



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 2

### CRIMINAL LAW

#### *Articles banned in prison*

#### **34 Articles banned in prison**

(1) In section 41 of the Prisons (Scotland) Act 1989 (c.45) (unlawful introduction of tobacco etc. into prison)—

(a) for subsection (1) substitute—

“(1) A person commits an offence if without reasonable excuse the person—

(a) brings or otherwise introduces into a prison a proscribed article (or attempts to do so),

(b) takes out of or otherwise removes from a prison a proscribed article (or attempts to do so).

(1A) A person who commits an offence under this section—

(a) where the proscribed article falls within paragraphs (b) to (f) of subsection (9A), is liable on summary conviction to imprisonment for a period not exceeding 30 days or to a fine not exceeding level 3 on the standard scale (or to both),

(b) where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), is liable to the penalties set out in section 41ZA(5).”

(b) in subsection (2), for “the foregoing subsection” substitute “subsection (1) (a).”

(c) in subsection (2A)—

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*Status: This is the original version (as it was originally enacted).*

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- (i) for “article mentioned in paragraphs (a) to (e) of subsection (1) above” substitute “proscribed article”, and
- (ii) for “article mentioned in those paragraphs” substitute “proscribed article”,
- (d) in subsection (2B)(c), for the words from “mentioned” to “that subsection)” substitute “that is a proscribed article falling within paragraph (d) to (f) of subsection (9A) (but not also within paragraph (b) or (c) of that subsection), or falling within paragraph (a) of that subsection”,
- (e) in subsection (3), for “subsection (1) above” substitute “this section or section 41ZA”,
- (f) after subsection (9) insert—
  - “(9A) In this section, a “proscribed article” is—
    - (a) any personal communication device,
    - (b) any drug,
    - (c) any firearm or ammunition,
    - (d) any offensive weapon,
    - (e) any article which has a blade or is sharply pointed,
    - (f) any article (or other article) which is a prohibited article within the meaning of rules made under section 39.
  - (9B) In this section, a “personal communication device” includes—
    - (a) a mobile telephone,
    - (b) any other portable electronic device that is capable of transmitting or receiving a communication of any kind,
    - (c) any—
      - (i) component part of a device mentioned in paragraph (a) or (b),
      - (ii) article that is designed or adapted for use with such a device.”, and
- (g) in subsection (10), in the definition of “offensive weapon”, for “the Prevention of Crime Act 1953” substitute “section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

(2) After section 41 of that Act insert—

**“41ZA Further provision for communication devices**

- (1) A person commits an offence if, knowing another person to be a prisoner, the person gives a personal communication device to the prisoner while the prisoner is inside a prison.
- (2) A person commits an offence if, by means of a personal communication device, the person—
  - (a) transmits, from inside a prison, a communication of any kind, or
  - (b) intentionally receives, when inside a prison, a communication of any kind.
- (3) A person commits an offence if, while inside a prison, the person is in possession of a personal communication device.

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

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- (4) A person who commits an offence under subsections (1) to (3) is liable to the penalties set out in subsection (5).
- (5) The penalties are—
  - (a) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine (or to both),
  - (b) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both).
- (6) In this section, “personal communication device” is to be construed in accordance with section 41(9B).

#### **41ZB Exceptions as to communication devices**

- (1) No offence—
  - (a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
  - (b) under section 41ZA(1) to (3),is committed by a person where subsection (2) applies.
- (2) This subsection applies—
  - (a) if (and in so far as) the act which constitutes the offence is done by the person at or in relation to a designated area at the prison, or
  - (b) if (and in so far as) the person is acting in circumstances to which an authorisation under subsection (8) applies.
- (3) No offence—
  - (a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
  - (b) under section 41ZA(2) or (3),is committed by a prison officer (or other prison official) where subsection (4) applies.
- (4) This subsection applies—
  - (a) if the device is one supplied to the person specifically for use in the course of the person’s official duties at the prison, or
  - (b) if (and in so far as) the person is acting in accordance with those duties.
- (5) No offence under section 41ZA(3) is committed by a person other than a prisoner if in the circumstances there is a reasonable excuse for the possession.
- (6) The defences mentioned in subsection (7) apply in any proceedings for an offence under—
  - (a) section 41(1), where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
  - (b) section 41ZA(1) to (3).

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- (7) In relation to such an offence, it is a defence for the accused person to show that—
- (a) the person reasonably believed that the person was acting in circumstances to which an authorisation under subsection (8) applied (even though no such authorisation did apply), or
  - (b) in the circumstances there was an overriding public interest which justified the person's actions.
- (8) An authorisation under this subsection is a written authorisation that is given—
- (a) in favour of any person specified in the authorisation (or person of a specified description),
  - (b) for a specified purpose, and
  - (c) by—
    - (i) the governor or director of a prison in relation to activities at that prison, or
    - (ii) the Scottish Ministers in relation to activities at any specified prison.
- (9) A designated area referred to in subsection (2)(a) is any part of the prison, used solely or principally for an administrative or similar purpose, that is specified as such by a written designation given under this paragraph by the governor or director of the prison.
- (10) Prison officers (or other prison officials) who are Crown servants or agents do not benefit from Crown immunity in relation to an offence under—
- (a) section 41, where the proscribed article falls within paragraph (a) of subsection (9A) of that section (whether or not also within paragraph (f) of that subsection), or
  - (b) section 41ZA.”.