



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART I

SEXUAL OFFENCES

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.

It shall be a defence to a charge of indecent assault committed against a girl under the age of 16 years that the person so charged has reasonable cause to believe that the girl was his wife.

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*

Status: Point in time view as at 30/09/1998.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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 ^{M1}Criminal Procedure (Scotland) Act 1995.

| |
|--|
| <p>Marginal Citations</p> <p>M1 1995 c.46.</p> |
|--|

[^{F1}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 ^{F2}. . . incitement to commit a listed sexual offence but for the fact that ^{F2}. . . 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, ^{F3}. . . 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 ^{F3}. . . , 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—
 - ^{F4}(a)

Status: Point in time view as at 30/09/1998.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- ^{F5} . . . , 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—
- ^{F6}(a)
 - ^{F7}(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);
 - (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

- F1** S. 16A inserted (1.10.1996) by 1996 c. 29, s. 6; S.I. 1996/2262, art. 2
- F2** 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))
- F3** 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))

Status: Point in time view as at 30/09/1998.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F4** 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))
- F5** 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))
- F6** 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))
- F7** 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))

[^{F8}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—
 - (a) constituted an offence under the law in force in that country or territory; and
 - (b) 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 Adjournment, the accused serves on the prosecutor a notice—
 - (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
 - (b) setting out the grounds for that opinion; and
 - (c) 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.
- (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);

Status: Point in time view as at 30/09/1998.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 ^{M2}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 ^{M3}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

F8 S. 16B inserted (1.9.1997) by 1997 c. 51, s. 8 (with s. 10(3); S.I. 1997/1920, art. 2

Marginal Citations

M2 1982 c.45.

M3 1995 c.46.

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:

Point in time view as at 30/09/1998.

Changes to legislation:

Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.