



# Criminal Law (Consolidation) (Scotland) Act 1995

## 1995 CHAPTER 39

### PART VI

#### MISCELLANEOUS AND GENERAL

##### *Offensive weapons*

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

- (1) Any person who <sup>F1</sup> . . . 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 [<sup>F25</sup> ] years or a fine, or both.

[<sup>F3</sup>(1A) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.]

- (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.

<sup>F4</sup>(3) . . . . .

[<sup>F5</sup>(4) In this section—

“offensive weapon” means any article—

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

*Status: Point in time view as at 25/01/2018.*

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- (i) the person having it, or
  - (ii) some other person,
- “public place” means any place other than—
- (a) domestic premises,
  - (b) school premises (within the meaning of section 49A(6)),
  - (c) a prison (within the meaning of section 49C(7)),
- “domestic premises” means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).]

#### Textual Amendments

- F1** Words in s. 47(1) repealed (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(2)(a)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F2** Word in s. 47(1)(b) substituted (10.3.2016) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 84(2)**, 117(2); S.S.I. 2016/95, **art. 2** (with **art. 3**)
- F3** S. 47(1A) inserted (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(2)(b)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F4** S. 47(3) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **sch. 2 para. 12(b)**; S.S.I. 2017/345, **art. 3**, sch.
- F5** S. 47(4) substituted (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(2)(c)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

## 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.
- <sup>F6</sup>(3) .....
- (4) In this section, “offensive weapon” has the same meaning as in the said section 47.

#### Textual Amendments

- F6** S. 48(3) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **sch. 2 para. 12(c)**; S.S.I. 2017/345, **art. 3**, sch.

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#### **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 [<sup>F7</sup>twelve] months or a fine not exceeding the statutory maximum or both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F8</sup>5] 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 [<sup>F9</sup>show that the person had a reasonable excuse] or lawful authority for having the article with him in the public place.
- (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 [<sup>F10</sup>show] 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>M1</sup>Criminal Procedure (Scotland) Act 1995 (suspension of forfeiture etc, pending appeal)) be disposed of as the court may direct.

[<sup>F11</sup>(7) In this section, “public place” has the same meaning as in section 47(4).]

#### **Textual Amendments**

- F7** Word in s. 49(1)(a) substituted (1.9.2006) by [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), **ss. 73(2)**, 104; S.S.I. 2006/432, **art. 2(d)**
- F8** Word in s. 49(1)(b) substituted (10.3.2016) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 84(3)**, 117(2); S.S.I. 2016/95, **art. 2** (with **art. 3**)
- F9** Words in s. 49(4) substituted (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(3)(a)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F10** Word in s. 49(5) substituted (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(3)(b)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F11** S. 49(7) substituted (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(3)(c)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

#### **Marginal Citations**

- M1** 1995 c.46.

*Status: Point in time view as at 25/01/2018.*

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**[<sup>F12</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 [<sup>F13</sup>show that the person had a reasonable excuse] 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 [<sup>F14</sup>show] 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 [<sup>F15</sup>twelve] months, or a fine not exceeding the statutory maximum, or both;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F16</sup>5] 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;
    - (ii) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F17</sup>5] 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>M2</sup>Education (Scotland) Act 1980.]

**Textual Amendments**

- F12** Ss. 49A, 49B inserted (1.9.1996) by 1996 c. 26, s. 4(3)(4); S.I. 1996/2071, art. 2
- F13** Words in s. 49A(3) substituted (13.12.2010 for specified purposes) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 37(4)(a), 206(1); S.S.I. 2010/413, art. 2, Sch.
- F14** Word in s. 49A(4) substituted (13.12.2010 for specified purposes) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 37(4)(b), 206(1); S.S.I. 2010/413, art. 2, Sch.
- F15** Word in s. 49A(5)(a)(i) substituted (1.9.2006) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 73(4), 104; S.S.I. 2006/432, art. 2(d)
- F16** Word in s. 49A(5)(a)(ii) substituted (10.3.2016) by Criminal Justice (Scotland) Act 2016 (asp 1), ss. 84(4)(a), 117(2); S.S.I. 2016/95, art. 2 (with art. 3)
- F17** Word in s. 49A(5)(b)(ii) substituted (10.3.2016) by Criminal Justice (Scotland) Act 2016 (asp 1), ss. 84(4)(b), 117(2); S.S.I. 2016/95, art. 2 (with art. 3)

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#### Marginal Citations

M2 1980 c. 44.

### [<sup>F18</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

F18 Ss. 49A, 49B inserted (1.9.1996) by 1996 c. 26, s. 4(3)(4); S.I. 1996/2071, art. 2

### [<sup>F19</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 [<sup>F20</sup>show that the person had a reasonable excuse] or lawful authority for having the weapon or other article with him in the prison.
- (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,

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- (b) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F21</sup>5] 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**

- F19** 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.
- F20** Words in s. 49C(2) substituted (13.12.2010 for specified purposes) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 37(5), 206(1)**; [S.S.I. 2010/413](#), **art. 2**, Sch.
- F21** Word in s. 49C(6)(b) substituted (10.3.2016) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 84(5), 117(2)**; [S.S.I. 2016/95](#), **art. 2** (with art. 3)

**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.

<sup>F22</sup>(3) .....

(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 [<sup>F23</sup>4] on the standard scale.

<sup>F24</sup>(5) .....

**Textual Amendments**

- F22** S. 50(3) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **sch. 2 para. 12(d)**; [S.S.I. 2017/345](#), **art. 3**, sch.

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- F23** Word in s. 50(4) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 37(6), 206(1)**; S.S.I. 2010/413, **art. 2**, Sch.
- F24** S. 50(5) repealed (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), **sch. 2 para. 12(d)**; S.S.I. 2017/345, art. 3, sch.

**Status:**

Point in time view as at 25/01/2018.

**Changes to legislation:**

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