



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART I

SEXUAL OFFENCES

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 eighteen 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—
 - (a) when more than two persons take part or are present; or
 - (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.

Status: This is the original version (as it was originally enacted).

- (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 both parties to the act; or
 - (c) with a person under the age of eighteen 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 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 previously been charged with a like offence, had reasonable cause to believe that the other person was of or over the age of 18 years.
- (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.