



Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

PART 2

SEXUAL HARM

CHAPTER 2

SEXUAL ACTS OUTSIDE SCOTLAND

7 Incitement to commit certain sexual acts elsewhere in the United Kingdom

- (1) Section 54 of the 2009 Act is amended as follows.
- (2) In subsection (1), for “the United Kingdom” substitute “Scotland”.
- (3) For subsection (2), substitute—
 - “(2) However—
 - (a) a person who is not a habitual resident of Scotland commits an offence by virtue of subsection (1) in respect of relevant conduct intended to occur elsewhere in the United Kingdom only if, and
 - (b) a person who is not a UK national commits an offence by virtue of subsection (1) in respect of relevant conduct intended to occur outside the United Kingdom only if,
the condition in subsection (2A) is met.
 - (2A) That condition is that the relevant conduct would also involve the commission of an offence under the law in force in the country where the whole or any part of it was intended to take place.”
- (4) In subsection (3), for “(2)” substitute “(2A)”.
- (5) In subsection (4), for “(2)” substitute “(2A)”.
- (6) In subsection (8)—

Status: This is the original version (as it was originally enacted).

- (a) after the definition of “listed offence” insert—
 - ““habitual resident of Scotland” means an individual who was at the time the act mentioned in subsection (1) took place habitually resident in Scotland,”
 - (b) in the definition of “UK national” omit “, or who has subsequently become”.
- (7) The title becomes “**Incitement to commit certain sexual acts outside Scotland**”.

8 **Commission of certain sexual offences elsewhere in the United Kingdom**

After section 54 of the 2009 Act, insert—

“54A Offences committed outside Scotland

- (1) If a person does an act elsewhere in the United Kingdom which would, if it had been done in Scotland, constitute a listed offence then the person commits that offence.
- (2) However, a person who is not a habitual resident of Scotland commits an offence by virtue of subsection (1) only if the act would also constitute an offence under the law in force in the country where it took place.
- (3) For the purposes of subsection (2), an act punishable under the law in force in the country is an offence under that law however it is described in that law.
- (4) The condition specified in subsection (2) is to be taken to be satisfied unless, not later than such time as 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 the accused’s opinion satisfied,
 - (b) setting out the grounds for the accused’s opinion, and
 - (c) requiring the prosecutor to prove that the condition is satisfied.
- (5) But 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 that subsection.
- (6) In proceedings on indictment, the question whether the condition is satisfied is to be determined by the judge alone.
- (7) A person may be prosecuted, tried and punished for any offence to which this section applies—
 - (a) in any sheriff court district in Scotland in which the person is apprehended or 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 is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed in that district.
- (8) In this section—
 - “habitual resident of Scotland” means an individual who was at the time the act mentioned in subsection (1) took place habitually resident in Scotland,

“listed offence” means an offence listed in Part 2 of schedule 4,
“sheriff court district” is to be construed in accordance with section 307(1)
of the Criminal Procedure (Scotland) Act 1995.

54B Offence committed by virtue of section 54A(1): limitations on prosecution

- (1) Subject to section 54C, this section applies in relation to a listed offence committed by a person by virtue of section 54A(1).
- (2) Prosecution in respect of the listed offence—
 - (a) is not competent if the person has been, or is being, prosecuted in respect of the act constituting the listed offence, in the country where the act took place, and
 - (b) is competent only if—
 - (i) before the prosecution is initiated, the prosecutor has consulted the relevant director of public prosecutions about the prosecution, and
 - (ii) the person is prosecuted, on the same indictment or complaint, in respect of an act in Scotland constituting a listed offence.
- (3) For the purposes of subsection (2)(a), a person is not to be regarded as having been prosecuted in respect of the act constituting the listed offence, in the country where the act took place, if a prosecution in that country was withdrawn in order to enable the prosecution of the person in Scotland.
- (4) For the purposes of subsection (2)(b)(i)—
 - (a) the prosecution is initiated when the indictment or complaint is served,
 - (b) the relevant director of public prosecutions is—
 - (i) in the case of an act which took place in England and Wales, the Director of Public Prosecutions (that is, the head of the Crown Prosecution Service),
 - (ii) in the case of an act which took place in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (5) In this section, “listed offence” means an offence listed in Part 2 of schedule 4.

54C Listed offence: limitations on prosecution if country not specified

- (1) The indictment or complaint in which a listed offence is charged need not contain information from which the country in the United Kingdom in which the act constituting the listed offence took place can be determined.
- (2) If the indictment or complaint does not contain that information, prosecution in respect of the listed offence—
 - (a) is not competent if the person charged with the offence has been, or is being, prosecuted, in respect of the act constituting the listed offence elsewhere in the United Kingdom, and
 - (b) is competent only if the conditions in subsection (3) which are applicable in the case are met.
- (3) Those conditions are—

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

- (a) if it can be determined from the indictment or complaint that the act constituting the offence took place—
 - (i) either in Scotland or in England and Wales, or
 - (ii) either in Scotland or in Northern Ireland,
 that before the indictment or complaint was served, the prosecutor consulted the relevant director of public prosecutions about the prosecution,
 - (b) if it can be determined from the indictment or complaint that the act constituting the offence took place either in England and Wales or in Northern Ireland but not in Scotland, that—
 - (i) before the indictment or complaint was served, the prosecutor consulted both directors of public prosecutions about the prosecution, and
 - (ii) the person is prosecuted, on the same indictment or complaint, in respect of an act in Scotland constituting a listed offence,
 - (c) if neither paragraph (a) nor (b) applies, that before the indictment or complaint was served, the prosecutor consulted both directors of public prosecutions about the prosecution.
- (4) For the purposes of subsection (3)—
- (a) the relevant director of public prosecutions is—
 - (i) in relation to subsection (3)(a)(i), the Director of Public Prosecutions (that is, the head of the Crown Prosecution Service),
 - (ii) in relation to subsection (3)(a)(ii), the Director of Public Prosecutions for Northern Ireland,
 - (b) the references to both directors of public prosecutions are to the Director of Public Prosecutions and the Director of Public Prosecutions for Northern Ireland.
- (5) For the purposes of subsection (2)(a), a person is not to be regarded as having been prosecuted in respect of the act constituting the listed offence, elsewhere in the United Kingdom, if a prosecution elsewhere in the United Kingdom was withdrawn in order to enable the prosecution of the person in Scotland.
- (6) In this section, “listed offence” means an offence listed in Part 2 of schedule 4.”.

9 Commission of certain sexual offences outside the United Kingdom

(1) Section 55 of the 2009 Act is amended as follows.

(2) After subsection (2), insert—

“(2A) If—

- (a) a person who is not a UK national or a UK resident does an act in a country outside the United Kingdom which would, if it had been done in Scotland, constitute a listed offence,
- (b) the act constitutes an offence under the law in force in that country, and
- (c) the person meets the nationality or residence condition at the relevant time,

proceedings may be brought against the person in Scotland for that listed offence as if the person had done the act there.

(2B) The person meets the nationality or residence condition at the relevant time if the person is a UK national or a UK resident at the time when the indictment or complaint is served on the person.”.

(3) In subsection (3), for “subsection (2)(b)” substitute “subsections (2)(b) and (2A)(b)”.

(4) In subsection (4), after “(2)(b)” insert “or (2A)(b)”.

(5) In subsection (8), for the definition of “UK national” substitute—

““UK national” means an individual who was at the time the act mentioned in subsection (1) or (2A) took place—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject,
or
- (c) a British protected person within the meaning of that Act.”.

(6) In subsection (8), in the definition of “UK resident”—

- (a) after “(2)” insert “or (2A)”,
- (b) omit “, or who has subsequently become”.