



# Criminal Law (Consolidation) (Scotland) Act 1995

## 1995 CHAPTER 39

### PART I

#### SEXUAL OFFENCES

##### *Incest and related offences*

#### 4 Proceedings and penalties for offences under sections 1 [<sup>F1</sup> and 2].

- (1) Proceedings in respect of an offence under section 1 [<sup>F2</sup> or 2] 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 <sup>M1</sup>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 [<sup>F2</sup> or 2] 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—

**Changes to legislation:** Criminal Law (Consolidation) (Scotland) Act 1995, Section 4 is up to date with all changes known to be in force on or before 23 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) [View outstanding changes](#)

- (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 <sup>M2</sup>Social Work (Scotland) Act 1968.

#### Textual Amendments

- F1** S. 4: words in section title substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(1), 62(2), [sch. 5 para. 1\(3\)](#); S.S.I. 2010/357, [art. 2\(a\)](#)
- F2** Words in s. 4(1)(5) substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(1), 62(2), [sch. 5 para. 1\(2\)](#); S.S.I. 2010/357, [art. 2\(a\)](#)

#### 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.
- M2** 1968 c.49.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(8) added by [2010 asp 13 s. 200\(2\)\(a\)](#)
- s. 45(6) added by [2010 asp 13 s. 200\(2\)\(c\)](#)
- s. 46(5) added by [2010 asp 13 s. 200\(2\)\(d\)\(ii\)](#)
- s. 49C(7)(b) repealed by [2024 asp 5 Sch. para. 15\(2\)](#)