



# Incest and Related Offences (Scotland) Act 1986

## 1986 CHAPTER 36

An Act to make provision for Scotland in respect of incest and related offences. [18th July 1986]

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:—

### **1 Incest and related offences.**

After section 2 of the Sexual Offences (Scotland) Act 1976 there shall be inserted the following sections—

#### **“2A 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
  - (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.

*Status: This is the original version (as it was originally enacted).*

TABLE  
DEGREES OF RELATIONSHIP

<i>Column 1</i>	<i>Column 2</i>
<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
<i>2. Relationships by adoption</i>	
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.

## **2B 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 stepchild is either under the age of 21 or has at any time before attaining the age of 18 lived in the same household and been treated as a child of his or her family, 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 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.

## **2C Intercourse of person in position of trust with child under 16.**

—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 he or she—

- (i) 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
- (ii) did not consent to have sexual intercourse or to have sexual intercourse with that person; or
- (iii) 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.

## **2D Proceedings and penalties for offences under ss. 2A to 2C.**

- (1) Proceedings in respect of an offence under section 2A, 2B or 2C 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 331 of the Criminal Procedure (Scotland) Act 1975 (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 2A, 2B or 2C of this Act shall be liable—
  - (a) on conviction on indictment in the High Court of Justiciary, to imprisonment for any term of imprisonment up to and including life imprisonment;
  - (b) on conviction on indictment before the sheriff, to imprisonment for a term not exceeding 2 years; and
  - (c) on summary conviction, to imprisonment for a term not exceeding 3 months.
- (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 Social Work (Scotland) Act 1968.”.

## **2 Consequential amendments and repeals.**

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule, being amendments consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **3 Short title, commencement and extent.**

- (1) This Act may be cited as the Incest and Related Offences (Scotland) Act 1986.
- (2) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument.
- (3) An order made under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with the coming into operation of this Act.
- (4) This Act extends to Scotland only.

## SCHEDULES

### SCHEDULE 1

Section 2(1).

#### CONSEQUENTIAL AMENDMENTS

##### *The Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 1 In section 171(3) (presumption and determination of age of child), for the words " (b) to " there shall be substituted the words " (c) and " and after the word "section " there shall be inserted " 2A, ".
- 2 In section 331(2) (statutory offences time limit), after the words " mentioned in " there shall be inserted the words " paragraph (d) of ".
- 3 In section 368(3) (presumption and determination of age of child), for the words " (b) to " there shall be substituted the words " (c) and " and after the word " section " there shall be inserted " 2A, ".

##### *The Sexual Offences (Scotland) Act 1976 (c. 67)*

- 4 At the beginning of section 4(1) (intercourse with girl between 13 and 16), there shall be added the words " Without prejudice to sections 2A to 2D of this Act ".

##### *The Adoption (Scotland) Act 1978 (c. 28)*

- 5 At the end of section 41(1) (status conferred in Scotland by adoption), there shall be added the words " and incest. ".

### SCHEDULE 2

Section 2(2).

#### ENACTMENTS REPEALED

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
1567 c. 15.	The Incest Act 1567.	The whole Act.
1 & 2 Geo. 6. c.48.	The Criminal Procedure (Scotland) Act 1938.	The whole Act.
1975 c 21.	The Criminal Procedure (Scotland) Act 1975.	In Schedule 1, paragraph (b).