



Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 3

PENALTIES

Sentencing powers

43 Common law offences

In section 5 (the sheriff: summary jurisdiction and powers) of the 1995 Act—

- (a) in paragraph (d) of subsection (2), for the word “three” there is substituted “12”,
and
- (b) subsection (3) is repealed.

44 Particular statutory offences

- (1) In section 41 (assaults on constables, etc.) of the Police (Scotland) Act 1967 (c. 77), in subsection (1), for the word “nine” there is substituted “12”.
- (2) In section 26A (enforcement of wildlife legislation) of the Wildlife and Countryside Act 1981 (c. 69), for the words from “as amended” to “97/62/EC” there is substituted “(that is, the Directive as amended from time to time by any other Community instrument or otherwise)”.
- (3) In section 37 (offences) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)—
 - (a) in subsection (4), for the words from “(a “relevant offence”)” to the end there is substituted “shall be liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46) or to both.”,
 - (b) subsection (5) is repealed.
- (4) In section 6 (penalties) of the Emergency Workers (Scotland) Act 2005 (asp 2)—
 - (a) for the word “9” there is substituted “12”,

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- (b) for the words “level 5 on the standard scale” there is substituted “the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46)”.
- (5) In section 39 (assaulting or impeding employees discharging certain functions) of the Fire (Scotland) Act 2005 (asp 5), in subsection (4)—
 - (a) for the word “9” there is substituted “12”,
 - (b) after the word “scale” there is added “or to both”.
- (6) This section does not affect the penalty for an offence committed before the coming into force of this section.

45 Other statutory offences

- (1) The maximum term of imprisonment to which a person is liable on summary conviction of a relevant offence is, by virtue of this subsection, 12 months.
- (2) Accordingly, the specification of a maximum period of imprisonment in every relevant penalty provision is, in relation to any relevant offence to which it applies, to be read subject to subsection (1).
- (3) Without prejudice to subsections (1) and (2), the Scottish Ministers may by order amend the specification of a maximum term of imprisonment in a relevant penalty provision so as to specify, in relation to the relevant offence to which it applies, that the maximum term of imprisonment to which a person is liable on summary conviction is 12 months.
- (4) The specification of a maximum period of imprisonment in a relevant power is, in relation to any offence to which it applies, to be read as a period of 12 months.
- (5) Without prejudice to subsection (4), the Scottish Ministers may by order amend a relevant power so as to increase to 12 months the maximum term of imprisonment specified in the power.
- (6) In this section, a “relevant offence” is an offence under a relevant enactment or instrument which is—
 - (a) triable either on indictment or summary complaint, and
 - (b) punishable on summary conviction with a maximum term of imprisonment of less than 12 months.
- (7) In this section—
 - a “relevant enactment” is an Act passed before this Act,
 - a “relevant instrument” is any subordinate legislation made before the passing of this Act,
 - a “relevant penalty provision” is a provision of a relevant enactment or instrument which specifies the penalties to which a person is liable on summary conviction of a relevant offence,
 - a “relevant power” is a provision of a relevant enactment which confers a power (however expressed) for subordinate legislation to make a person, as regards an offence that is triable either on indictment or summary complaint, liable on summary conviction to a maximum term of imprisonment of less than 12 months.

- (8) For the purposes of subsection (7), reference to the passing of an Act is to be construed, in the case of an Act of the Scottish Parliament (including this Act), as reference to the passing by the Parliament of the Bill for the Act.

46 JP court: power to increase penalties

- (1) The Scottish Ministers may by order amend any specification of a maximum—
- (a) term of imprisonment,
 - (b) level of fine,
 - (c) amount of caution,
- in section 7(6) or (7) of the 1995 Act.
- (2) The Scottish Ministers may by order amend any specification, in relation to the JP court, of a maximum—
- (a) term of imprisonment,
 - (b) level of fine,
- in any other enactment.
- (3) An order under subsection (1) or (2) may not make provision for—
- (a) a term of imprisonment exceeding 6 months,
 - (b) a fine exceeding level 5 on the standard scale,
 - (c) an amount of caution exceeding level 5 on the standard scale.

47 Fine level

- (1) The maximum fine to which a person is liable on summary conviction of a relevant offence is, by virtue of this subsection, the statutory maximum.
- (2) Accordingly, the specification (by reference to level 5 on the standard scale) of a maximum fine in every relevant penalty provision is, in relation to any relevant offence to which it applies, to be read subject to subsection (1).
- (3) Without prejudice to subsections (1) and (2), the Scottish Ministers may by order amend the specification of a maximum fine in a relevant penalty provision so as to specify, in relation to the relevant offence to which it applies, that the maximum fine to which a person is liable on summary conviction is the statutory maximum.
- (4) The specification (by reference to level 5 on the standard scale) of a maximum fine in a relevant power is, in relation to any offence to which it applies, to be read as the statutory maximum.
- (5) Without prejudice to subsection (4), the Scottish Ministers may by order amend the specification of a maximum fine in a relevant power so as to increase to the statutory maximum the maximum fine specified in the power.
- (6) In this section, a “relevant offence” is an offence under a relevant enactment or instrument which is—
- (a) triable either on indictment or summary complaint, and
 - (b) punishable on summary conviction with a maximum fine specified as level 5 on the standard scale.
- (7) In this section—

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a “relevant enactment” is an Act passed before this Act,

a “relevant instrument” is any subordinate legislation made before the passing of this Act,

a “relevant penalty provision” is a provision of a relevant enactment or instrument which specifies the penalties to which a person is liable on summary conviction of a relevant offence,

a “relevant power” is a provision of a relevant enactment which confers a power (however expressed) for subordinate legislation to make a person, as regards an offence that is triable either on indictment or summary complaint, liable on summary conviction to a maximum fine specified as level 5 on the standard scale.

- (8) For the purposes of subsection (7), reference to the passing of an Act is to be construed, in the case of an Act of the Scottish Parliament (including this Act), as reference to the passing by the Parliament of the Bill for the Act.

48 Prescribed sum

In section 225 (penalties: standard scale, prescribed sum and uprating) of the 1995 Act, in subsection (8), for the words “£5,000” there is substituted “£10,000”.

49 Compensation orders

- (1) In section 249 (compensation order against convicted person) of the 1995 Act—
- (a) in subsection (1), for the words from “any” in the second place where it occurs to the end there is substituted “any—
 - (a) personal injury, loss or damage caused directly or indirectly; or
 - (b) alarm or distress caused directly,

to the victim.”,
 - (b) after that subsection there is inserted—

“(1A) For the purposes of subsection (1) above, “victim” means—

 - (a) a person against whom; or
 - (b) a person against whose property,

the acts which constituted the offence were directed.”.
- (2) In section 251(1)(a) (review of compensation order) of that Act, for the words “or damage” there is substituted “, damage, alarm or distress”.
- (3) In section 253(1) (effect of compensation order on subsequent award of damages in civil proceedings) of that Act, for the words “or damage” there is substituted “, damage, alarm or distress”.
- (4) In section 229 (probation orders: additional requirements) of that Act—
- (a) in subsection (6), for the words from “any” in the second place where it occurs to “offence” there is substituted “the matters referred to in subsection (6A) below”,
 - (b) after that subsection there is inserted—

“(6A) Those matters are any personal injury, loss, damage, alarm or distress of the victim as described in section 249(1) and (1A) of this Act.”.