



Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART VI

MISCELLANEOUS AND GENERAL

80 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 twenty-one years.
- (2) An act which would otherwise be treated for the purposes 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) Section 97 of the Mental Health (Scotland) Act 1960 (prohibition on men on the staff of a hospital, or otherwise having responsibility for mental patients, having sexual intercourse with women patients) shall have effect as if any reference therein to having unlawful sexual intercourse with a woman included a reference to committing a homosexual act.
- (5) Subsection (1) above shall not prevent a homosexual act from being an offence under any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

Status: This is the original version (as it was originally enacted).

- (6) In this section, " a homosexual act" means sodomy or an act of gross indecency by one male person with another male person.
- (7) Subject to the provisions of 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;
 - (c) with a person under the age of twenty-one years; or
 - (d) where the act is committed on board a United Kingdom merchant ship, wherever it may be, by a male person who is a member of the crew of that ship with another male person who is a member of the crew of that ship or any other United Kingdom merchant ship.
- (8) In this section—
- " member of the crew " in relation to a ship, includes the master of the ship ;
 - " United Kingdom merchant ship " means a ship registered in the United Kingdom habitually used or used at the time of the alleged offence for the purposes of carrying passengers or goods for reward.
- (9) It shall be an offence to procure or attempt to procure the commission of a homosexual act between two other male persons.
- (10) From the commencement of this section a person who commits or is party to the commission of an offence under subsection (7) or subsection (9) 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 289B of the 1975 Act).
- (11) It shall be a defence to a charge of committing a homosexual act under subsection (7) (c) above that the person so charged being under the age of 24 years who had not previously been charged with like offence, had reasonable cause to believe that the other person was of or above the age of twenty-one years.
- (12) 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 (6) 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.
- (13) Premises shall be treated for the purposes of sections 13 and 14 of the Sexual Offences (Scotland) Act 1976 as a brothel if people resort to it for the purpose of homosexual acts within the meaning of subsection (6) 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.
- (14) No proceedings for an offence to which this subsection applies shall be commenced after the expiration of twelve months from the date on which that offence was committed. This subsection applies to:

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- (a) the offences mentioned in subsections (7) and (9) above; and
- (b) any offence under subsection (12) above which consists of soliciting or importuning any male person for the purpose of procuring the commission of a homosexual act.