



# Sexual Offences (Scotland) Act 1976

## 1976 CHAPTER 67

An Act to consolidate certain enactments relating to sexual offences in Scotland. [15th November, 1976]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Procuring**

Any person who procures or attempts to procure—

- (a) any woman under 21 years of age or girl to have unlawful sexual intercourse with any other person or persons in any part of the world, or
- (b) any woman or girl to become a common prostitute in any part of the world, or
- (c) any woman or girl to leave the United Kingdom, with intent that she may become an inmate of or frequent a brothel elsewhere, or
- (d) any woman or girl to leave her usual place of abode in the United Kingdom, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel in any part of the world,

shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

### **2 Procuring by threats, etc.**

(1) Any person who—

- (a) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful sexual intercourse in any part of the world, or
- (b) by false pretences or false representations procures any woman or girl to have any unlawful sexual intercourse in any part of the world, or

(c) applies or administers to, or causes to be taken by, any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful sexual intercourse with such woman or girl, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

(2) A man who induces a married woman to permit him to have sexual intercourse with her by impersonating her husband shall be deemed to be guilty of rape.

### **3 Intercourse with girl under 13**

(1) Any person who has unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for life.

(2) Any person who attempts to have unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

### **4 Intercourse with girl between 13 and 16**

(1) Any person who has, or attempts to have, unlawful sexual intercourse with any girl of or above the age of 13 years and under the age of 16 years shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months:

Provided that no prosecution on indictment shall be commenced for an offence under this subsection more than one year after the commission of the offence.

(2) It shall be a defence to a charge under subsection (1) above that the person so charged—

- (a) had reasonable cause to believe that the girl was his wife; or
- (b) being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or above the age of 16 years.

In this subsection, " a like offence " means an offence under—

- (i) subsection (1) above ; or
- (ii) section 5 or 6 of the Criminal Law Amendment Act 1885 (the provisions replaced for Scotland by subsection (1) above and section 10(1) of this Act); or
- (iii) section 6 of the Sexual Offences Act 1956 (the provision for England and Wales corresponding to subsection (1) above), or with an attempt to commit such an offence ; or
- (iv) section 10(1) of this Act.

### **5 Indecent behaviour towards girl between 12 and 16**

Any person who uses towards a girl of or above the age of 12 years and under the age of 16 years any lewd, indecent or libidinous practice or behaviour which, if used towards a girl under the age of 12 years, would have constituted an offence at common law shall, whether the girl consented to such practice or behaviour or not, be liable on

conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

## **6 Defence to charge of indecent assault**

It shall be a defence to a charge of indecent assault committed against a girl under the age of 16 years that the person so charged had reasonable cause to believe that the girl was his wife.

## **7 Gross indecency between males**

Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

## **8 Abduction of girl under 18 with intent to have sexual intercourse**

Any person who, with intent that any unmarried girl under the age of 18 years should have unlawful sexual intercourse with men or with a particular man, takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months:

Provided that it shall be a defence to any charge under this section that the person so charged had reasonable cause to believe that the girl was of or above the age of 18 years.

## **9 Unlawful detention with intent to have sexual intercourse**

- (1) Any person who detains any woman or girl against her will—
  - (a) in or upon any premises with intent that she may have unlawful sexual intercourse with men or with a particular man, or
  - (b) in any brothel,shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (2) Where a woman or girl is in or upon any premises for the purpose of having unlawful sexual intercourse, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her or, where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the direction of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.
- (3) No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

## 10 Permitting girl to use premises for intercourse

- (1) Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly suffers any girl of such age as is mentioned in this subsection to resort to or be in or upon such premises for the purpose of having unlawful sexual intercourse with men or with a particular man—
  - (a) if such girl is under the age of 13 years, shall be liable on conviction on indictment to imprisonment for life; and
  - (b) if such girl is of or above the age of 13 years and under the age of 16 years, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (2) It shall be a defence to a charge under this section that the person so charged, being a man under the age of 24 years who had not previously been charged with a like offence, had reasonable cause to believe that the girl was of or above the age of 16 years.

In this subsection, " a like offence " means an offence under—

- (i) subsection (1) above; or
- (ii) section 5 or 6 of the Criminal Law Amendment Act 1885 (the provisions replaced for Scotland by section 4(1) of this Act and subsection (1) above); or
- (iii) section 4(1) of this Act.

## 11 Causing or encouraging seduction, prostitution, etc., of girl under 16

- (1) If any person having the custody, charge or care of a girl under the age of 16 years causes or encourages the seduction or prostitution of, unlawful sexual intercourse with, or the commission of an indecent assault upon, her he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (2) For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction or prostitution of, unlawful sexual intercourse with or the commission of an indecent assault upon, a girl who has been seduced or indecently assaulted, or who has had unlawful sexual intercourse or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.
- (3) The foregoing provisions of this section shall apply to a contravention of section 5 of this Act in like manner as they apply to an indecent assault, and any reference to the commission of such an assault or to being indecently assaulted shall be construed accordingly.
- (4) Where on the trial of any offence under this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl under the age of 16 years has been caused, encouraged or favoured by her father, mother, guardian, master of mistress, it shall be in the power of the court to divest such person of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of 21 years, or such less age as the court may direct.
- (5) The High Court of Justiciary shall have the power from time to time to rescind or vary an order under subsection (4) above by the appointment of any other person or persons as such guardian, or in any other respect.

## 12 Persons trading in prostitution

- (1) Every male person who—
  - (a) knowingly lives wholly or in part on the earnings of prostitution, or
  - (b) in any public place persistently solicits or importunes for immoral purposes,shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding six months.
- (2) If it is made to appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the court may issue a warrant authorising any constable to enter and search the house and to arrest that male person.
- (3) Where a male person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.
- (4) Every female who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any other person, or generally, shall be liable to the penalties set out in subsection (1) above.

## 13 Proceedings against brothel keeper, etc.

- (1) Any person who—
  - (a) keeps or manages or acts or assists in the management of a brothel, or
  - (b) being the tenant, lessee, occupier or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution, or
  - (c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,shall be liable on summary conviction in the sheriff court—
  - (i) to a fine not exceeding £100 or to imprisonment for a term not exceeding three months, and
  - (ii) on a second or subsequent conviction, to a fine not exceeding £250 or to imprisonment for a term not exceeding six months,or to both such fine and imprisonment; and shall be liable on conviction in the district court to a fine not exceeding £100 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.
- (2) In determining whether or not a conviction under subsection (1) above is a second or subsequent conviction for the purposes of head (ii) thereof, there shall be taken into account any conviction under section 13 of the Criminal Law Amendment Act 1885 (the provision replaced for Scotland by subsection (1) above) or under section 33, 34,

35 or 36 of the Sexual Offences Act 1956 (the corresponding provisions for England and Wales) as well as any conviction under subsection (1) above.

- (3) The provisions in section 403 of the Burgh Police (Scotland) Act 1892 relating to the voidance or termination of any lease or arrangement to let shall apply upon a conviction under this section in like manner as they apply upon a conviction under that section.

#### **14 Allowing child to be in brothel**

- (1) If any person having the custody, charge or care of a child who has attained the age of four years and is under the age of 16 years, allows that child to reside in or to frequent a brothel, he shall be liable on conviction on indictment, or on summary conviction, to a fine not exceeding £25 or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for a term not exceeding six months.
- (2) Nothing in this section shall affect the liability of a person to be indicted under section 10 of this Act, but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

#### **15 Power, on indictment for rape, etc., to convict of other offences**

If, upon the trial of any indictment for rape or any offence under section 3(1) of this Act, the jury are satisfied that the accused is guilty of an offence under section 2, 3 or 4(1) of this Act, or of an indecent assault, but are not satisfied that the accused is guilty of the charge in such indictment, or of an attempt to commit the same, then and in every such case the jury may acquit the accused of such charge, and find him guilty of such offence as aforesaid, or of an indecent assault, and thereupon the accused shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such offence as aforesaid, or for indecent assault.

#### **16 Accused and spouse to be competent witnesses**

- (1) Every person charged with an offence under this Act and the spouse of the person so charged shall be competent but not compellable witnesses on every hearing at every stage of such charge.
- (2) Nothing in this section shall affect the provisions contained in sections 143 and 348 (spouse as witness in certain cases) of the Criminal Procedure (Scotland) Act 1975.

#### **17 Arrest without warrant**

A constable may take into custody without a warrant any person whom he shall have good cause to suspect of having committed, or of attempting to commit, any offence under section 1 of this Act.

#### **18 Power of search**

- (1) If it appears to any justice on information on oath by any parent, relative or guardian of any woman or girl, or any other person who, in the opinion of the justice, is bona fide acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person

in any place within the jurisdiction of such justice, such justice may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety, such woman or girl until she can be brought before a justice, and the justice before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

- (2) The justice issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.
- (3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of having unlawful sexual intercourse with men or with a particular man, and she—
  - (a) is under the age of 16 years ; or
  - (b) if of or above the age of 16 years and under the age of 18 years, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her ; or
  - (c) if of or above the age of 18 years, is so detained against her will.
- (4) Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom.
- (5) Every warrant issued under this section shall be addressed to and executed by an officer of police, who shall be accompanied by the parent, relative, or guardian or other person giving the information, if such person so desire, unless the justice shall otherwise direct.
- (6) In this section, " justice " includes a sheriff, a stipendiary magistrate and a justice of the peace.

## **19 Liability to other criminal proceedings**

This Act shall not exempt any person from any proceedings for an offence which is punishable at common law, or under any enactment other than this Act, but nothing in this Act shall enable a person to be punished twice for the same offence.

## **20 Transitional provisions, savings and interpretation**

- (1) Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (effect of repeals), nothing in any repeal made by this Act shall affect any order or rule made, certificate issued, requirement or condition imposed or thing done under any enactment repealed by this Act, and every such order, rule, certificate, requirement, condition or thing shall, if in force at the commencement of this Act, continue in force (subject to the provisions of this Act) and be deemed to have been made, issued, imposed or done under the corresponding provisions of this Act.
- (2) Nothing in this Act shall affect the enactments repealed thereby in their operation in relation to offences committed before the commencement of this Act.

- (3) Any reference in any enactment or document to an enactment repealed by this Act shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision in this Act.
- (4) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended, extended or applied by or under any other enactment, including this Act.
- (5) Any act or omission punishable on conviction under this Act shall be deemed to be an offence under this Act.

## **21 Amendments and repeals**

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **22 Citation, commencement and extent**

- (1) This Act may be cited as the Sexual Offences (Scotland) Act 1976.
- (2) This Act shall come into operation at the expiration of the period of one month beginning with the day on which it is passed.
- (3) This Act shall extend to Scotland only.



## SCHEDULES

### SCHEDULE 1

Section 21.

#### AMENDMENT OF OTHER ENACTMENTS

##### *The Mental Health (Scotland) Act 1960 (1960 c. 61)*

In section 96(4), for the words " ten of the Criminal Law Amendment Act 1885 " there shall be substituted the words " 18 of the Sexual Offences (Scotland) Act 1976 ".

##### *The Criminal Procedure (Scotland) Act 1975 (1975 c. 21)*

In section 171(3), for the words from " Schedule 1 " to " Act, 1885 " there shall be substituted the words " paragraphs (b) to (d) of Schedule 1 to this Act or any offence under section 11(1) to (3) or 14 of the Sexual Offences (Scotland) Act 1976 ", and for the words " be presumed " there shall be substituted the words " or the Sexual Offences (Scotland) Act 1976 be presumed ".

In section 368(3), for the words from " Schedule 1 " to " Act, 1885 " there shall be substituted the words " paragraphs (b) to (d) of Schedule 1 to this Act or any offence under section 11(1) to (3) or 14 of the Sexual Offences (Scotland) Act 1976 ", and for the words " be presumed " there shall be substituted the words " or the Sexual Offences (Scotland) Act 1976 be presumed ".

In Schedule 1, in paragraph (a), for the words " Criminal Law Amendment Act 1885 " there shall be substituted the words " Sexual Offences (Scotland) Act 1976 " , and, in paragraph (c), the words " 13, 14 " shall be omitted.

### SCHEDULE 2

Section 21.

#### ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
48 & 49 Vict. c. 69.	The Criminal Law Amendment Act 1885.	The whole Act.
2 Edw. 7. c. 11.	The Immoral Traffic (Scotland) Act 1902.	The whole Act.
2 & 3 Geo. 5. c. 20.	The Criminal Law Amendment Act 1912.	The whole Act.
12 & 13 Geo. 5. c. 56.	The Criminal Law Amendment Act 1922.	The whole Act.
18 & 19 Geo. 5. c. 42.	The Criminal Law Amendment Act 1928.	The whole Act.

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

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Session and Chapter	Short Title	Extent of Repeal
19 & 20 Geo. 5. c. 36.	The Age of Marriage Act 1929.	In section 1(1), the proviso.
1 Edw. 8 & 1 Geo. 6. c. 37.	The Children and Young Persons (Scotland) Act 1937.	Sections 13 and 14.
4 & 5 Eliz. 2. c. 69.	The Sexual Offences Act 1956.	Section 49.
1975 c. 20.	The District Courts (Scotland) Act 1975.	In Schedule 1, paragraph 5.
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	In Schedule 1, in paragraph (c), the words "13, 14"  In Schedule 4, the entry relating to the Immoral Traffic (Scotland) Act 1902.