

SCHEDULE 5
MINOR AND CONSEQUENTIAL AMENDMENTS

The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)

- 1 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- (2) In section 4 (proceedings and penalties for offences under sections 1 to 3), in each of subsections (1) and (5), for the words “, 2 or 3” there is substituted “or 2”.
- (3) In the section title of that section, for the words “to 3” there is substituted “and 2”.
- (4) In section 9 (permitting girl under 16 years to use premises for intercourse)—
- (a) in subsection (2)—
- (i) after the word “charge” there is inserted “in proceedings”,
- (ii) the words from “, being” to “offence,” are omitted,
- (b) after that subsection, there is inserted—
- “(2A) But the defence under subsection (2) is not available to the person so charged if—
- (a) that person has previously been charged by the police with a relevant sexual offence; or
- (b) there is in force in respect of that person a risk of sexual harm order.”,
- (c) in subsection (3), for the words from “(2)” to the end there is substituted
- “(2A) above—
- (a) “a relevant sexual offence” has the same meaning as in section 39(5)(a) of the Sexual Offences (Scotland) Act 2009 (asp 9); and
- (b) “a risk of sexual harm order” has the same meaning as in section 39(5)(b) of that Act.”.
- (5) In section 10(3) (application of provisions of section 10 to offence of indecent behaviour towards girl under 16), for “section 6 of this Act” there is substituted “sections 19 to 26 and 29 to 36 of the Sexual Offences (Scotland) Act 2009 (asp 9) (certain sexual offences relating to children)”.
- (6) After section 12, there is inserted—

“12A Sections 11(5) and 12: further provision

- (1) Premises shall be treated for the purposes of sections 11(5) and 12 of this Act as a brothel if people resort to them for the purposes of homosexual acts in circumstances in which resort to them for heterosexual practices would have led to the premises being treated as a brothel for the purposes of those sections.
- (2) For the purposes of this section, a homosexual act is an act of engaging in sexual activity by one male person with another male person; and an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.”.

Status: This is the original version (as it was originally enacted).

- (7) For the heading above section 13, there is substituted “*Living on earnings of another from male prostitution*”.
- (8) For the section title, there is substituted “Living on earnings of another from male prostitution”.
- (9) In section 13 (homosexual offences), in subsection (9), the words from “or who” to “above” are omitted.