punished in any place in Scotland where he was apprehended or is in custody as if the offence had been committed in that place; and for all purposes incidental to or consequential on the trial or punishment of the offence, it shall be deemed to have been committed in that place.
- (3) Any summary criminal proceedings for an offence against section 44 of this Act may, notwithstanding anything in the <sup>M41</sup>Criminal Procedure (Scotland) Act 1995, be commenced at any time within one year from the date of the commission of the offence, or within three months from the date when evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge whichever period last expires; and for the purposes of this section a certificate purporting to be signed by or on behalf of the Lord Advocate as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.
- (4) In sections 44 and 45 of this Act and in this section, the expression “statutory declaration” means a declaration made by virtue of the <sup>M42</sup>Statutory Declarations Act 1835 or of any enactment (including subordinate legislation) applying or extending the provisions of that Act.

### Marginal Citations

**M41** 1995 c.46.

**M42** 1835 c.62.

**Status:** Point in time view as at 01/12/2001. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 26/04/2004

## *[<sup>F27</sup>False monetary instruments*

### Textual Amendments

**F27** S. 46A inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 89, 94; S.S.I. 2004/175, art. 2

### 46A False monetary instruments

- (1) A person who counterfeits or falsifies a specified monetary instrument with the intention that it be uttered as genuine is guilty of an offence.
- (2) A person who has in his custody or under his control, without lawful authority or excuse—
  - (a) anything which is, and which he knows or believes to be, a counterfeited or falsified specified monetary instrument; or
  - (b) any machine, implement or computer programme, or any paper or other material, which to his knowledge is specially designed or adapted for the making of a specified monetary instrument,
 is guilty of an offence.
- (3) For the purposes of subsections (1) and (2)(a) above, it is immaterial that the specified monetary instrument (or purported specified monetary instrument) is not in a fit state to be uttered or that the counterfeiting or falsifying of it has not been finished or perfected.
- (4) A person guilty of an offence under this section is liable on summary conviction—
  - (a) to a fine not exceeding the statutory maximum;
  - (b) to imprisonment for a term not exceeding six months; or
  - (c) both to a fine and to such imprisonment.
- (5) A person guilty of an offence—
  - (a) under subsection (1) above is liable on conviction on indictment—
    - (i) to a fine;
    - (ii) to imprisonment for a term not exceeding ten years; or
    - (iii) both to a fine and to such imprisonment;
  - (b) under subsection (2) above is liable on conviction on indictment—
    - (i) to a fine;
    - (ii) if it is proved that the offence was committed with the intention that the specified monetary instrument in question be uttered (or as the case may be that a specified monetary instrument be uttered), to imprisonment for a term not exceeding ten years and if it is not so proved, to imprisonment for a term not exceeding two years; or
    - (iii) both to a fine and to imprisonment for a term not exceeding ten years, if it is proved as mentioned in sub-paragraph (ii) above, or both to a fine and to imprisonment for a term not exceeding two years if it is not so proved.

**Status:** Point in time view as at 01/12/2001. This version of this Act contains provisions that are not valid for this point in time.

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- (6) Where an offence under this section which has been committed—
- (a) by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body; or
  - (b) by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a member of that partnership,
- or by any person who was purporting to act in any such capacity, he as well as the body corporate, or as the case may be the partnership, is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (7) Where the affairs of a body corporate are managed by its members, subsection (6) above applies in relation to the actings and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (8) In subsections (1) to (5) above, “specified” means for the time being specified for the purposes of this section, by order made by the Scottish Ministers.
- (9) The power to make an order under subsection (8) above—
- (a) includes power to make such incidental, supplemental, transitional or transitory provision as the Scottish Ministers think necessary or expedient; and
  - (b) is exercisable by statutory instrument.
- (10) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

### *Offensive weapons*

#### **47 Prohibition of the carrying of offensive weapons.**

- (1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding [F28four] years or a fine, or both.
- (2) Where any person is convicted of an offence under subsection (1) above the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.
- (3) A constable may arrest without warrant any person whom he has reasonable cause to believe to be committing an offence under subsection (1) above, if the constable is not satisfied as to that person’s identity or place of residence, or has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used.
- (4) In this section “public place” includes any road within the meaning of the <sup>M43</sup>Roads (Scotland) Act 1984 and any other premises or place to which at the material time the

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public have or are permitted to have access, whether on payment or otherwise; and “offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him <sup>F29</sup> or by some other person].

#### Textual Amendments

**F28** Word in s. 47(1)(b) substituted (4.7.1996) by 1996 c. 26, s. 2(2)(4)

**F29** Words in s. 47(4) inserted (4.7.1996) by 1996 c. 26, s. 5

#### Marginal Citations

**M43** 1984 c.54.

### 48 Search for offensive weapons.

- (1) Where a constable has reasonable grounds for suspecting that any person is carrying an offensive weapon and has committed or is committing an offence under section 47 of this Act, the constable may search that person without warrant, and detain him for such time as is reasonably required to permit the search to be carried out; and he shall inform the person of the reason for such detention.
- (2) Any person who—
  - (a) intentionally obstructs a constable in the exercise of the constable’s powers under subsection (1) above; or
  - (b) conceals from a constable acting in the exercise of those powers an offensive weapon,
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) A constable may arrest without warrant any person who he has reason to believe has committed an offence under subsection (2) above.
- (4) In this section, “offensive weapon” has the same meaning as in the said section 47.

### 49 Offence of having in public place article with blade or point.

- (1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed.
- (3) This section does not apply to a folding pocketknife if the cutting edge of its blade does not exceed three inches (7.62 centimetres).
- (4) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he had good reason or lawful authority for having the article with him in the public place.



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- (5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under subsection (1) above to prove that he had the article with him—
  - (a) for use at work;
  - (b) for religious reasons; or
  - (c) as part of any national costume.
- (6) Where a person is convicted of an offence under subsection (1) above the court may make an order for the forfeiture of any article to which the offence relates, and any article forfeited under this subsection shall (subject to section 193 of the <sup>M44</sup>Criminal Procedure (Scotland) Act 1995 (suspension of forfeiture etc, pending appeal)) be disposed of as the court may direct.
- (7) In this section “public place” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

#### Marginal Citations

M44 1995 c.46.

### [<sup>F30</sup>49A Offence of having article with blade or point (or offensive weapon) on school premises.

- (1) Any person who has an article to which section 49 of this Act applies with him on school premises shall be guilty of an offence.
- (2) Any person who has an offensive weapon within the meaning of section 47 of this Act with him on school premises shall be guilty of an offence.
- (3) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.
- (4) Without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—
  - (a) for use at work,
  - (b) for educational purposes,
  - (c) for religious reasons, or
  - (d) as part of any national costume.
- (5) A person guilty of an offence—
  - (a) under subsection (1) above shall be liable—
    - (i) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both;
  - (b) under subsection (2) above shall be liable—
    - (i) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;

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(ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.

(6) In this section and section 49B of this Act, “school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and “school” has the meaning given by section 135(1) of the <sup>M45</sup>Education (Scotland) Act 1980.]

#### Textual Amendments

**F30** Ss. 49A, 49B inserted (1.9.1996) by 1996 c. 26, s. 4(3)(4); S.I. 1996/2071, art. 2

#### Marginal Citations

**M45** 1980 c. 44.

### [<sup>F31</sup>49B Power of entry to search for articles with a blade or point and offensive weapons.

- (1) A constable may enter school premises and search those premises and any person on those premises for—
  - (a) any article to which section 49 of this Act applies, or
  - (b) any offensive weapon within the meaning of section 47 of this Act,
 if he has reasonable grounds for suspecting that an offence under section 49A of this Act is being, or has been, committed.
- (2) If in the course of a search under this section a constable discovers an article or weapon which he has reasonable grounds for believing to be an article or weapon of a kind described in subsection (1) above, he may seize it.
- (3) The constable may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section.]

#### Textual Amendments

**F31** Ss. 49A, 49B inserted (1.9.1996) by 1996 c. 26, s. 4(3)(4); S.I. 1996/2071, art. 2

VALID FROM 01/11/2007

### [<sup>F32</sup>49C Offence of having offensive weapon etc. in prison

- (1) Any person who has with him in a prison—
  - (a) an offensive weapon, or
  - (b) any other article which has a blade or is sharply pointed,
 commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he had good reason or lawful authority for having the weapon or other article with him in the prison.

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- (3) A defence under subsection (2) includes, in particular, a defence that the person had the weapon or other article with him in prison—
  - (a) for use at work,
  - (b) for religious reasons, or
  - (c) as part of any national costume.
- (4) Where a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture of any weapon or other article to which the offence relates.
- (5) Any weapon or other article forfeited under subsection (4) is, subject to section 193 of the Criminal Procedure (Scotland) Act 1995 (c. 46), to be disposed of as the court may direct.
- (6) 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 a fine not exceeding the statutory maximum or both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.
- (7) In this section—

“offensive weapon” has the meaning given by section 47(4),

“prison” includes—

  - (a) any prison other than a naval, military or air force prison,
  - (b) a remand centre (within the meaning of paragraph (a) of subsection (1) of section 19 of the Prisons (Scotland) Act 1989 (c. 45) (provision of remand centres and young offenders institutions),
  - (c) a young offenders institution (within the meaning of paragraph (b) of that subsection), and
  - (d) secure accommodation within the meaning of section 93(1) of the Children (Scotland) Act 1995 (c. 36).]

#### Textual Amendments

**F32** S. 49C inserted (1.11.2007) by [Custodial Sentences and Weapons \(Scotland\) Act 2007 \(asp 17\)](#), [ss. 63, 67\(2\)](#); [S.S.I. 2007/431](#), [art. 3](#), Sch.

## 50 Extension of constable’s power to stop, search and arrest without warrant.

- (1) Where a constable has reasonable grounds for suspecting that a person has with him an article to which section 49 of this Act applies and has committed or is committing an offence under subsection (1) of that section, the constable may search that person without warrant and detain him for such time as is reasonably required to permit the search to be carried out.
- (2) A constable who detains a person under subsection (1) above shall inform him of the reason for his detention.
- (3) Where a constable has reasonable cause to believe that a person has committed or is committing an offence under section 49(1) [<sup>F33</sup> or section 49A(1) or (2)] of this Act and the constable—
  - (a) having requested that person to give his name or address or both—

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- (i) is not given the information requested; or
  - (ii) is not satisfied that such information as is given is correct; or
  - (b) has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an article to which that section applies might be used, he may arrest that person without warrant.
- (4) Any person who—
- (a) intentionally obstructs a constable in the exercise of the constable’s powers under subsection (1) above; or
  - (b) conceals from a constable acting in the exercise of those powers an article to which section 49 of this Act applies,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Where a constable has reasonable cause to believe that a person has committed or is committing an offence under subsection (4) above he may arrest that person without warrant.

#### Textual Amendments

**F33** Words in s. 50(3) inserted (4.7.1996) by 1996 c. 26, s. 1(2)

*[<sup>F34</sup> Racially-aggravated harassment]*

#### Textual Amendments

**F34** Crossheading inserted (30.9.1998) by 1998 c. 37, s. 33; S.I. 1998/2327, art. 2(x)

#### <sup>F35</sup> 50A [ Racially-aggravated harassment.]

- (1) A person is guilty of an offence under this section if he—
- (a) pursues a racially-aggravated course of conduct which amounts to harassment of a person and—
    - (i) is intended to amount to harassment of that person; or
    - (ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person; or
  - (b) acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.
- (2) For the purposes of this section a course of conduct or an action is racially aggravated if—
- (a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person’s membership (or presumed membership) of a racial group; or
  - (b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group.

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- (3) In subsection (2)(a) above—  
“membership”, in relation to a racial group, includes association with members of that group;  
“presumed” means presumed by the offender.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender’s malice and ill-will is also based, to any extent, on—  
(a) the fact or presumption that any person or group of persons belongs to any religious group; or  
(b) any other factor not mentioned in that paragraph.
- (5) A person who is guilty of an offence under this section shall—  
(a) on summary conviction, be liable to a fine not exceeding the statutory maximum, or imprisonment for a period not exceeding six months, or both such fine and such imprisonment; and  
(b) on conviction on indictment, be liable to a fine or to imprisonment for a period not exceeding seven years, or both such fine and such imprisonment.
- (6) In this section—  
“conduct” includes speech;  
“harassment” of a person includes causing the person alarm or distress;  
“racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins, and a course of conduct must involve conduct on at least two occasions.

#### Textual Amendments

**F35** S. 50A inserted (30.9.1998) by 1998 c. 37, s. 33; S.I. 1998/2327, art. 2(g)

### Reset

#### 51 Reset.

Criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement and by falsehood, fraud and wilful imposition.

### Vandalism

#### 52 Vandalism.

- (1) Subject to subsection (2) below, any person who, without reasonable excuse, wilfully or recklessly destroys or damages any property belonging to another shall be guilty of the offence of vandalism.
- (2) It shall not be competent to charge acts which constitute the offence of wilful fire-raising as vandalism under this section.
- (3) Any person convicted of the offence of vandalism shall be liable on summary conviction—

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- (a) in the district court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 3 on the standard scale, or to both;
- (b) in the sheriff court—
  - (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the <sup>M46</sup>Criminal Procedure (Scotland) Act 1995), or to both; and
  - (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i) above, or to both.

#### Marginal Citations

M46 1995 c. 46.

### General

#### 53 Short title, commencement and extent.

- (1) This Act may be cited as the Criminal Law (Consolidation) (Scotland) Act 1995.
- (2) This Act shall come into force on 1 April 1996.
- (3) Subject to subsection (4) below, this Act extends only to Scotland.
- (4) Section 35(10) to (12) of this Act extends also to England and Wales and sections 27 to 29 of this Act and this section extend also to England and Wales and Northern Ireland.

### TABLE OF DERIVATIONS

#### 1 Notes:

This Table shows the derivation of the provisions of the Act.

#### 2 The following abbreviations are used in the Table:—

#### ACTS OF PARLIAMENT

1933	= False Oaths (Scotland) Act 1933 (c. 20)
1976	= Sexual Offences (Scotland) Act 1976 (c. 67)
1980	= Criminal Justice (Scotland) Act 1980 (c. 62)
1987	= Criminal Justice (Scotland) Act 1987 (c. 41)
1988	= Criminal Justice Act 1988 (c. 33)
1993	= Criminal Justice Act 1993 (c. 36)

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1994	= Drug Trafficking Act 1994 (c. 37)
1995	= Criminal Justice (Scotland) Act 1995 (1995 c. 20)
1995CP	= Criminal Justice (Consequential Provisions) (Scotland) Act (1995 c. 40)
1995CLC	= Criminal Law (Consolidation) (Scotland) Act 1995 (1995 c. 39)

Provision	Derivation
1	1976 s.2A; Incest and Related Offences (Scotland) Act 1986 (c. 36) s.1
2	1976 s.2B; Incest and Related Offences (Scotland) Act 1986 (c. 36) s.1
3	1976 s.2C; Incest and Related Offences (Scotland) Act 1986 (c. 36) s.1
4	1976 s.2D; Incest and Related Offences (Scotland) Act 1986 (c. 36) s.1; 1987 Sch.2
5(1), (2)	1976 s.3
(3) — (7)	1976 s.4; Incest and Related Offences (Scotland) Act 1986 (c. 36) Sch.1 §.4; Criminal Justice (Scotland) Act 1995 (c. 20) Sch.6 §.
6	1976 s.5
7(1)	1976 s.1
(2), (3)	1976 s.2
(4)	1976 s.17
8(1), (2)	1976 s.8
(3) — (5)	1976 s.9
9	1976 s.10
10	1976 s.11
11(1) — (4)	1976 s.12
(5), (6)	1976 s.13(1)
12	1976 s.14; Criminal Procedure (Scotland) Act 1975 (c. 21) Sch.7A; Criminal Law Act 1977 (c. 45) Sch.11
13	1980 s.80; Mental Health (Scotland) Act 1984 (c. 36) Sch.5; Criminal Justice and Public Order Act 1994 (c. 33) ss.145(2), 146(2)
14	1976 s.15

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15	1976 s.6
16	1976 s.18
17	1976 s.19
18	1980 s.68; Sporting Events (Control of Alcohol etc.) Act 1985 (c.57) s.10
19(1)	1980 s.69
(2)	1980 s.70
(3) — (6)	1980 s.70A; Public Order Act 1986 (c. 64) Sch.1 §.10
(7)	1980 s.71; Public Order Act 1986 (c. 64) Sch.1 §.11
20(1)	1980 s.72(1)
(2)	1980 s.73
(3) — (6)	1980 s.72A(1) — (4); Public Order Act 1986 (c. 64) Sch.1 §.14
(7)	1980 s.74
(8)	1980 ss.72(2), (3), 72A(5); Public Order Act 1986 (c. 64) Sch.1 §.14
21	1980 s.75; Public Order Act 1986 (c. 64) Sch.1 §.12
22	1980 s.76; Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) Sch.8 §.30
23	1980 s.77; Sporting Events (Control of Alcohol etc.) Act 1985 (c.57) s.10; Public Order Act 1986 (c. 64) Sch.1 §.13
24	1987 s.48; Criminal Justice and Public Order Act 1994 (c. 33) s.129(4), (5)
25	1987 s.49; Criminal Justice and Public Order Act 1994 (c. 33) s.129(6); Children (Scotland) Act 1995 (c. 36) Sch.3 §.[39]
26	1987 s.50
27	1987 s.51; Criminal Justice and Public Order Act 1994 (c. 33) s.164(3)
28	1987 s.52; 1988 Sch.15 §.117; Criminal Justice and Public Order Act 1994 (c. 33) s.164(4)
29	1987 s.53
30	1987 s.54; 1988 Sch.15 §.111; S.I. 1989/2405 Sch.9 Pt.II §.58



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31	1987 s.38; 1988 Sch.5 §.23
32	1987 s.39
33	1987 s.40
34	1987 s.40A; 1993 s.20(2)
35	1987 s.41
36	1987 s.42; 1993 s.26(2)
37	1987 s.42A; 1993 s.17(1)
38	1987 s.43; 1993 s.19(2), (3)
39	1987 s.43A; 1993 s.19(1)
40	1987 s.43B; 1993 s.19(1)
41	1987 s.44
42	1987 s.46A; 1993 Sch.4 §.2
43	1987 s.47(1)(part) — (4)
44(1)	1933 s.1; Criminal procedure (Scotland) Act 1975 s.221(1)
(2)	1933 s.2; Evidence (Proceedings in Other Jurisdictions) Act 1975 (c. 35) Sch.1
(3)	1933 s.3
(4)	Criminal Justice (Scotland) Act 1949 (c. 94) s.42(1)
45(1), (2)	1933 s.4
(3) — (5)	1933 s.6
46(1)	1933 s.7(1)
(2)	1933 s.5
(3)	Criminal Justice (Scotland) Act 1949 (c. 94) s.42(2)
(4)	1933 s.7(2)
47	Prevention of Crime Act 1953 (c. 14) s.1; Criminal Procedure (Scotland) Act 1975 (c. 21) ss. 193A, 298B; Roads (Scotland) Act 1984 (c. 54) Sch.9 §.42; Criminal Justice Act 1988 (c. 33) Sch.8 §.16
48	1980 s.4
49	Carrying of Knives (Scotland) Act 1993 (c. 13) s.1; Council Directive 80/181 (Approximation of Laws Relating to Units of Measurement)
50	Carrying of Knives (Scotland) Act 1993 (c. 13) s.2

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51	Criminal Procedure (Scotland) Act 1975 (c. 21) s.59
52	1980 s.78
53(1), (2)	Drafting
(3), (4)	1987 s.72(1), (4)

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