



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

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—
- 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
 - did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
 - 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

1. Relationships by consanguinity

Mother

Father

Status: Point in time view as at 27/06/2003. This version of this part contains provisions that are not valid for this point in time.
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Daughter	Son
Grandmother	Grandfather
Grand-daughter	Grandson
Sister	Brother
Aunt	Uncle
Niece	Nephew
Great grandmother	Great grandfather
Great grand-daughter	Great grandson

2. Relationships by adoption

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—

- (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

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(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 ^{M1}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.
- (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 ^{M2}Social Work (Scotland) Act 1968.

Modifications etc. (not altering text)

- C1** 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.

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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 [^{F1}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 [^{F1}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 ^{M3}Sexual Offences (Scotland) Act 1976 or section 5 or 6 of the ^{M4}Criminal Law Amendment Act 1885 (the enactments formerly creating the offences mentioned in subsection (3) above and [^{F2}section 9(1) of this Act]); or
 - (c) section 6 of the ^{M5}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.**

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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 [^{F3}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.
- (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 [^{F4}her] by impersonating her husband shall be deemed to be guilty of rape.

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- (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) ^{F5}
- (2) ^{F5}
- (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 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.

Textual Amendments

F5 S. 8(1)(2) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 19(2)(a)**, 89; S.S.I. 2003/288, **art. 2**, **Sch.**

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

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- (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 ^{M6}Sexual Offences (Scotland) Act 1976 or section 5 or 6 of the ^{M7}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 ^{M8}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.
- (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.

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- (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.
- (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

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- (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 ^{M9}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

[^{F6}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 any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.]

Textual Amendments

F6 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 [^{F7}sixteen] years.

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- (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—
 - ^{F8}(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 [^{F9}the] parties to the act; or
 - (c) with a person under the age of [^{F7}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 ^{M10}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 [^{F7}sixteen] years.
- ^{F10}(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

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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

- F7** 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)
- F8** S. 13(2)(a) and the word “or” immediately following it repealed (6.7.2001) by 2001 asp 7, ss. 10(a), 15(3)
- F9** Word in s. 13(5)(b) substituted (6.7.2001) by 2001 asp 7, ss. 10(b), 15(3)
- F10** 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.

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.

F11

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Textual Amendments

F11 S. 15 repealed (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 19(2)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

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 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 ^{M11}Criminal Procedure (Scotland) Act 1995.

Marginal Citations

M11 1995 c.46.

[^{F12}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 ^{F13} . . . incitement to commit a listed sexual offence but for the fact that

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- ^{F13} . . . 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, ^{F14} . . . 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 ^{F14} . . ., 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—
- ^{F15}(a)
- ^{F16} . . ., 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—
- ^{F17}(a)
- ^{F18}(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.
- (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);

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- (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

- F12** S. 16A inserted (1.10.1996) by 1996 c. 29, s. 6; S.I. 1996/2262, art. 2
- F13** 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))
- F14** 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))
- F15** 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))
- F16** 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))
- F17** 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))
- F18** 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))

[^{F19}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—
- constituted an offence under the law in force in that country or territory; and
 - 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.
- (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—
- stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
 - setting out the grounds for that opinion; and
 - 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.

[A person may be proceeded against, indicted, tried and punished for any offence to ^{F20}(6A) which this section applies—

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- (a) in any sheriff court district in Scotland in which he is apprehended or is in custody; or
 - (b) in such sheriff court district as the Lord Advocate may determine,
- as if the offence had been committed in that district; and the offence shall, for all purposes incidental to or consequential on trial or punishment, be deemed to have been committed in that district.
- (6B) In subsection (6A) above, “sheriff court district” shall be construed in accordance with section 307(1)(interpretation) of the Criminal Procedure (Scotland) Act 1995 (c. 46).]
- (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 ^{M12}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 ^{M13}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

F19 S. 16B inserted (1.9.1997) by 1997 c. 51, s. 8 (with s. 10(3); S.I. 1997/1920, art. 2

F20 S. 16B(6A)(6B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 19(2)(c), 89; S.S.I. 2003/288, art. 2, Sch.

Modifications etc. (not altering text)

C2 S. 16B continued (20.11.2003) by Sexual Offences Act 2003 (c. 42), ss. 141, 142(5)

Marginal Citations

M12 1982 c.45.

M13 1995 c.46.

Status: Point in time view as at 27/06/2003. This version of this part contains provisions that are not valid for this point in time.

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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.

Status:

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Changes to legislation:

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