



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 3

### CRIMINAL PROCEDURE

#### *Police liberation*

#### 55 Breach of undertaking

After section 22 of the 1995 Act insert—

##### **“22ZA Offences where undertaking breached**

- (1) A person who without reasonable excuse breaches an undertaking given by the person under section 22—
  - (a) by reason of failing to appear at court as required under subsection (1C) (a) of section 22, or
  - (b) by reason of failing to comply with a condition imposed under subsection (1D) of that section,is guilty of an offence.
- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 3 on the standard scale, and
  - (b) imprisonment for a period—
    - (i) where conviction is in the JP court, not exceeding 60 days,
    - (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (3) Despite subsection (1)(b), where (and to the extent that) the person breaches the undertaking by reason of committing an offence while subject to the undertaking—
  - (a) the person is not guilty of an offence under that subsection, and

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- (b) subsection (4) applies instead.
- (4) The court, in determining the sentence for the subsequent offence, must have regard to—
  - (a) the fact that the subsequent offence was committed in breach of the undertaking,
  - (b) the number of undertakings to which the person was subject when that offence was committed,
  - (c) any previous conviction of the person of an offence under subsection (1)(b),
  - (d) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.
- (5) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).
- (6) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (5), as references to any provision that is equivalent to subsection (4).
- (7) Any issue of equivalence arising in pursuance of subsection (5) or (6) is for the court to determine.
- (8) Subsections (3)(b) and (4) apply only if the fact that the subsequent offence was committed while the person was subject to an undertaking is specified in the complaint or indictment.
- (9) In this section and section 22ZB, “the subsequent offence” is the offence committed by a person while the person is subject to an undertaking.

### **22ZB Evidential and procedural provision**

- (1) In any proceedings in relation to an offence under section 22ZA(1), the fact that a person—
  - (a) breached an undertaking given by the person under section 22 by reason of failing to appear at court as required under subsection (1C) (a) of that section, or
  - (b) was subject to any particular condition imposed under subsection (1D) of that section,
 is, unless challenged by preliminary objection before the person's plea is recorded, to be held as admitted.
- (2) In any proceedings in relation to an offence under section 22ZA(1) or (as the case may be) the subsequent offence—
  - (a) something in writing, purporting to be an undertaking given by a person under section 22 (and bearing to be signed and certified), is sufficient evidence of the terms of the undertaking so given,

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- (b) a document purporting to be a notice (or copy of a notice) effected under subsection (1F) of that section is sufficient evidence of the terms of the notice,
  - (c) an undertaking whose terms are modified under paragraph (b) of that subsection is to be regarded as if given in the terms as so modified.
- (3) The fact that the subsequent offence was committed while the person was subject to an undertaking is to be held as admitted, unless challenged—
  - (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
  - (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act.
- (4) Where the maximum penalty in respect of the subsequent offence is specified by (or by virtue of) any enactment, that maximum penalty is, for the purposes of the court's determination of the appropriate sentence or disposal in respect of that offence, increased—
  - (a) where it is a fine, by the amount equivalent to level 3 on the standard scale, and
  - (b) where it is a period of imprisonment—
    - (i) as respects conviction in the JP court, by 60 days,
    - (ii) as respects conviction in the sheriff court or the High Court, by 6 months,

even if the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) A penalty under section 22ZA(2) may be imposed in addition to any other penalty which it is competent for the court to impose even if the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (6) The reference in subsection (5) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
  - (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
  - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
- (7) Subsection (6)(b) is subject to section 204A of this Act.
- (8) The court must state—
  - (a) where the sentence or disposal in respect of the subsequent offence is different from that which the court would have imposed but for section 22ZA(4), the extent of and the reasons for that difference, or
  - (b) otherwise, the reasons for there being no such difference.
- (9) A court which finds a person guilty of an offence under section 22ZA(1) may remit that person for sentence in respect of that offence to any court which is considering the original offence.

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- (10) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under section 22ZA(1).
- (11) In this section, “the original offence” is the offence in relation to which an undertaking is given.”.

#### Commencement Information

**II** [S. 55](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#) (with [Sch.](#))

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