

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 3 – Penalties

Sentencing powers

Section 43: Common law offences

249. This section amends section 5(2)(d) of the 1995 Act by increasing the maximum sentence of imprisonment which can be imposed by a sheriff for a common law offence in a summary case from 3 months to 12 months. At present, section 5(3) of the 1995 Act provides that the maximum sentence of imprisonment for a second or subsequent offence involving violence or dishonesty is 6 months. This provision is repealed meaning that, in future, all common law offences will be punishable with a maximum custodial sentence of 12 months on summary conviction. The sentencing powers of the district court are unaffected.

Section 44: Particular statutory offences

250. This section increases the maximum prison sentence for certain statutory offences. These offences attract a maximum sentence in excess of the present common law maximum, but below the proposed new common law maximum of 12 months. They are triable summarily only, so the penalties would not be altered by the provisions of section 45 of this Act. Subsection (1) increases the maximum prison sentence for offences under section 41 of the Police (Scotland) Act 1967 from 9 to 12 months, and amends that Act accordingly. That section covers assaulting or otherwise impeding police officers in the course of their duty.

251. Subsection (2) extends existing powers to impose maximum custodial sentences of 6 months on summary conviction for offences related to the transposition of Council Directive [92/43/EC](#) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”). Section 26A of the Wildlife and Countryside Act 1981 (“the 1981 Act”) currently provides that regulations made under section 2(2) of the European Communities Act, which give effect to the Habitats Directive, may provide for a maximum prison sentence on summary conviction of 6 months. Such regulations would otherwise only be able to impose a maximum sentence of 3 months.

252. However, the power under section 26A of the 1981 Act refers only to the Directive as it was then amended by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive [97/62](#). That reference to the Directive does not take account of a subsequent amendment to the Habitats Directive (by the Act of Accession of the Czech Republic etc in 2003). The effect of this is that section 26A of the 1981 Act does not enable the imposition of maximum 6 month custodial sentences in relation to offences related to that later amendment of the Habitats Directive. Subsection

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(2) ensures that the 6 month maximum can apply in respect of all offences related to the Habitats Directive and that, in the event of any future amendment of the Directive, section 26A of the 1981 Act will continue to apply to the Directive as amended.

253. Subsection (3) increases the maximum sentence under section 37 of the Antisocial Behaviour (Scotland) Act 2004 to 12 months or a fine not exceeding the prescribed sum or both and abolishes the distinction in the maximum penalty between a first offence and a second or subsequent offence. Section 37 contains offences relating to premises which are subject to a closure order.
254. Subsection (4) increases the maximum sentence under the Emergency Workers (Scotland) Act 2005, section 6, from 9 to 12 months or a fine not exceeding the prescribed sum or both. That section covers the offences created by that Act of assaulting or impeding emergency or health workers in the course of their duty.
255. Subsection (5) increases the maximum prison sentence under section 39 of the Fire (Scotland) Act 2005 from 9 to 12 months or a fine not exceeding level 4 on the standard scale or both. That section covers assaulting or impeding those performing certain functions under that Act.

Section 45: Other statutory offences

256. This section brings the maximum summary prison sentences for certain statutory offences into line with the new maximum sentence for common law offences set out in section 43 of the Act.
257. Subsection (1), read with subsections (6), (7) and (8) set out the new maximum, and define the penalty provisions that will be altered. Offences which will be affected are those which can be tried under either solemn or summary procedure (sometimes referred to as “triable either way”) and attract maximum prison sentences of less than 12 months on summary conviction. The new maximum summary penalty for such offences will be 12 months.
258. The effect of subsection (2) is that the statutes which create the affected offences are to be read subject to the amended summary sentencing limit.
259. Subsection (3) allows the Scottish Ministers to amend the maximum period of imprisonment specified in the statutory offences to which subsections (1) and (2) apply. This means that, in due course, textual amendment of the relevant statutes can take place, avoiding ongoing reliance on the general amendment. Subsection (4) provides that the maximum period of imprisonment provided for in a relevant power is to be read as a period of 12 months. Subsection (5) allows the Scottish Ministers to amend certain provisions in enactments that contain powers to create offences. Where an enactment provides for the creation of offences punishable on both solemn and summary conviction, the maximum summary penalty may, by order, be increased to 12 months.

Section 46: JP court: power to increase penalties

260. This section gives powers to the Scottish Ministers to amend the maximum penalties available to the JP court. Ministers will be able to make similar changes which would apply to any remaining district courts by virtue of section 64(5) of the Act.
261. Subsection (1) empowers Ministers to amend, by order, the maximum period of imprisonment, fine, or amount of caution available to JP courts for either common law offences or statutory offences, as specified in section 7(6) or (7) of the 1995 Act.
262. Subsection (2) empowers Ministers to amend the maximum penalty available to JP courts in respect of an offence set out in another statute.

263. Subsection (3) caps these powers. The effect of subsection (3) is that an order could empower the JP court to impose imprisonment for up to 6 months (but could also increase the limit to a period that is higher than the current maximum of 60 days but lower than 6 months).

Section 47: Fine Level

264. This section provides that the maximum level of fine that may be imposed on summary conviction in respect of a statutory “triable either way offence” where the maximum penalty on summary conviction is currently expressed by reference to ‘level 5 on the standard scale’ is to be £10,000 in future.
265. Subsection (1) (read with the definitions provided in subsections (6), (7) and (8)), provides that the maximum fine that may be imposed on a person following summary conviction of a “triable either way” offence for which the current maximum is referred to as level 5 on the standard scale shall be the statutory maximum.
266. The effect of subsection (2) is that the statutes which create the affected offences are to be read subject to the amended maximum financial penalty (the reference to “level 5” as the maximum fine imposable on summary conviction in a “triable either way” offence is to be read as a reference to “the statutory maximum” by virtue of this provision).
267. Subsection (3) allows the Scottish Ministers, by order, to amend the maximum level of fine specified in the statutory offences to which subsections (1) and (2) apply. This means that, in due course, textual amendment of the relevant statutes can take place, avoiding ongoing reliance on the general amendment.
268. The effect of subsection (4) is that any reference in a ‘relevant power’ which expresses the maximum level of fine that may be imposed on summary conviction for a “triable either way” offence as level 5 on the standard scale is to be read as a reference to the statutory maximum. ‘Relevant power’ is defined in subsection (7).
269. Subsection (5) allows the Scottish Ministers, by order, to amend the specification of the maximum fine level in a relevant power so as to increase the maximum to the statutory maximum. This means that, in due course, textual amendment of relevant powers can take place, ensuring that those powers make clear the level of penalty that may be set in any offence created under them, avoiding ongoing reliance on the general amendment.
270. Subsections (6) to (8) provide definitions for the purposes of subsections (1) to (5).

Section 48: Prescribed sum

271. This section increases the prescribed sum from £5,000 to £10,000. The prescribed sum is the maximum amount the sheriff may impose for a common law offence and certain statutory offences under summary procedure.

Section 49: Compensation orders

272. This section amends section 249 of the 1995 Act. That section prescribes and limits the circumstances in which a court can impose a compensation order on an offender. The purpose of the amendment is to extend the power of the court to impose compensation orders.
273. This section is also relevant to the operation of the new alternative to prosecution introduced in section 50 of this Act – the compensation offer – as prosecutors are empowered to issue compensation offers in circumstances where a court could, on conviction, impose a compensation order.
274. The introduction of section 249(1)(b) of the 1995 Act permits compensation to be ordered by a court, or offered by a prosecutor, in circumstances where alarm or distress have been caused directly by the actions complained of. Currently, section 249(1) limits

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compensation orders to circumstances where personal injury, loss or damage is caused either directly or indirectly.